

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF PERMIT)	
NO. 61-12090 (NEVID LLC);)	
PERMIT NO. 61-12096 (NEVID LLC))	PRELIMINARY ORDER
PERMIT NO. 63-32225)	ON MOTIONS
(INTERMOUNTAIN SEWER AND)	
WATER); NO. 63-32499 (MAYFIELD)	
TOWNSITE LLC); and PERMIT NO.)	
63-35473 (MAYFIELD RANCH LLC))	
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PROCEDURAL HISTORY

On September 12, 2023, the Idaho Department of Water Resources (“Department”) received *Motion to Deny Any Additional Requests for Extension of Time or in the Alternative to Provide Actual Notice and an Opportunity to be Heard to Challenge the Same Before They are Approved* (“*Motion*”) filed by Juniper Station Farm LLC (“Juniper”). Juniper served a copy of the Motion on representatives of Nevid LLC (“Nevid”), Intermountain Sewer and Water (“Intermountain”), Mayfield Townsite LLC (“Mayfield”), and Mayfield Ranch LLC (“Mayfield Ranch”). On September 26, 2023, the Department received timely responses in opposition to the *Motion* from Nevid and Mayfield, Intermountain, and Mayfield Ranch (collectively “Respondents”). Juniper filed a timely reply to the responses (“*Motion Reply*”) on October 3, 2023.

Juniper has filed an application for transfer and an application to appropriate water within an area of limited water supply, referred to as the “I-84 Corridor”, within which the Department is processing applications in chronological order as water becomes available.¹ The most likely way water may become available is if existing permits lapse or are licensed for a lesser quantity than permitted. Juniper must await licensing of the existing permits, as well as processing of earlier in time applications (and, perhaps, licensing of permits that issue therefrom) before the Department will process Juniper’s applications. Juniper asks the Department to preemptively deny future requests for extension of time to file proof of beneficial use for the five existing above-captioned permits in the area (“Subject Permits”). In the alternative, Juniper asks that the Department provide notice and an opportunity to challenge future requests for extension of time to file proof of beneficial use for the Subject Permits prior to any decision. Respondents separately own the Subject Permits in the area that would be affected if the *Motion* were granted. Respondents each oppose the *Motion*.

FINDINGS OF FACT

1. On February 16, 2007, the Department issued permit to appropriate water no. 63-32225 to Intermountain to divert up to 10 cubic feet per second (“cfs”) and 1,815 acre-feet (“af”) of ground water for municipal purposes with a priority date of September

¹ Juniper’s application for transfer was protested and the protest resolution requires the application to be processed in chronological order with other applications for permit and transfer in the area.

- 16, 2005. Proof of beneficial use was due on or before February 1, 2012. The Department since approved requests for extension of time to file proof of beneficial use for permit 63-32225 as follows:
- February 6, 2012 - five additional years, proof due February 1, 2017
 - January 25, 2016 - five additional years, proof due February 1, 2021
 - January 26, 2021 - 584 additional days, proof due September 8, 2022
 - July 21, 2022 - three additional years, proof due April 14, 2025
2. On November 24, 2009, the Department issued permit to appropriate water 61-12090 to Nevid to divert up to 1.82 cfs and 345 af of ground water for municipal purposes, and an additional 2.20 cfs of ground water for fire protection purposes with a priority date of September 28, 2006. Proof of beneficial use was due on or before October 1, 2014. On September 25, 2014, the Department approved a request for a ten-year extension of time to file proof of beneficial use, resulting in a proof due date of October 1, 2024.
 3. On November 4, 2013, the Director issued *Final Order Regarding Water Sufficiency* (“*Final Order*”). In the *Final Order*, the Director determined the available ground water supply is sufficient to approve up to 7,440 af of consumptive use, equivalent to 10.3 cfs of continuous diversion. *Final Order*, at 13.
 4. The *Final Order* ordered that, “processing shall continue for Mayfield application for permit no. 63-32499, Shekinah application for transfer 78356, and Nevid application for permit no. 61-12096. Other applications shall be held until processing is complete for these three applications.” *Id.* at 14.
 5. On November 30, 2015, the Department issued permit to appropriate water 61-12096 to Nevid to divert up to 14.91 cfs and 2,028 af of ground water for municipal purposes,² with a priority date of April 3, 2007. Proof of beneficial use was due on or before December 1, 2020. On January 17, 2021, the Department approved a five-year extension of time to file proof of beneficial use, resulting in a proof due date of December 1, 2025.
 6. On January 13, 2016, the Department issued permit to appropriate water 63-32499 to Mayfield to divert up to 10.0 cfs and 4,320 af of ground water for municipal purposes, with a priority date of July 28, 2006. Proof of beneficial use was due on or before January 1, 2021. On January 17, 2021, the Department approved a five-year extension of time to file proof of beneficial use, resulting in a proof due date of January 1, 2026.
 7. On August 11, 2023, the Department processed a notice of change in water right ownership to reflect Mayfield’s conveyance of a portion of permit 63-32499 to Mayfield Ranch. The ownership change resulted in permit 63-35473 for Mayfield Ranch that authorizes up to 3.48 cfs and 1,503.4 af of ground water for municipal

² Permit 61-12096 also authorizes an additional 5.57 cfs of ground water for fire protection purposes but is conditioned to limit diversion of water for fire protection purposes only when necessary to fight or repel an existing fire.

purposes, and a corresponding reduction in permit 63-32499. Both permits bear a proof of beneficial use due date of January 1, 2026.

8. On January 21, 2016, the Department approved application for transfer 78356 that authorized consumptive use of up to 1,092 af of ground water within the I-84 Corridor. This approval, along with approval of 63-12096 and 63-32499, totals the available 7,440 af of available ground water supply determined in the *Final Order*.

9. Conclusion of Law 13 in the *Final Order* is as follows:

Following completion of processing of the three Mayfield, Shekinah and Nevid applications and following their development, the remaining applications should be evaluated to determine what additional water might be available for appropriation. Subsequent applications will be processed in the chronological order of receipt.

Final Order, at 14. The Department has relied upon this statement to establish a “processing queue” for the remaining applications and subsequently filed applications in the I-84 Corridor.

10. None of the Subject Permits propose municipal use for Reasonably Anticipated Future Needs (“RAFN”).

RELEVANT STATUTES

Idaho Code § 42-204:

(3) The provisions of this subsection shall not apply to permits held by municipal providers for reasonably anticipated future needs. For all other permits, the department shall require that actual construction work and application of the water to full beneficial use shall be complete within a period of five (5) years from the date of such approval, but may limit permit development to a shorter period than requested in the application, and the permit shall set forth the date when beneficial application of the water to be diverted by such works shall be made. Sixty (60) days before the date set for the completion of the appropriation of water under any permit, the department shall forward a notice to the permit holder by certified mail at the permit holder’s address of record of the date for such completion, which said notice shall advise the permit holder of the necessity of submitting a statement of completion showing proof of beneficial use or a request for an extension of time on or before said date. The department may approve a timely request for an extension of time in the following circumstances:

(a) In cases where the permit holder is prevented from proceeding with construction, work, or application of water to full beneficial use by the permit holder’s failure to obtain necessary consent or final approval or rejection from the federal government because of the pendency of an application for right-of-way or other matter within the jurisdiction of the United States, by state, county, city or other local government permitting or administrative action or process related to the permit holder’s land or water development, or by litigation related to the permit holder’s land or

water development, the department of water resources, upon proper showing of the existence of any such condition, and being convinced that said permit holder is proceeding diligently and in good faith, shall extend the time so that the amount of time lost by such delays shall be added to the time given in the original permit, or in any subsequent grant of extension pursuant to paragraph (b), (c), (d), or (f) of this subsection, for each and every action required.

...

(d) The time for completion of works and application of the water to full beneficial use: (i) under any permit authorizing the diversion of two (2) or more cubic feet per second of water or the development or cultivation of one hundred (100) or more acres of land or (ii) under any permit that, when combined with another permit, authorizes the diversion of two (2) or more cubic feet per second of water or the development or cultivation of one hundred (100) or more acres of land, provided the permits have a common or combined diversion and distribution system, are owned by the same permit holder, and are approved within five (5) years of each other may be extended by the director of the department of water resources upon application by the permit holder for an additional period up to ten (10) years beyond the initial development deadline contained in the permit, or beyond a grant of extension pursuant to the provisions of paragraph (a) of this subsection, provided the permit holder establishes that the permit holder has exercised reasonable diligence and that good cause exists for the requested extension.

...

(f) In all other situations not governed by these provisions, the department may grant one (1) extension of time, not exceeding five (5) years beyond the date originally set for completion of works and application of the water to full beneficial use, or beyond any grant of extension pursuant to the provisions of paragraph (a) of this subsection, upon request for extension received on or before the date set for completion, provided good cause appears therefor.

(5) Any permit holder aggrieved by the decision of the department of water resources regarding its request for extension may request a hearing before the director in accordance with section 42-1701A(3), Idaho Code, for the purpose of contesting the decision and may seek judicial review pursuant to section 42-1701A(4), Idaho Code, of any final decision of the director following the hearing.

...

(7) The provisions of this section as it becomes effective on July 1, 2021, shall apply to all existing permits pending before the department of water resources on July 1, 2021. Permits pending before the department on July 1, 2021, are

entitled to the maximum qualifying extension available pursuant to the provisions of this section regardless of whether the permittee received a prior extension under subsection (3)(f) of this section.

Idaho Code § 42-1701A:

(3) Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person aggrieved by any action of the director, including any decision, determination, order or other action, including action upon any application for a permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the director, who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. The director shall give such notice of the petition as is necessary to provide other affected persons an opportunity to participate in the proceeding. The hearing shall be held and conducted in accordance with the provisions of subsections (1) and (2) of this section. Judicial review of any final order of the director issued following the hearing shall be had pursuant to subsection (4) of this section.

ANALYSIS

I. Request for Blanket Denial

Juniper asks the Department to “deny any additional requests for extension of time by the [Respondents]” for the Subject Permits in the I-84 Corridor. *Motion*, at 1. Juniper asserts that previous extensions of time the Department has granted, and any future extensions it might grant, “prejudices Juniper’s ability to move up the Department’s processing queue.” *Id.* at 3. Juniper argues that the processing queue and the existing permits have “locked up” the limited water supply in the I-84 Corridor because the Respondents have not put the water to beneficial use, while others, such as Juniper, are ready and willing to do so, but cannot. *Id.* at 7. Juniper asserts that accepting additional requests for extension of time for the Subject Permits will violate Idaho Code § 42-204(3) because extensions beyond 10-15 years will “turn the non-RAFN Permits into RAFN Permits, despite not being applied for as such.” *Id.* at 9. Juniper further claimed that granting additional extensions of time would “violate the development period for non-RAFN municipal permits.” *Motion Reply*, at 4.

Juniper cites the *RAFN Municipal Water Right Handbook*³ (“*Handbook*”) that states “the maximum development period for a beneficial use associated with a non-RAFN water right is five years, which can be extended an additional five to ten years for a total of ten to fifteen years.” *Handbook*, at 9. Juniper suggests that statement supports Juniper’s claim that longer development periods are not possible for non-RAFN municipal permits. The

³ See the Department’s Administrative Memorandum, *Recommendations for the Processing of Reasonably Anticipated Future Needs (RAFN) Municipal Water Rights at the Time of Application, Licensing, and Transfer*, RAFN Municipal Water Right Handbook (Amended October 2021).

Handbook is a Department guidance document and does not carry the force and effect of law. In this case, the statement in the *Handbook* fails to recognize situations that would result in longer development periods.

Idaho Code § 42-204(3)(a)–(f) lists circumstances for which the Department may approve a timely request for extension of time to file proof of beneficial use for a permit. These circumstances do not apply to permits held for municipal purposes for RAFN. None of the Subject Permits are held for RAFN. Several of the circumstances listed in Section 42-204(3) specify a maximum number of years for an extension. Extensions approved based on such circumstances generally result in a maximum development period of up to 10 years beyond an initial five-year development period for permits such as the Subject Permits. However, this is not the maximum time that may be available. Longer development periods can result from extensions for a permit based on circumstances in Section 42-204(3) that do not have specific limitations on the number or duration of extensions of time. Nothing in Section 42-204(3) suggests that a permit for non-RAFN municipal purposes is absolutely limited to a certain development period, or that it becomes a permit for RAFN, if it qualifies for and receives some reasoned number of years of extension of time to submit proof of beneficial use. The *Motion* cannot be granted based on the assertion that additional requests for extension of time for the Subject Permits will violate Section 42-204(3).

The *Motion* should be denied because granting a blanket denial of future requests for extension would violate Idaho Code § 42-204(3)(a). Section 42-204(3)(a) allows a permit holder to request an extension of time provided that certain conditions are met. The Department may approve a request for an extension of time if: (1) the permit holder could not obtain the necessary approval by applicable federal, state, county, city, or other local permitting authority which prevented the construction, work, or application of water to full beneficial use on the permit holder's land or water development; or (2) the permit holder could not construct, work, or apply water to full beneficial use because of litigation surrounding the permit holder's land or water development. I.C. § 42-204(3)(a). The Department must evaluate any such request on a case-by-case basis, looking at the facts presented with the request, to determine whether the permit holder has made a "proper showing of the existence of any such condition, and [the Department] being convinced that said permit holder is proceeding diligently and in good faith, shall extend the time" to the extent time was lost due to the delay. *Id.* If the Department finds that the permit holder was delayed, but proceeding in good faith, it *must* extend the time to file proof. *Id.* The Department will not have the facts to make this evaluation until a request for extension of time is filed, so it cannot issue a blanket denial in advance.

Similarly, the circumstances described in subsections (d) and (f) require the Department to evaluate whether good cause exists to grant the request.⁴ Although extensions available under subsections (d) and (f) are limited to a specific number of years, extensions available under subsection (a) have no such limitation and are granted in addition to any extension granted under subsections (d) or (f). Moreover, Section 42-204(7) entitles permit holders "to the maximum qualifying extension available pursuant to the provisions of this section regardless of whether the permittee received a prior extension under subsection

⁴ Note that subsections (b), (c), and (e) are specific to permits of certain sizes and uses, or to specific permit holders, and are not applicable to the Subject Permits.

(3)(f).” If the Department receives a request for an extension of time and the permit holder proves that it made a good faith effort, based on the factual circumstances, that it was delayed in proving beneficial use, the Department may grant an extension of time without a specific number of years limitation.⁵ I.C. § 42-204(3)(a). The Subject Permits have each been granted one or more extensions of time, so it may be that additional extensions of time under one or more of the circumstances is not available to one or more of the Subject Permits, but each request for extension of time must be evaluated on a case-by-case basis. The Department has discretion in most cases whether to approve a request, but in all cases the Department is required to evaluate whether the request meets the criteria in Section 42-204(3). The Department cannot evaluate a request that has not yet been filed. Juniper’s *Motion* for a blanket future denial should be denied.

II. Alternative – Provide Notice and Opportunity to Participate in Future Requests

As an alternative to a blanket denial of future requests for extension of time to file proof of beneficial use for the Subject Permits, Juniper asks that the Department provide Juniper with actual notice of any future requests and provide an opportunity to be heard to challenge any such requests before they are approved. *Motion*, at 9.

Section 42-204(3) only requires that a 60-day notice be given to the *permit holder* that advises the permit holder of its requirement to show proof of beneficial use or file an extension of time on or before the proof of beneficial use date. Nothing in Idaho Code § 42-204 suggests that the Department needs to provide public notice or an opportunity for public participation when it receives a request for extension of time.

Idaho Code § 42-1701A(3) is generally an avenue in which an aggrieved person can request a hearing before the Director based on an action taken by the Director. It states:

[A]ny person aggrieved by any action of the director, including any decision, determination, order or other action, including action upon any application for permit, . . . approval, . . . or similar form of permission required by law to be issued by the director, who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action.”

Pursuant to Idaho Code § 42-1701A(3), Juniper may request a hearing before the Director to contest the Director’s approval of a request for extension of time so long as Juniper files a petition for hearing “stating the grounds for contesting the action” within fifteen days of written or actual notice of an approval of extension of time. However, Juniper is asking to participate in the process before the Director receives an extension of time request for the Subject Permits and before the Director approves or denies any future request for extension of time for any of the Subject Permits.

The Department declines to designate a forum and an opportunity for a hearing in advance of future requests for extension of time. In addition, there is no statutory requirement for the Department to provide notice to Juniper whenever it receives a request for extension of time. However, the Department agrees to provide Juniper a courtesy copy of any decision on such

⁵ The Department will conduct a good faith analysis to ensure that the extension for time request is not made for speculative purposes.

requests. Such notice will ensure Juniper can take timely action pursuant to Idaho Code § 42-1701A(3). Juniper's *Motion* in the alternative for the Department to provide a forum for notice and an opportunity to be heard should be denied because Juniper already has an avenue to request a hearing pursuant to Idaho Code § 42-1701A(3) once the Department issues a decision on a request for extension of time.

CONCLUSIONS OF LAW

1. Holders of the Subject Permits are entitled to request extensions of time pursuant to Idaho Code § 42-204(3), and the Department must evaluate such requests pursuant to the statutory requirements.
2. The Department cannot evaluate requests for extension of time in advance of receiving them, so the *Motion* should be denied.
3. Nothing in Idaho Code § 42-204(3) suggests that the Department needs to provide public notice or an opportunity for public participation when it receives a request for extension of time.
4. Juniper has the opportunity to request a hearing pursuant to Idaho Code § 42-1701A(3) once the Department issues a decision on a request for extension of time so long as Juniper complies with the statutory requirements. The Department agrees to notify Juniper of future decisions on requests for extension of time for the Subject Permits.

ORDER

Based on the foregoing, IT IS HEREBY ORDERED that Juniper's *Motion to Deny Any Additional Requests for Extension of Time or in the Alternative to Provide Actual Notice and an Opportunity to be Heard to Challenge the Same Before They are Approved* is DENIED.

It is further HEREBY ORDERED that the Department shall provide Juniper a courtesy copy of any decision issued in response to a request for extension of time filed for permit 61-12090, 61-12096, 63-32225, 63-32499, or 63-35473.

IT IS FURTHER ORDERED that as of October 11, 2024, and pursuant to IDAPA 37.01.01.053.02-03, the Department and parties are authorized to serve documents by email as an alternative to service by mail or personal service. The emails included in the certificate of service below are to be used for official service, unless a notice instructing otherwise is filed with the Department and properly served on the parties.

Dated this 11th day of October 2024




Nick Miller
Manager, IDWR Western Region

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of October, 2024, I served a true and correct copy of the foregoing document on the following by the method(s) indicated below:

<p>CHRIS M. BROMLEY CANDICE M. MCHUGH MCHUGH BROMLEY PLLC 380 S 4TH ST STE 103 BOISE ID 83702-7687 208.287.0991 cbromley@mchughbromley.com cmchugh@mchughbromley.com Attorney for Juniper Station Farms LLC Petitioner</p>	<p><input type="checkbox"/> U.S. Mail, Certified, postage prepaid <input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email</p>
<p>NORMAN M. SEMANKO GARRETT M. KITAMURA PARSONS BEHLE & LATIMER 800 W MAIN ST STE 1300 BOISE ID 83702 208.562.4900 nsemanko@parsonsbehle.com gkitamura@parsonsbehle.com ecf@parsonsbehle.com Attorneys for Mayfield Townsite LLC and Nevid LLC Respondents</p>	<p><input type="checkbox"/> U.S. Mail, Certified, postage prepaid <input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email</p>
<p>MICHAEL P. LAWRENCE GIVENS PURSLEY LLP 601 W BANNOCK ST PO BOX 2720 BOISE, ID 83701-2720 208.388.1294 mpl@givenspursley.com Attorney for Mayfield Ranch LLC Respondent</p>	<p><input type="checkbox"/> U.S. Mail, Certified, postage prepaid <input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email</p>
<p>S. BRYCE FARRIS SAWTOOTH LAW OFFICES PLLC 1101 W RIVER ST STE 110 BOISE ID 83702-7067 208.629.7447 bryce@sawtoothlaw.com Attorney for Intermountain Sewer and Water Corp. Respondent</p>	<p><input type="checkbox"/> U.S. Mail, Certified, postage prepaid <input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email</p>



 Nick Miller
 Manager, IDWR Western Region

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

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. **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(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 Water Resource 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 service date 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.

**IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit 63-32499**

8/11/2023

After Split

<u>Owner Type</u>	<u>Name and Address</u>
Attorney	NORMAN M SEMANKO PARSONS BEHLE & LATIMER PLC 800 W MAIN ST STE 1300 BOISE, ID 83702 (208) 562-4900
Current Owner	MAYFIELD TOWNSITE LLC 11204 N BAR 21 DR GLENN'S FERRY, ID 83623-5028 (208) 366-7931
Interested Party	CHARLES L HONSINGER PO BOX 517 BOISE, ID 83701-0517 (208) 863-6106
Original Owner	MARTY GOLDSMITH PO BOX 1359 CALDWELL, ID 83606 (208) 850-9654
Representative	SPF WATER ENGINEERING LLC C/O SCOTT N KING 300 E MALLARD DR STE 350 BOISE, ID 83706 (208) 383-4140

Priority Date: 7/28/2006

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
MUNICIPAL	01/01	12/31	6.520 CFS	
	<u>Total Diversion</u>		6.520 CFS	

Source and Point(s) of Diversion:

GROUND WATER	SWNE	Sec. 24, Twp 01N, Rge 04E, ELMORE County
GROUND WATER	SESW	Sec. 23, Twp 01N, Rge 04E, ELMORE County
GROUND WATER	SENE	Sec. 27, Twp 01N, Rge 04E, ELMORE County
GROUND WATER	NWSW	Sec. 24, Twp 01N, Rge 04E, ELMORE County
GROUND WATER	SWSW	Sec. 24, Twp 01N, Rge 04E, ELMORE County
GROUND WATER	SESE	Sec. 24, Twp 01N, Rge 04E, ELMORE County
GROUND WATER	SWSE	Sec. 18, Twp 01N, Rge 05E, ELMORE County
GROUND WATER	L2(SWNW)	Sec. 19, Twp 01N, Rge 05E, ELMORE County

IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit 63-32499

8/11/2023

Place Of Use:

MUNICIPAL within **ELMORE** County

Twp	Rng	Sec	NE				NW				SW				SE				Totals	
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
01N	04E	12													X				X	
01N	04E	13	X																	
01N	04E	14									X	X	X	X						
01N	04E	15																	X	
01N	04E	22	X	X	X	X	X	X	X	X	X	X			X	X				
01N	04E	23		X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X
01N	04E	24	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
01N	04E	25		X	X	X	X	X	X	X	X	X	X	X		X	X			
01N	04E	26	X	X	X	X	X	X	X	X	X				X	X	X	X		
01N	04E	27	X			X									X					
01N	05E	5	X L1	X L2	X	X			X	X	X	X	X	X	X	X	X	X	X	X
01N	05E	7									X	X L3	X L4	X		X				
01N	05E	8	X	X	X	X	X			X	X	X	X	X	X	X	X	X	X	X
01N	05E	17	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
01N	05E	18		X			X	X L1	X L2	X	X	X L3	X L4	X	X	X	X	X	X	X
01N	05E	19	X	X	X	X	X	X L1	X L2	X	X	X L3	X L4	X		X	X			
01N	05E	20	X	X	X	X	X			X										
01N	05E	21						X	X											

Conditions of Approval:

1. 128 Place of use is within the area served by the public water supply system of Mayfield Townsite. The place of use is generally located within Sections 12-15 and 22-27, Township 1N, Range 4E and Sections 5, 7, 8 and 17-21, Township 1N, Range 5E.
2. 180 A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustrative purposes.
3. Prior to submitting proof of beneficial use, the right holder shall not assign ownership of the permit to another owner without prior notification to the Department.
4. 134 Prior to or in connection with the proof of beneficial use statement to be submitted for municipal water use under this right, the right holder shall provide the department with documentation showing that the water supply system is being regulated by the Idaho Department of Environmental Quality as a public water supply and that it has been issued a public water supply number.
5. 26A Project construction shall commence within one year from the date of permit

IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit 63-32499

8/11/2023

- issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
6. 004 This right does not grant any right-of-way or easement across the land of another.
 7. 046 Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
 8. 121 The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.
 9. 196 The right holder shall install or construct a straight length of conduit or ditch suitable for installation of a device for measuring the entire flow of water being diverted in connection with this right. If the right holder uses conduit, the straight length of conduit shall be at least fifteen times the diameter of the conduit and shall be above ground or otherwise easily accessible.
 10. R64 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for municipal type irrigation within the place of use.
 11. Diversion of water under this water right will impact the sufficiency of the supply for the Swan Falls minimum flows, because of the direct hydraulic connection between the ground water being appropriated by the applications and the Snake River above Swan Falls Dam. The water right holder shall fully participate in any requirement imposed upon other junior water right holders and trust water right holders needed to satisfy the Swan Falls minimum flows.
 12. Prior to diversion and use of water under this right, the right holder shall install a flow measurement and volume totalizing device of a type approved by the Department on each point of diversion to measure flow and volume of water diverted.
 13. Diversion and use of water in connection with this right is subject to a Monitoring-Reporting Plan. The right holder shall provide the Department with a plan for monitoring-reporting aquifer levels, diversion flow rates, and volumes. The monitoring-reporting should occur in parallel with land development and production and should include identification of non-production wells and timelines for measuring and reporting. The right holder shall not divert water in connection with this right until the plan is approved by the Department. Failure to comply with the plan once it is accepted shall be cause for the Department to cancel or revoke the right.
 14. Common areas, parks, school grounds, golf courses, and any other large parcels may only be irrigated under this water right with wastewater that has been previously beneficially used for potable or culinary purposes, has been treated in a waste water treatment plant, and is delivered from the wastewater treatment plant to the parcel to be irrigated.
 15. Water diverted under this right may be used for direct irrigation of up to ½ acre per residential lot upon which a home has been constructed.
 16. This right is limited to a total diversion volume of 2816.6 acre-feet annually.

Comments:

1 scurtis 9/29/2014 POU

IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit 63-32499

8/11/2023

Updated Shape

2 scurtis 9/29/2014 POU
Updated PLS

3 agrimm 11/9/2015 POD
Updated Shape

4 agrimm 11/9/2015 POU
Updated Shape

5 nmiller 7/31/2019 Data entry correction
I updated the proof of beneficial use due date in the database from 12/1/2020 to 1/1/2021 to be consistent with the permit document issued on January 13, 2016.

6 djudd 10/14/2020 Extension of Time
Extension request filed and granted based on due diligence pursuant to Idaho Code § 42-204(3)(d). Proof due extended to 1/1/2026. More extensions are allowed for due diligence pursuant to Idaho Code § 42-204(3)(d).

7 Ahansen 12/22/2022 Charles Honsinger Interested Party Entry
On 4/27/2016, IDWR received a request from Charles Honsinger to be notified of any IDWR action on this water right. When I checked the database today, Charles was not listed as an interested party. Charles Honsinger is retired, but I entered his old contact information as a flag so anyone working on future actions can consider whether the party Charles Honsinger previously represented related this the water right should be notified of the action.

8 jhersley 8/11/2023 POU
Updated Shape

9 jhersley 8/11/2023 Split Right
Split into 63-32499 & 63-35473 due to change in ownership to Mayfield Ranch LLC.

Dates and Other Information:

Permit Proof Due Date: 1/1/2026
Permit Approved Date: 1/13/2016
Water District Number: 161
Mitigation Plan: False

Combined Use Limits:

N/A

SubCase:

N/A

Water Supply Bank:

IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit 63-32499

8/11/2023

N/A

IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit 63-32499

8/11/2023

Before Split

<u>Owner Type</u>	<u>Name and Address</u>
Attorney	NORMAN M SEMANKO PARSONS BEHLE & LATIMER PLC 800 W MAIN ST STE 1300 BOISE, ID 83702 (208) 562-4900
Current Owner	MAYFIELD TOWNSITE LLC 11204 N BAR 21 DR GLENN'S FERRY, ID 83623-5028 (208) 366-7931
Interested Party	CHARLES L HONSINGER PO BOX 517 BOISE, ID 83701-0517 (208) 863-6106
Original Owner	MARTY GOLDSMITH PO BOX 1359 CALDWELL, ID 83606 (208) 850-9654
Representative	SPF WATER ENGINEERING LLC C/O SCOTT N KING 300 E MALLARD DR STE 350 BOISE, ID 83706 (208) 383-4140

Priority Date: 7/28/2006

Status: Active

Source
GROUND WATER

Tributary

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
MUNICIPAL	01/01	12/31	10.000 CFS	
	<u>Total Diversion</u>		10.000 CFS	

Source and Point(s) of Diversion:

GROUND WATER	SWNE	Sec. 24, Twp 01N, Rge 04E, ELMORE County
GROUND WATER	SESW	Sec. 23, Twp 01N, Rge 04E, ELMORE County
GROUND WATER	SENE	Sec. 27, Twp 01N, Rge 04E, ELMORE County
GROUND WATER	NWSW	Sec. 24, Twp 01N, Rge 04E, ELMORE County
GROUND WATER	SWSW	Sec. 24, Twp 01N, Rge 04E, ELMORE County
GROUND WATER	SESE	Sec. 24, Twp 01N, Rge 04E, ELMORE County
GROUND WATER	SWSE	Sec. 18, Twp 01N, Rge 05E, ELMORE County
GROUND WATER	L2(SWNW)	Sec. 19, Twp 01N, Rge 05E, ELMORE County

IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit 63-32499

8/11/2023

- issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
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10. R64 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for municipal type irrigation within the place of use.
11. Diversion of water under this water right will impact the sufficiency of the supply for the Swan Falls minimum flows, because of the direct hydraulic connection between the ground water being appropriated by the applications and the Snake River above Swan Falls Dam. The water right holder shall fully participate in any requirement imposed upon other junior water right holders and trust water right holders needed to satisfy the Swan Falls minimum flows.
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14. Common areas, parks, school grounds, golf courses, and any other large parcels may only be irrigated under this water right with wastewater that has been previously beneficially used for potable or culinary purposes, has been treated in a waste water treatment plant, and is delivered from the wastewater treatment plant to the parcel to be irrigated.
15. Water diverted under this right may be used for direct irrigation of up to ½ acre per residential lot upon which a home has been constructed.
16. This right is limited to a total diversion volume of 4320.0 acre-feet annually.

Comments:

1 scurtis 9/29/2014 POU

IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit 63-32499

8/11/2023

Updated Shape

2 scurtis 9/29/2014 POU
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Dates and Other Information:

Permit Proof Due Date: 1/1/2026
Permit Approved Date: 1/13/2016
Water District Number: 161
Mitigation Plan: False

Combined Use Limits:

N/A

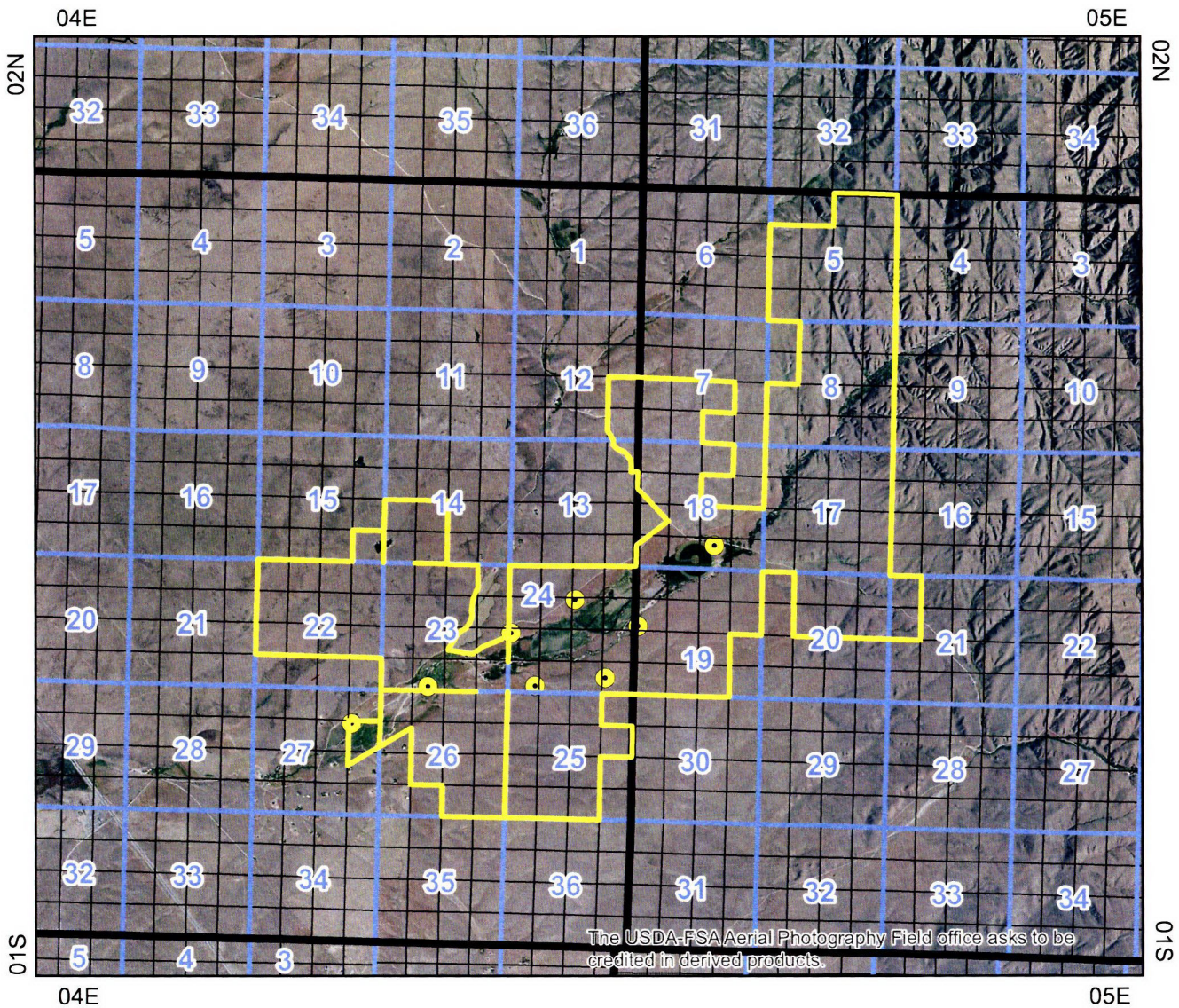
SubCase:

N/A

Water Supply Bank:

N/A

State of Idaho
 Department of Water Resources
Permit to Appropriate Water
 63-32499
 Water Service Area Boundary for Mayfield Townsite Llc



- Water Service Area Boundary
- Townships
- PLS Sections
- Quarter Quarters
- Point of Diversion



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

RECEIVED
JUL 26 2023
DEPARTMENT OF
WATER RESOURCES

1. List the numbers of all water rights and/or adjudication claim records to be changed. If you only acquired a portion of the water right or adjudication claim, check "Yes" in the "Split?" column. If the water right is leased to the Water Supply Bank, check "Yes". If you are not sure if the water right is leased to the Water Supply Bank, see #7 of the instructions.

Water Right/Claim No.	Split?	Leased to Water Supply Bank?	Water Right/Claim No.	Split?	Leased to Water Supply Bank?
63-32499	Yes <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>		Yes <input type="checkbox"/>	Yes <input type="checkbox"/>
463-35473	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>		Yes <input type="checkbox"/>	Yes <input type="checkbox"/>
	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>		Yes <input type="checkbox"/>	Yes <input type="checkbox"/>
	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>		Yes <input type="checkbox"/>	Yes <input type="checkbox"/>
	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>		Yes <input type="checkbox"/>	Yes <input type="checkbox"/>

2. Previous Owner's Name: Mayfield Townsite LLC, an Idaho limited liability company
Name of current water right holder/claimant

3. New Owner(s)/Claimant(s): Mayfield Ranch LLC, a Delaware limited liability company, dba in Idaho as Mayfield Ranch II LLC c/o Givens Pursley LLP (Michael P. Lawrence)

New owner(s) as listed on the conveyance document Name connector and or

601 W. Bannock St. Boise ID 83702
Mailing address City State Zip

(208) 388-1200 mpl@givenspursley.com
Telephone Email

4. If the water rights and/or adjudication claims were split, how did the division occur?
 The water rights or claims were divided as specifically identified in a deed, contract, or other conveyance document.
 The water rights or claims were divided proportionately based on the portion of their place(s) of use acquired by the new owner.

5. Date you acquired the water rights and/or claims listed above: January 13, 2022 & July 24, 2023

6. Do you own the land identified as the water right place of use? Yes No
 o If no, attach evidence that written notice of the change of water right ownership has been delivered to the landowner of record.

7. This form must be signed and submitted with the following **REQUIRED** items:
 A copy of the conveyance document – warranty deed, quitclaim deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property or description of the water right(s) if no land is conveyed.
 Plat map, survey map or aerial photograph which clearly shows the place of use and point of diversion for each water right and/or claim listed above (if necessary to clarify division of water rights or complex property descriptions).
 Filing fee (see instructions for further explanation):
 o \$25 per undivided water right.
 o \$100 per split water right.
 o No fee is required for pending adjudication claims.
 If water right(s) are leased to the Water Supply Bank AND there are multiple owners, a Lessor Designation form is required.
 If water right(s) are leased to the Water Supply Bank, the individual owner or designated lessor must complete, sign and submit an IRS Form W-9.

SUPPORT DATA
IN FILE # 63-32499

8. Signature: [Signature] Manager 7/24/23
 Signature of new owner/claimant Title, if applicable Date
Darren Mower
 Print name

Signature: _____
 Signature of new owner/claimant Title, if applicable Date
 Print name

SCANNED
AUG 11 2023

For IDWR Office Use Only:
 Received by KM Date 7.26.23 Receipt No. C116804 Receipt Amt. \$ 100-

Active in the Water Supply Bank? Yes No If yes, forward to the State Office for processing W-9 received? Yes No
 Name on W-9 _____ Approved by _____ Processed by [Signature] Date 8-11-23

Instrument # 0000497036
ELMORE COUNTY, ID
09:09:48 AM Jan 18, 2022
For **TITLEONE BOISE**
No. of Pages: 5 Fee: \$15.00
SHELLEY ESSL, Recorder
JK, Deputy
Electronically Recorded by Simplifile



Order Number: 21438637

Warranty Deed

For value received,

Mayfield Townsite, LLC, an Idaho limited liability company

the grantor, does hereby grant, bargain, sell, and convey unto

Mayfield Ranch, LLC, an Delaware limited liability company

whose current address is 4208 E. Trekker Rim Drive Boise, ID 83716

the grantee, the following described premises, in Elmore County, Idaho, to wit:

See Exhibit A, attached hereto and incorporated herein.

The conveyance includes 1.25 cfs of Water Right 63-32499. Grantor retains all remaining water rights and water permits appurtenant to the premises described on Exhibit A attached hereto.

To have and to hold the said premises, with their appurtenances unto the said Grantee, its heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that Grantor is the owner in fee simple of said premises; that they are free from all encumbrances except those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee; and subject to all existing patent reservations, easements, right(s) of way, protective covenants, zoning ordinances, and applicable building codes, laws and regulations, general taxes and assessments, including irrigation and utility assessments (if any) for the current year, which are not due and payable, and that Grantor will warrant and defend the same from all lawful claims whatsoever. Whenever the context so requires, the singular number includes the plural.

Remainder of page intentionally left blank.

SCANNED
AUG 11 2022

Order Number: 21438637

Warranty Deed - Page 1 of 3

EXHIBIT "A"

Land situate in the Sections 23, 24, 25, 26 and 27 of Township 1 North, Range 4 East, and situate in Section 19 of Township 1 North, Range 5 East, Boise Meridian, Elmore County, Idaho, being more particularly described as follows:

Beginning at the Southwest corner of said Section 19, which is the POINT OF BEGINNING:

Thence S89°49'28"W, 1,320.17 feet along the Northerly boundary of the Northeast quarter of the Northeast quarter of said Section 25 to the Northeast corner of the Northwest quarter of the Northeast quarter of said Section 25;

Thence S00°02'32"W, 1,322.36 feet along the Easterly boundary of the Northwest quarter of the Northeast quarter of said Section 25 to the Southeast corner of the Northwest quarter of the Northeast quarter of said Section 25;

Thence N89°55'02"E, 1,320.06 feet along the Southerly boundary of the Northeast quarter of the Northeast quarter of said Section 25 to the Southeast corner of the Northeast quarter of the Northeast quarter of said Section 25;

Thence S00°02'48"W, 1,324.50 feet along the Easterly boundary of the Southeast quarter of the Northeast quarter of said Section 25 to the East quarter corner of said Section 25;

Thence N89°59'24"W, 1,319.96 feet along the Southerly boundary of the Southeast quarter of the Northeast quarter of said Section 25 to the Southwest corner of the Southeast quarter of the Northeast quarter of said Section 25;

Thence S00°06'16"E, 2,640.97 feet along the Easterly boundary of the Northwest quarter of the Southeast quarter and the Easterly boundary of the Southwest quarter of the Southeast quarter of said Section 25 to the Southeast corner of the Southwest quarter of the Southeast quarter of said Section 25;

Thence N89°53'15"W, 1,326.51 feet along the Southerly boundary of the Southwest quarter of the Southeast quarter of said Section 25 to the South quarter corner of said Section 25;

Thence N89°51'20"W, 2,655.58 feet along the Southerly boundary of the Southwest quarter of said Section 25 to the Southwest corner of said Section 25;

Thence S89°48'52"W, 2,649.60 feet along the Southerly boundary of said Section 26 to the South quarter corner of said Section 26;

Thence N00°10'33"E, 1,315.30 feet along the Westerly boundary of the Southwest quarter of the Southeast quarter of said Section 26 to the Northwest corner of the Southwest quarter of the Southeast quarter of said Section 26;

Thence S89°46'07"W, 1,324.65 feet along the Southerly boundary of the Northeast quarter of the Southwest quarter of said Section 26 to the Southwest corner of the Northeast quarter of the Southwest quarter of said Section 26, also to the Easterly line of "Danskin Properties", as described in Instrument Number 258976, records of Elmore County, Idaho;

Thence N00°08'58"E, 1,315.47 feet along the Westerly boundary of the Northeast quarter of the Southwest quarter of said Section 26 and along the Easterly boundary of said "Danskin Properties" to the Northwest corner of the Northeast quarter of the Southwest quarter of said Section 26;

Thence N00°10'24"E, 1,048.90 feet along the Westerly boundary of the Southeast quarter of the Northwest quarter of said Section 26 and along the Easterly boundary of said "Danskin Properties" to the Northeast corner of said "Danskin Properties";

Thence S58°44'08"W, 3,108.58 feet along the Northwesterly boundary of said "Danskin Properties" to a corner of said "Danskin Properties";

SCANNED

2023

Thence N00°00'54"E, 1,884.89 feet along the Easterly boundary of said "Danskin Properties" to the Northwest corner of the Southeast quarter of the Northeast quarter of said Section 27;

Thence S89°33'04"E, 1,331.56 feet along the Northerly boundary of the Southeast quarter of the Northeast quarter of said Section 27 to the Northeast corner of the Southeast quarter of the Northeast quarter of said Section 27;

Thence N00°08'33"E, 1,072.78 feet along the Westerly boundary of the Northwest quarter of the Northwest quarter of said Section 26 to the centerline of Indian Creek Road, which centerline bears S00°08'33"W, 242.43 feet from the Northwest corner of said Section 26;

Thence the following courses and distances along the centerline of Indian Creek Road; 244.96 feet along a non-tangent curve deflecting to the left, with a radius of 529.00 feet, a central angle of 26°31'55", a long chord of 242.78 feet and a chord bearing of N82°51'07"E; N69°35'09"E, 117.18 feet; 251.62 feet along a tangent curve deflecting to the left, with a radius of 374.00 feet, a central angle of 38°32'53", a long chord of 246.90 feet and a chord bearing of N50°18'43"E; N31°02'17"E, 229.35 feet; 119.96 feet along a tangent curve deflecting to the right, with a radius of 152.00 feet, a central angle of 45°13'10", a long chord of 116.87 feet and a chord bearing of N53°38'52"E; N76°15'27"E, 236.87 feet; 184.25 feet along a tangent curve deflecting to the left, with a radius of 491.00 feet, a central angle of 21°30'04", a long chord of 183.18 feet and a chord bearing of N65°30'25"E; N54°45'23"E, 117.81 feet; 228.19 feet along a tangent curve deflecting to the right, with a radius of 513.00 feet, a central angle of 25°29'11", a long chord of 226.32 feet and a chord bearing of N42°00'48"E; N29°16'12"E, 180.45 feet; 309.22 feet along a tangent curve deflecting to the right, with a radius of 1,107.00 feet, a central angle of 16°00'16", a long chord of 308.21 feet and a chord bearing of N37°16'20"E; N45°16'28"E, 288.56 feet; 155.14 feet along a tangent curve deflecting to the right, with a radius of 1,865.00 feet, a central angle of 04°45'58", a long chord of 155.09 feet and a chord bearing of N47°39'27"E to the Northerly boundary of the Southeast quarter of the Southwest quarter of said Section 23;

Thence N89°41'48"E, 658.74 feet along the Northerly boundary of the Southeast quarter of the Southwest quarter of said Section 23 to the Northeast corner of the Southeast quarter of the Southwest quarter of said Section 23;

Thence N89°41'48"E, 2,655.91 feet along the Northerly boundary of the south one-half of the Southeast quarter of said Section 23 to the Northeast corner of the Southeast quarter of the Southeast quarter of said Section 23;

Thence S00°05'14"W, 1,324.27 feet along the Easterly boundary of the Southeast quarter of the Southeast quarter of said Section 23 to the Southeast corner of said Section 23;

Thence N89°51'45"E, 1,320.22 feet along the Southerly boundary of said Section 24 to the Southeast corner of the Southwest quarter of the Southwest quarter of said Section 24;

Thence N00°07'17"E, 1,324.41 feet along the Easterly boundary of the Southwest quarter of the Southwest quarter of said Section 24 to the Northeast corner of the Southwest quarter of the Southwest quarter of said Section 24;

Thence N89°51'24"E, 1,321.01 feet along the Northerly boundary of the Southeast quarter of the Southwest quarter of said Section 24 to Northeast corner of the Southeast quarter of the Southwest quarter of said Section 24;

Thence N89°50'16"E, 2,643.08 feet along the Northerly boundary of the South one-half of the Southeast quarter of said Section 24 to the Northeast corner of the Southeast quarter of the Southeast quarter of said Section 24;

Thence S89°20'49"E, 2,711.91 feet along the Northerly boundary of U.S. Lot 4 of said Section 19 and the Northerly boundary of the Southeast quarter of the Southwest quarter of said Section 19 to the Northeast corner of the Southeast quarter of the Southwest quarter of said Section 19;

SCANNED
AUG 11 2023

Thence S89°20'47"E, 1,320.17 feet along the Northerly boundary of the Southwest quarter of the Southeast quarter of said Section 19 to the Northeast corner of the Southwest quarter of the Southeast quarter of said Section 19;

Thence S00°07'31"E, 1,319.24 feet along the Easterly boundary of the Southwest quarter of the Southeast quarter of said Section 19 to the Southeast corner of the Southwest quarter of the Southeast quarter of said Section 19;

Thence N89°24'54"W, 1,318.72 feet along the Southerly boundary of the Southwest quarter of the Southeast quarter of said Section 19 to the South quarter corner of said Section 19;

Thence continuing N89°24'54"W, 2,722.52 feet along the Southerly boundary of the Southwest quarter of said Section 19 to the POINT OF BEGINNING.

SCANNED
AUG 11 2023

When Recorded Return To:

Givens Pursley LLP
Attention: Elizabeth A. Koeckeritz
601 W. Bannock St.
Boise, Idaho 83702

**SPECIAL WARRANTY DEED AND ASSIGNMENT FOR WATER RIGHT
(Permit No. 63-32499)**

MAYFIELD TOWNSITE, LLC, an Idaho limited liability company whose address is 11204 N. Bar 21 Drive, Glens Ferry, Idaho 83623 ("Grantor") does hereby grant, bargain, sell, assign, and convey to MAYFIELD RANCH LLC, a Delaware limited liability company doing business in Idaho as MAYFIELD RANCH II LLC, whose address is 172 N. East Promontory, Unit 300, Farmington, Utah 84025 ("Grantee"), and to Grantee's heirs, successors and assigns forever, all of Grantor's right title and interest in and to that certain portion of Idaho water right permit no. 63-32499 entitling the holder to ground water diversions of 2.23 cubic feet per second and 963.4 acre-feet annually for municipal purposes (the "Water Right").

Grantor hereby covenants and warrants to Grantee as follows:

- (A) Grantor is the owner of the Water Right;
- (B) Grantor has not conveyed any of the Water Right to anyone other than Grantee;
- (C) The Water Right is conveyed free from all liens, claims, or encumbrances;
and
- (D) Grantor has the authority to convey the Water Right to Grantee.

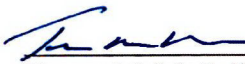
Grantor makes no other covenants or warranties as to the Water Right.

IN WITNESS WHEREOF, the undersigned has caused their name to be hereunto subscribed.

DATED this 24th day of July, 2023.

GRANTOR

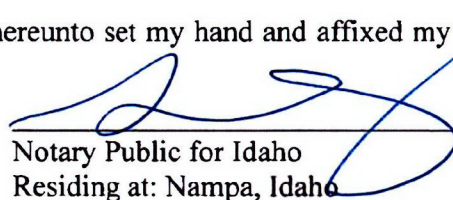
Mayfield Townsite LLC
an Idaho limited liability company

By: 
Name: Teresa M. McCallum
Its: Manager

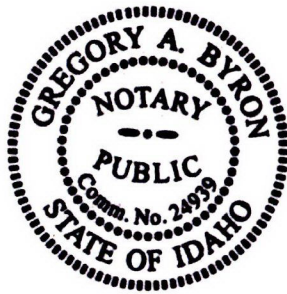
STATE OF IDAHO)
 : ss.
County of Ada)

On this 24th day of July, 2023, before me, a Notary Public in and for the State of Idaho, personally appeared Teresa M. McCallum, known or identified to me to be a manager in the limited liability company of **Mayfield Townsite LLC** and who subscribed said name to the foregoing instrument, and acknowledged to me that she executed the same in said company name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Notary Public for Idaho
Residing at: Nampa, Idaho
My commission expires: November 13, 2025





322 E Front Street, Suite 648, Boise ID 83702 • PO Box 83720, Boise ID 83720-0098
Phone: 208-287-4800 • Fax: 208-287-6700 • Email: idwrinfo@idwr.idaho.gov • Website: idwr.idaho.gov

Governor Brad Little

Director Gary Spackman

August 11, 2023

MAYFIELD RANCH LLC
C/O MICHAEL P LAWRENCE
601 W BANNOCK ST
BOISE ID 83702-5919

Re: Change in Water Right Ownership: 63-32499 (Split into 63-32499 and **63-35473**)

Dear Water Right Holder(s):

The Department of Water Resources (Department) acknowledges the receipt of correspondence changing ownership of a portion of the above referenced water right(s) to you. The Department has modified its records based on the information received and has enclosed a computer-generated report for you.

Your portion of each water right(s) has a specified point of diversion, nature of use and place of use. If you plan to change the authorized point of diversion, nature of use, or place of use, including adding a new point of diversion, you must file an Application for Transfer of Water Right. If you do not plan to change any elements of your water right, then no further action is required at this time.

The portion of the water right retained by the original right holder retains the original water right number. The Department is sending the original right holder a copy of this letter and a computer-generated report showing the changes to the original water right.

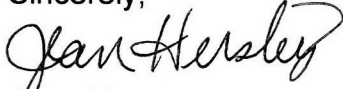
Updating the ownership record for a water right does not reconfirm the validity of the right. When processing a Notice of Change in Water Right Ownership, the Department does not review the history of water use to determine if the right has been forfeited or deliberately abandoned through five years or more of non-use. To read more about water right forfeiture, including how to protect a water right from forfeiture, please see Idaho Code §§ 42-222 and 42-223.

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Please note, water right owners are required to report any change of water right ownership and any change of mailing address to the Department within 120 days of the change. Reporting forms are available from any office of the Department, or from the Department's website.

If you have any questions concerning the enclosed information, please contact me at (208) 287-4942.

Sincerely,



Jean Hersley
Technical Records Specialist 2

Enclosure(s)

c: NORMAN M SEMANKO
CHARLES L HONSINGER
MAYFIELD TOWNSITE LLC
SPF WATER ENGINEERING LLC

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AUG 11 2023

RECEIVED

Feb 16, 2023

DEPARTMENT OF
WATER RESOURCES

63-32499

Norman M. Semanko, ISB #4761
Garrett M. Kitamura, ISB #11502
PARSONS BEHLE & LATIMER
800 West Main Street, Suite 1300
Boise, Idaho 83702
Telephone: 208.562.4900
Facsimile: 208.562.4901
Email: NSemanko@parsonsbehle.com;
GKitamura@parsonsbehle.com; ecf@parsonsbehle.com

Attorneys for Nevid, LLC ; Orchard Ranch, LLC; and Ark Properties-Mayfield Townsite, LLC

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 78356 (SHEKINAH
INDUSTRIES); APPLICATION FOR
TRANSFER NO. 78355 (ORCHARD
RANCH); APPLICATION FOR PERMIT
NO. 63-32499 (MAYFIELD TOWNSITE);
APPLICATION FOR PERMIT NO. 61-
12095 (NEVID-CORDER); APPLICATION
FOR PERMIT NO. 63-32703 (ORCHARD
RANCH); APPLICATION FOR PERMIT
NO. 61-12256 (INTERMOUNTAIN SEWER
AND WATER); APPLICATION FOR
PERMIT NO. 63-33344 (ARK
PROPERTIES-MAYFIELD TOWNSITE)

**NEVID, LLC, ORCHARD RANCH,
LLC, AND ARK PROPERTIES-
MAYFIELD TOWNSITE, LLC'S
RESPONSE IN OPPOSITION TO
JUNIPER STATION FARMS, LLC'S
MOTION TO DESIGNATE PRIOR
APPROVALS FOR EXTENSION OF
TIME IN THE I-84 CORRIDOR AS
PRELIMINARY, RECOMMENDED,
OR FINAL ORDERS; TO DENY
SUBSEQUENT REQUESTS FOR
EXTENSIONS OF TIME IN THE I-
84 CORRIDOR; OR IN THE
ALTERNATIVE TO PROVIDE A
FORUM FOR CHALLENGING
REQUESTS FOR EXTENSION OF
TIME IN THE I-84 CORRIDOR**

COMES NOW Nevid, LLC ("Nevid"); Orchard Ranch, LLC ("Orchard Ranch"); and Ark
Properties-Mayfield Townsite, LLC ("Mayfield", and collectively "Respondents"), by and through
their attorney of record, Parsons Behle & Latimer, to submit this response in opposition to Juniper
Station Farms, LLC's ("Juniper's") *Motion to Designate Prior Approvals for Extension of Time in
the I-84 Corridor as Preliminary, Recommended, or Final Orders; To Deny Subsequent Requests*

NEVID, ORCHARD RANCH, AND ARK PROPERTIES-MAYFIELD TOWNSITE'S RESPONSE IN
OPPOSITION TO JUNIPER STATION FARMS' MOTION TO DESIGNATE PRIOR APPROVALS FOR
EXTENSION OF TIME IN THE I-84 CORRIDOR AS PRELIMINARY – PAGE 1
4881-5198-2416.v2

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FEB 17 2023

for Extensions of Time in the I-84 Corridor; Or in the Alternative to Provide a Forum for Challenging Requests for Extension of Time in the I-84 Corridor (“Juniper’s Motion” or the “Motion”).

I. ARGUMENT

Juniper’s Motion is improper because Juniper lacks standing to move the Idaho Department of Water Resources (the “Department”) for designation of the prior approvals for extension of time as preliminary, recommended, or final orders. IDAPA 37.01.01.750 provides the procedure for designating orders. With regard to motions for designation, the rule states:

If a **party** believes that an order not designated as a recommended order, preliminary order or final order according to the terms of these rules should be designated as a recommended order, preliminary order or final order, the **party** may move to designate the order as recommended, preliminary, or final, as appropriate.

Id. (emphasis added). A “party” is defined as “[e]ach person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, including an applicant, petitioner, respondent, protestant or intervenor.” IDAPA 37.01.01.002.12. Juniper is not a party to the extension of time matters within the meaning of IDAPA 37.01.01.002.12. Juniper has not been named or admitted as a party in those matters. Furthermore, Juniper has not sought to be admitted as a party, and Juniper has made no showing that it is entitled as a matter of right to be admitted as a party. Accordingly, Juniper lacks standing to move for designation and its motion should be denied. For these same reasons, Juniper’s request, pursuant to IDAPA 37.01.01.220, that the Department deny further requests for extension of time or provide a forum for challenging extensions is also improper. A plain reading of IDAPA 37.01.01.220, which governs motion practice, shows that making and opposing motions are also limited to parties. There is also no basis for providing such relief. The right to apply for extensions of time, and for those to be considered

by the Department and appealed by the applicant, as deemed necessary by the applicant, is expressly provided for by Idaho Code § 42-204.

Juniper requests in the alternative that the Department Director provide a forum for challenging subsequent requests for extension of time for application of permits. Juniper argues that this request is justified because the Department has granted extensions of time without providing notice or opportunities to be heard. Juniper's request and the stated rationale behind it hold no water. First, Juniper makes no showing to support its contention that it has not been provided notice of past grants for extension for time. The Department's orders regarding requests for extension of time are publicly posted on the Department's website and decisions regarding specific water rights can be found via the Department's Water Right and Adjudication Search page on the Department's website. Second, Idaho Code § 42-1701A(3) already provides an avenue for Juniper to lodge such objections, albeit within a timely fashion:

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person aggrieved by any action of the director, including any decision, determination, order or other action, including action upon any application for a permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the director, who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing...

Id. Juniper has not explained how the provisions of Idaho Code § 42-1701A(3) are insufficient to facilitate Juniper's objections to future requests for extension. Finally, Idaho Code § 42-1701A(3) lacks any language to support Juniper's blanket request that it be entitled to receive an opportunity to be heard on any and all future requests for extension of time in the I-84 Corridor. The text of Idaho Code § 42-1701A(3) does not provide an aggrieved party such a proactive right.

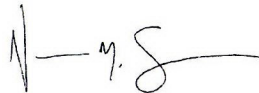
On a final overarching note, to the extent Juniper's present Motion is based on its objections to the Department's past grants of extension of time, the provisions of Idaho Code § 42-1701A(3) further reveal that Juniper's Motion is untimely and must be denied. In support of its Motion, Juniper cites to past extensions of time granted to Mayfield, Nevid, and Intermountain Sewer & Water Corporation. *See* Juniper's Motion, p. 7. Yet, among these applicants, the latest extension of time was granted back on July 20, 2022,¹ which is well beyond the 15-day period for Juniper to contest the extension. Thus, even assuming *arguendo* Juniper has any standing to make its Motion (it does not) or that Juniper is an aggrieved party within the meaning of Idaho Code § 42-1701A(3), its Motion comes almost 7 months beyond the time to appeal and contest the Department's past grants of extension of time.

II. CONCLUSION

Based on the foregoing, Respondents ask the Department to deny Juniper's Motion in its entirety.

DATED this 16th day of February, 2023.

PARSONS BEHLE & LATIMER



Norman M. Semanko; Garrett M. Kitamura
*Attorneys for Nevid, LLC; Orchard Ranch, LLC;
and Mayfield Townsite, LLC*

¹ *See* Intermountain Sewer & Water Corp.'s Request for Extension of Time and Action of the Department of Water Resources, https://research.idwr.idaho.gov/files/relateddocs/_dp301_.pdf.

CERTIFICATE OF SERVICE

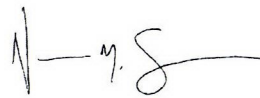
I hereby certify that on this 16th day of February, 2023, I served a true and correct copy of the foregoing document on the parties listed below by their designated method of service.

<p>Chris M. Bromley Candice M. McHugh MCHUGH BROMLEY, PLLC 380 South 4th Street, Suite 103 Boise, ID 83702</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Electronic Mail cbromley@mchughbromley.com cmchugh@mchughbromley.com <input type="checkbox"/> Facsimile (208) 287-0864</p>
<p>Director Spackman IDAHO DEPT. OF WATER RESOURCES P. O. Box 83720 Boise, ID 83720-0098</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>Nick Miller IDWR WESTERN REGION 2735 Airport Way Boise, ID 83705-5082</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>Michael Preston SHEKINAH INDUSTRIES INC. 420 Bitterroot Drive Boise, ID 83709</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>Tim Conrads 75 S. Pronghorn Road Boise, ID 83716</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>SPF WATER ENGINEERING 300 E. Mallard Drive, Ste. 350 Boise, ID 83706</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>

<p>Bruce Smith MOORE SMITH 950 W. Bannock, Ste. 520 Boise, ID 83702</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>Michael Creamer GIVENS PURSLEY P. O. Box 2720 Boise, ID 83701-2720</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>CLEVELAND CORDER LLC 622 Zoe Lane Garden City, ID 83714</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>Tonya D. Bolshaw P. O. Box 16022 Boise, ID 83715</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>Mary Firsch 155 S. Pronghorn Dr. Boise, ID 83716</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>Dana Quinney Scott Quinney 160 S. Pronghorn Boise, ID 83716</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>Brown Farms LLC Attn. Clifford Brown Esq. HOLZER EDWARDS & HARRISON 1516 W. Hays Street Boise, ID 83702</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>

<p>Erick Powell BROCKWAY ENGINEERING 2016 N. Washington Street, Ste. 4 Twin Falls, ID 83301</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>James Tucker IDAHO POWER COMPANY P. O. Box 70 Boise, ID 83707</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>Darla Bateman 404 E. Indian Circle Road Boise, ID 83716</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>John K. Simpson BARKER ROSHOLT & SIMPSON LLP P. O. Box 2139 Boise, ID 83701-2139</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>Robert Maynard Erika Malmen PERKINS COIE LLP P. O. Box 737 Boise, ID 83701-0737</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>Wendy Tippetts 999 N. Slater Creek Mayfield, ID 83716</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>Ed Van Grouw 5089 S. Debonair Lane Meridian, ID 83642</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>

<p>Lori Atkins 602 E. Mike's Place Boise, ID 83716</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>Wayne Shepherd Director of Public Works CITY OF MOUNTAIN HOME P. O. Box 10 Mountain Home, ID 83647</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>Darwin Roy 147 E. Indian Circle Road Mayfield, ID 83716</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>Bryce S. Farris SAWTOOTH LAW OFFICES PLLC 1101 W. River Street, Ste. 110 Boise, ID 83707</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>



Norman M. Semanko; Garrett M. Kitamura

Margheim, Kris

From: Kimberly Aulenbacher <KAulenbacher@parsonsbehle.com>
Sent: Thursday, February 16, 2023 12:36 PM
To: IDWR File
Subject: FILING REQUEST: Transfer No. 78356, et al. / Opposition to Juniper Station Farms' Motion
Attachments: Opposition to Juniper Station Farm's Motion.pdf
Follow Up Flag: Follow up
Flag Status: Completed

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Good afternoon:

Attached please find our clients' *Opposition to Juniper Station Farms' Motion* regarding the above-referenced cases. Please **conform the attached document and return a conformed copy to us** for our files. Please note, that a copy of this document is also being mailed directly to Mr. Spackman's attention, as well as copied to all of the parties, per the attached Certificate of Service to the document.

Thank you for your assistance in this regarding, and please let me know if you have any problems opening the document. I hope you have a nice rest of your day, Kimberly



A Professional
Law Corporation

Kimberly Aulenbacher
Legal Secretary
Parsons Behle & Latimer
800 West Main Street, Suite 1300 • Boise, Idaho 83702
Main +1 208.562.4900 • Direct +1 208.562.4885 • Fax +1 208.562.4901

parsonsbehle.com • KAulenbacher@parsonsbehle.com • vCard

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S. Bryce Farris, ISB No. 5636
Katie L. Vandenberg-Van Vliet, ISB No. 10969
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FEB 16 2023
DEPARTMENT OF
WATER RESOURCES

Attorneys for Intermountain Sewer & Water Corp.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 78356 (SHEKINAH INDUSTRIES); APPLICATION FOR TRANSFER NO. 78355 (ORCHARD RANCH); APPLICATION FOR PERMIT NO. 63-32499 (MAYFIELD TOWNSITE); APPLICATION FOR PERMIT NO. 61-12095 (NEVID-CORDER); APPLICATION FOR PERMIT NO. 63-32703 (ORCHARD RANCH); APPLICATION FOR PERMIT NO. 61-12256 (INTERMOUNTAIN SEWER AND WATER); APPLICATION FOR PERMIT NO. 63-33344 (ARK PROPERTIES-MAYFIELD TOWNSITE)

NOTICE OF APPEARANCE; AND RESPONSE TO MOTION TO DESIGNATE PRIOR APPROVALS FOR EXTENSION OF TIME IN THE I-84 CORRIDOR AS PRELIMINARY, RECOMMENDED, OR FINAL ORDERS; TO DENY SUBSEQUENT REQUESTS FOR EXTENSIONS OF TIME IN THE I-84 CORRIDOR; OR IN THE ALTERNATIVE TO PROVIDE A FORUM FOR CHALLENGING REQUESTS FOR EXTENSION OF TIME IN THE I-84 CORRIDOR

A. Notice of Appearance

COMES NOW Intermountain Sewer & Water Corp., by and through its attorneys, S. Bryce Farris and Katie L. Vandenberg-Van Vliet of Sawtooth Law Offices, PLLC, and hereby gives notice of appearance in said cause and controversy by said firm, and requests that all documents

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FEB 17 2023

NOTICE OF APPEARANCE; AND RESPONSE TO MOTION TO DESIGNATE PRIOR APPROVALS FOR EXTENSION OF TIME IN THE I-84 CORRIDOR AS PRELIMINARY, RECOMMENDED, OR FINAL ORDERS; TO DENY SUBSEQUENT REQUESTS FOR EXTENSIONS OF TIME IN THE I-84 CORRIDOR; OR IN THE ALTERNATIVE TO PROVIDE A FORUM FOR CHALLENGING REQUESTS FOR EXTENSION OF TIME IN THE I-84 CORRIDOR – Page 1

and pleadings filed herein be duly and regularly served upon said attorneys at the address noticed above.

B. Response to Motion to Designate Prior Approvals for Extension of Time in the I-84 Corridor as Preliminary, Recommended, or Final Orders; to Deny Subsequent Requests for Extensions of Time in the I-84 Corridor; or in the Alternative to Provide a Forum for Challenging Requests for Extension of Time in the I-84 Corridor

Juniper Station Farms, LLC (hereinafter “Juniper Station”) filed the above-referenced Motion pursuant to Rule of Procedure 750, IDAPA 37.01.01.750, and moving the Director of the Idaho Department of Water Resources (“Director” or “IDWR”) to designate prior approvals of extension of time as either recommended, preliminary, or final orders of the agency,¹ to deny subsequent requests for extension of time or, in the alternative, to provide a forum to challenge requests for extensions of time (hereinafter “*Motion*”). While Intermountain Sewer & Water Corp. believes it understands Juniper Station’s intent behind the *Motion*, it is not clear procedurally whether there is a proper forum for the *Motion* at this time, whether the forum is the I-84 Corridor matter where the *Final Order* was issued nearly ten years ago² or whether Juniper Station is

¹ Juniper Station suggests that the extensions of time were granted without a recommended, preliminary or final order. However, Juniper Station is incorrect with respect to Intermountain Sewer & Water Corp.’s request for extensions because preliminary orders were in fact specifically issued by the Department (*See* water right backfile for 63-32225). In fact, Intermountain Sewer & Water Corp.’s most recent extension was approved and an approval letter dated June 21, 2022 was issued by the Department which provided that the approval was a: “PRELIMINARY ORDER issued by the Department pursuant to Rule 730 of the Department’s Rules of Procedure.” The Preliminary Order became a final order fourteen (14) days later. Thus, Juniper Station’s *Motion*, or at least the portion seeking to designate prior approvals, is moot as to the extensions granted to Intermountain Sewer & Water Corp.

² For purposes of this Response, the *I-84 Corridor Final Order* refers to the *Final Order Regarding Water Sufficiency* issued by the Director on November 4, 2013.

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FEB 17 2023

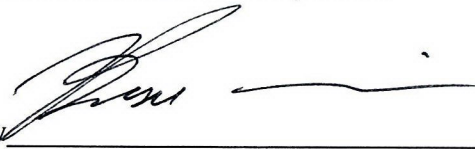
attempting to establish a new contested case altogether. While the I-84 Corridor *Final Order* consolidated applications for purposes of evaluating the sufficiency of water supply, it does not appear the Director retained jurisdiction as an open contested case to address future applications or issues concerning future applications. In fact, future applications and transfers have been processed separately with the conclusions/direction provided in the *Final Order* as a basis of consideration by IDWR concerning the sufficiency of water supply and the processing of pending applications. In other words, the *Final Order* provided IDWR and applicants with the guidance or direction as the sufficiency of water supply and the processing of pending applications but such applications have been processed separately. Thus, Intermountain Sewer & Water Corp. contends that it is premature for it to have to respond to Juniper Station's *Motion* until the proper forum is addressed and a reasonable process for responding to the *Motion* is established.

While Rule of Procedure 220.02.b, IDAPA 37.01.01.220.02.b, provides that a response to a motion is due fourteen days from the date the motion is filed, again, it is unclear whether a proper motion has been filed and in which forum. Thus, without waiving its right to respond to the merits of the *Motion*, Intermountain Sewer & Water Corp. contends that it cannot properly respond, nor should it be required to respond, to the *Motion* at this time. Intermountain Sewer & Water Corp. requests that IDWR either schedule a status conference to discuss and determine how to procedurally proceed and/or provide guidance as to the forum and process for addressing Juniper Station's *Motion*. At said time Intermountain Sewer & Water Corp. will address the merits of the *Motion*.

SCANNED
FEB 17 2023

DATED this 16th day of February, 2023.

SAWTOOTH LAW OFFICES, PLLC

By 

S. Bryce Farris
Katie L. Vandenberg-Van Vliet
Attorneys for Intermountain Sewer &
Water Corp.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of February, 2023, I caused a true and correct copy of the foregoing **NOTICE OF APPEARANCE; AND RESPONSE TO MOTION TO DESIGNATE PRIOR APPROVALS FOR EXTENSION OF TIME IN THE I-84 CORRIDOR AS PRELIMINARY, RECOMMENDED, OR FINAL ORDERS; TO DENY SUBSEQUENT REQUESTS FOR EXTENSIONS OF TIME IN THE I-84 CORRIDOR; OR IN THE ALTERNATIVE TO PROVIDE A FORUM FOR CHALLENGING REQUESTS FOR EXTENSION OF TIME IN THE I-84 CORRIDOR** to be served by the method indicated below, and addressed to the following:

Director Spackman
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

Nick Miller
IDWR Western Region
2735 Airport Way
Boise, ID 83705-5082

Chris M. Bromley
Candice M. McHugh
McHugh Bromley PLLC
380 S. 4th Street, Suite 103
Boise, ID 83702

Wayne Shepherd
Director of Public Works
City of Mountain Home
P.O. Box 10
Mountain Home, ID 83647

Michael Preston
Shekinah Industries Inc.
420 Bitterroot Drive
Boise, ID 83709

Tim Conrads
75 S. Pronghorn Road
Boise, ID 83716

SPF Water Engineering
300 E. Mallard Drive, Suite 350
Boise, ID 83706-6660

Bruce Smith
Moore Smith
950 W. Bannock, Suite 520
Boise, ID 83702

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FEB 17 2023

Michael Creamer
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DEPARTMENT OF
WATER RESOURCES

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Attorneys for Juniper Station Farm, LLC

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 78356 (SHEKINAH INDUSTRIES); APPLICATION FOR TRANSFER NO. 78355 (ORCHARD RAHCN); APPLICATION FOR PERMIT NO. 63-32499 (MAYFIELD TOWNSITE); APPLICATION FOR PERMIT NO. 61-12095 (NEVID-CORDER); APPLICATION FOR PERMIT NO. 63-32703 (ORCHARD RANCH); APPLICATION FOR PERMIT NO. 61-12256 (INTERMOUNTAIN SEWER AND WATER); APPLICATION FOR PERMIT NO. 63-33344 (ARK PROPERTIES-MAYFIELD TOWNSITE)

MOTION TO DESIGNATE PRIOR APPROVALS FOR EXTENSION OF TIME IN THE I-84 CORRIDOR AS PRELIMINARY, RECOMMENDED, OR FINAL ORDERS; TO DENY SUBSEQUENT REQUESTS FOR EXTENSIONS OF TIME IN THE I-84 CORRIDOR; OR IN THE ALTERNATIVE TO PROVIDE A FORUM FOR CHALLENGING REQUESTS FOR EXTENSION OF TIME IN THE I-84 CORRIDOR

COMES NOW Juniper Station Farms, LLC (“Juniper”) by and through its attorneys of record, McHugh Bromley, PLLC, and pursuant to Rule of Procedure 750, IDAPA 37.01.01.750, hereby moves the Director of the Idaho Department of Water Resources (“Director” or “IDWR”) to designate prior approvals of extension of time for applications pending in the I-84 Corridor as either recommended, preliminary, or final orders of the agency, in order to provide water users in

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the I-84 Corridor with the opportunity to assess and challenge the granting of requests for extensions of time. Because the I-84 Corridor is an area of limited water supply, Juniper further moves IDWR, pursuant to Rule of Procedure 220, IDAPA 37.01.01.220, to deny any subsequent requests for extension of time, or in the alternative, to provide notice and an opportunity to be heard in a forum for challenging subsequent requests for extension of time in the I-84 Corridor.

INTRODUCTION

The I-84 Corridor is an area of limited water supply for planned communities and irrigation projects along the Interstate near the Ada County/Elmore County line, as shown below:

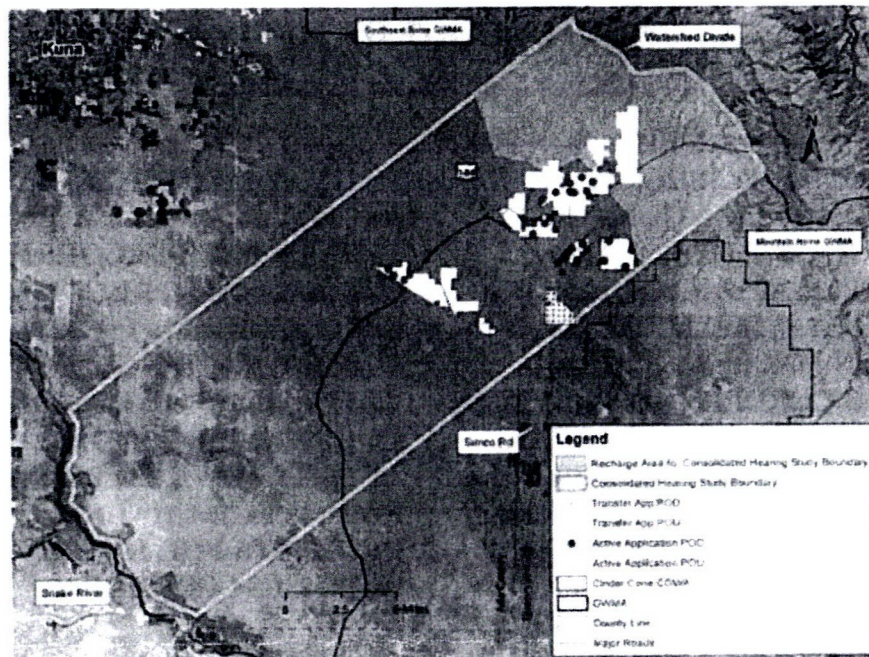


Figure 2. Consolidated hearing study area boundary.

Juniper is the holder of Application for Permit No. 61-12319 and Application for Transfer No. 81327 (collectively the “Applications”), which are located within the I-84 Corridor. Based on a May 6, 2019 letter from the Manager of IDWR’s Western Regional Office, Juniper’s Applications are in a processing hold until applications that are ahead of Juniper in the processing queue move forward. Therefore, the granting of requests for extension in the I-84

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Corridor prejudices Juniper, as Juniper is ready, willing, and able to put unappropriated water to beneficial use, now.

On January 24, 2012, the Director issued an *Order Creating Contested Case and Consolidating Protested and Unprotested Applications* for applications within the I-84 Corridor. “The applications were consolidated for the purpose of evaluating the sufficiency of the water supply in the same geographic area of the Western Snake River Plain aquifer along the I-84 corridor.” *Final Order Regarding Water Sufficiency* at 1 (“Final Order”).

The applications that were addressed in the I-84 consolidated proceeding, listed in chronological order of receipt, were as follows:

NAME	NUMBER	RECEIVED	PRIORITY	WATER USE	CFS
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Id. at 2.

On November 4, 2013, after considering the applications and evidence before him, the Director found, in the *Final Order*: “[T]he estimated net annual recharge volume for the study area to be 7,440 AFA. On a continuous basis, this amount is equivalent to 10.3 cfs, which is significantly less than the total maximum flow rates sought by the consolidated applications.”

Final Order at 10. According to the *Final Order*, there is a maximum, sufficient supply to satisfy only two applications and part of a third: 63-32499 (Mayfield), 73811 (Shekinah), and part of 61-12066 (Nevid):

NAME	NUMBER	RECEIVED	PRIORITY	WATER USE	Est. Annual Volume (AF)
Mayfield Townsite, LLC	63-32499	7/28/2006	7/28/2006	Municipal	4,320
Shekinah Industries, Inc.	78356	12/4/2006	1963	Irrigation	1,107
Nevid, LLC	61-12096[]	4/3/2007	4/3/2007	Municipal & Fire Protection	2,486
				TOTAL	7,913

Id. Important to the issue at hand, the Director concluded, he “will consider the pending applications in the chronological order the applications were received unless an applicant is not prepared to proceed with its application.” *Final Order* at 14 (emphasis added).

Since issuance of the *Final Order*, and pursuant to Idaho Code § 42-204, IDWR has issued requests for extension of time within the I-84 Corridor to: (1) Mayfield Townsite, permit no. 63-32499; (2) Nevid, LLC, permit no. 61-12096; and (3) to Intermountain Sewer & Water

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Corp., permit no. 63-32225.¹ Juniper is unaware if IDWR has received or granted requests for extension of time to any of the other applications that were identified by the Director on page 2 of the *Final Order*.

As to Shekinah Industries, Inc., and according to IDWR's records, the rights that were at issue in Transfer No. 78356 are now owned by Edward DeGroot Properties, LLC. Transfer No. 78356 was approved by IDWR on January 21, 2016. According to the transfer approval, the changes were to be accomplished within 5 years (Condition of Approval No. 1), otherwise the Director would be authorized to rescind its approval (Condition of Approval No. 2). More than 5 years have passed since Transfer No. 78356 was approved.

The granting of requests for extension of time prejudice Juniper, as Juniper is ready, willing, and able to put unappropriated water to beneficial use, now.

ARGUMENT

As concluded by the Director in the *Final Order*, the I-84 Corridor is an area of limited water supply. It is for this reason that Juniper is in a processing hold as to its Applications. As stated previously, Juniper is aware that IDWR staff has been granting requests for extension of time in the I-84 Corridor, without notice and opportunity to be heard. This is troubling given that a contested case exists for this area of limited water supply, with a processing hold, wherein the Director concluded, he "will consider the pending applications in the chronological order the applications were received unless an applicant is not prepared to proceed with its application."

¹ Intermountain Sewer & Water Corp.'s permit, 63-32225, for 10.00 cfs for municipal purposes, with a priority date of 9/16/2005, was not at issue in the *Final Order* and is identified by IDWR as within the I-84 Corridor. See *Order on Exceptions; Final Order Approving Application for Amendment of Permit with Conditions Denying Transfer* (September 2, 2021).

Final Order at 14 (emphasis added). Further troubling is the granting of requests for extension of time in this area without notice and opportunity to be heard runs contrary to the requirement of law that unappropriated water should be put to beneficial use: “The right to divert and appropriate the unappropriated waters . . . shall never be denied” Idaho Const. Art. XV § 3. Moreover, the reason for requiring water be put to beneficial use within five years is to preventing locking up the State’s water for speculative purposes as against subsequent appropriators. *North Snake Ground Water Dist. v. Idaho Dept. of Water Res.*, 160 518, 527, 376 P.3d 722, 731 (2016) citing IDAPA 37.03.08.045.01.c (“Speculation for the purpose of this rule is an intention to obtain a permit to appropriate water without the intention of apply the water to beneficial use with reasonable diligence.”). Because Juniper is ready, willing, and able to put water to beneficial use, now, it is prejudiced by the granting of requests for extension of time within the I-84 Corridor.

1. IDWR Should Designate Whether Its Decisions Granting Requests For Extension Of Time In The I-84 Corridor Are Recommended, Preliminary, Or Final Orders Of The Agency

IDWR Rule of Procedure 11, IDAPA 37.01.01.011, defines an “Order” as “An agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons.” The approvals of requests for extension of time determine legal rights, duties, privileges and other legal interests of specific persons and specifically impact Juniper’s legal rights, duties, privileges and interests. Thus, the approvals fall within the definition of an “Order” under Rule 11.

As stated previously, IDWR has granted at least three requests for extension of time in the I-84 Corridor:

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- **Mayfield Townsite, permit no. 63-32499.** Proof of beneficial use was due on January 1, 2021 and has been extended to January 1, 2026. A stated basis for this request for extension of time was: “Property and project are pending sale.”
- **Nevid, LLC, permit no. 61-12096.** Proof of beneficial use was due on December 1, 2020 and has been extended to December 1, 2025. A stated basis for this request for extension of time was: “Market conditions have not been conducive to planned use developments in this area.”
- **Intermountain Sewer & Water Corp., permit no. 63-32225.** Proof of beneficial use was due on February 1, 2012 and has been extended four times until April 14, 2025. A stated basis for this request for extension of time was: “County and state approval processes have taken longer than expected, prohibiting actual work from beginning on the project.”

As to Mayfield Townsite and Nevid, LLC, market forces are the stated basis for the requests for extension of time. Market forces are not defined by statute as a basis for granting extensions of time. *See* I.C. § 42-204. As to Intermountain Sewer & Water Corp., allowing a permit to be extended four times in an area of limited supply locks up the resource and prevents other users from developing projects that will actually divert and put water to beneficial use.

Also worth noting is each of the permits are for municipal purposes of use, not RAFN municipal purposes of use. With the granting of requests for extensions of time, these permits have taken on the appearance of RAFN permits, with speculative planning horizons that greatly

exceed the 5-year proof of beneficial use requirement for non-RAFN municipal permits, despite the fact that the permits were not filed as RAFN. I.C. § 42-204(4).

Without knowledge as to what type of order is approving the requests for extension of time, and without notice as to the issuance of the decisions, Juniper is without a remedy to assess the same. Therefore, pursuant to Rule 750, IDAPA 37.01.01.750, Juniper moves IDWR to designate if the granting of requests for extension of time in the I-84 Corridor are recommended, preliminary, or final orders of the agency.

2. IDWR Should Deny Subsequent Requests For Extension Of Time In The I-84 Corridor

Requests for extension of time are reviewed pursuant to Idaho Code § 42-204, and may be granted if certain factors exist, as enunciated in section 42-204(a) – (e), provided there is good cause. Here, good cause does not exist to grant subsequent requests for extension of time in the I-84 Corridor. As stated in the *Final Order*, the I-84 Corridor is an area of limited water supply with a processing hold on applications that IDWR continues today:

As you know, the Director’s November 4th, 2013 *Final Order Regarding Water Sufficiency* established that the area was nearly fully appropriated, but that some of the applications in the consolidated matter could be approved and others would remain in queue while those and other pre-existing permits are developed. . . . Since that order was issued, Western Region has received an additional application for transfer and three applications for permit. These are being held and will be processed if/when existing permits become licensed and water becomes available or not.

Memorandum from Nick Miller to Shelley Keen, dated December 29, 2020, re: Status of I84 Applications (“Memorandum”).

In the I-84 Corridor, good cause does not exist to grant subsequent requests for extension of time because water should not be locked up for speculative purposes, particularly when there are water users, like Juniper, who are entitled to an opportunity to put water to beneficial use.

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Juniper therefore moves the Director to deny all future requests for extension of time within the I-84 Corridor. This is consistent with the Director's conclusion in the *Final Order* that he "will consider the pending applications in the chronological order the applications were received unless an applicant is not prepared to proceed with its application." *Final Order* at 14 (emphasis added).

3. In The Alternative, IDWR Should Provide A Forum, With Notice And An Opportunity To Be Heard, Of All Subsequent Requests For Extension Of Time In The I-84 Corridor

If the Director will not decide to stop granting subsequent requests for extension of time within the boundaries of the I-84 Corridor, Juniper moves IDWR to provide a forum to evaluate all subsequent requests for extension of time in a way that provides meaningful notice and an opportunity to be heard by those who are in the I-84 contested case and processing queue. As evidenced by the *Final Order*, the parties to the contested case are known, and are identified by Juniper in the certificate of service for this document. Moreover, as evidenced by the *Memorandum*, the water users who are subject to the processing hold consist of Nevid, LLC, Ark Properties, LLC/Mayfield Townsite, LLC, Pars Holding LC,² and Juniper. Providing notice and an opportunity to be heard to those within the I-84 Corridor contested case and queue is therefore neither unreasonable nor unduly burdensome on IDWR, and is substantially similar to IDWR providing actual notice of new water right filings to water users who have been involved in previous contested cases involving the same source.

² On December 23, 2022, IDWR acknowledged the assignment of the Pars Holding, LC applications for permit to Intermountain Sewer & Water Corp. According to the acknowledgment, Intermountain Sewer & Water Corp. is represented by Sawtooth Law Offices. Juniper has included Sawtooth Law Offices in the Certificate of Service for this motion.

CONCLUSION

Based on the foregoing, Juniper respectfully moves the Director to designate all prior approvals of requests for extension of time for applications for permit in the I-84 Corridor as either preliminary, recommended, or final orders. Juniper further moves the Director to deny any subsequent requests for extension of time in the I-84 Corridor, or in the alternative, to provide a forum for challenging subsequent requests for extension of time in the I-84 Corridor.

RESPECTFULLY SUBMITTED this 2nd day of February, 2023.

MCHUGH BROMLEY, PLLC



CHRIS M. BROMLEY

Attorneys for Juniper Station Farms, LLC

CERTIFICATE OF SERVICE

I certify that on this 2nd day of February, 2023, I caused to be served a true and correct copy of the foregoing upon the following persons by the method(s) indicated:

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Boise, ID 83716

SPF Water Engineering
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Boise, ID 83706

Bruce Smith
Moore Smith
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Director Spackman
Idaho Dept. of Water Res.
PO Box 83720
Boise, ID 83720-0098


CHRIS M. BROMLEY

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DEPARTMENT OF
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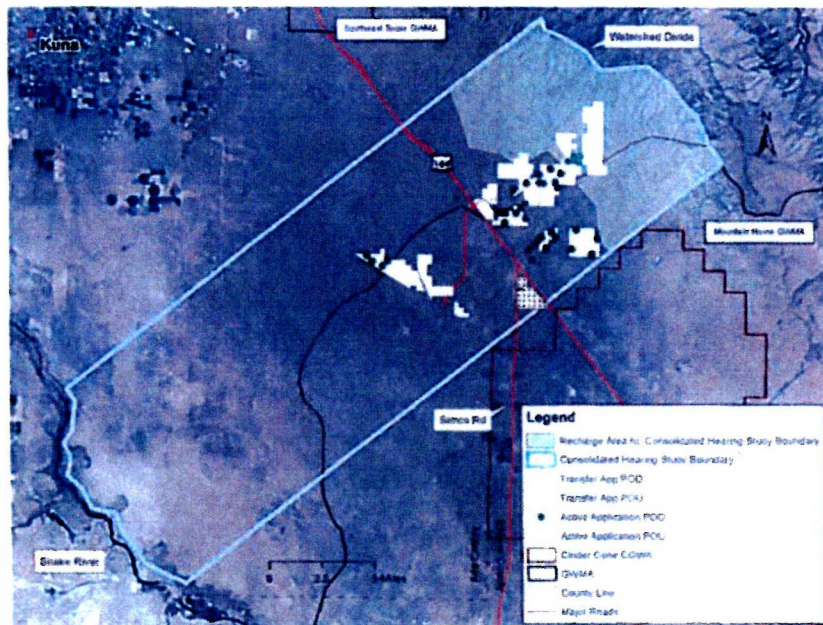


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Id. at 2.

On November 4, 2013, after considering the applications and evidence before him, the Director found, in the *Final Order*: “[T]he estimated net annual recharge volume for the study area to be 7,440 AFA. On a continuous basis, this amount is equivalent to 10.3 cfs, which is significantly less than the total maximum flow rates sought by the consolidated applications.”

Final Order at 10. According to the *Final Order*, there is a maximum, sufficient supply to satisfy only two applications and part of a third: 63-32499 (Mayfield), 73811 (Shekinah), and part of 61-12066 (Nevid):

NAME	NUMBER	RECEIVED	PRIORITY	WATER USE	Est. Annual Volume (AF)
Mayfield Townsite, LLC	63-32499	7/28/2006	7/28/2006	Municipal	4,320
Shekinah Industries, Inc.	78356	12/4/2006	1963	Irrigation	1,107
Nevid, LLC	61-12096[]	4/3/2007	4/3/2007	Municipal & Fire Protection	2,486
				TOTAL	7,913

Id. Important to the issue at hand, the Director concluded, he “will consider the pending applications in the chronological order the applications were received unless an applicant is not prepared to proceed with its application.” *Final Order* at 14 (emphasis added).

Since issuance of the *Final Order*, and pursuant to Idaho Code § 42-204, IDWR has issued requests for extension of time within the I-84 Corridor to: (1) Mayfield Townsite, permit no. 63-32499; (2) Nevid, LLC, permit no. 61-12096; and (3) to Intermountain Sewer & Water

Corp., permit no. 63-32225.¹ Juniper is unaware if IDWR has received or granted requests for extension of time to any of the other applications that were identified by the Director on page 2 of the *Final Order*.

As to Shekinah Industries, Inc., and according to IDWR's records, the rights that were at issue in Transfer No. 78356 are now owned by Edward DeGroot Properties, LLC. Transfer No. 78356 was approved by IDWR on January 21, 2016. According to the transfer approval, the changes were to be accomplished within 5 years (Condition of Approval No. 1), otherwise the Director would be authorized to rescind its approval (Condition of Approval No. 2). More than 5 years have passed since Transfer No. 78356 was approved.

The granting of requests for extension of time prejudice Juniper, as Juniper is ready, willing, and able to put unappropriated water to beneficial use, now.

ARGUMENT

As concluded by the Director in the *Final Order*, the I-84 Corridor is an area of limited water supply. It is for this reason that Juniper is in a processing hold as to its Applications. As stated previously, Juniper is aware that IDWR staff has been granting requests for extension of time in the I-84 Corridor, without notice and opportunity to be heard. This is troubling given that a contested case exists for this area of limited water supply, with a processing hold, wherein the Director concluded, he "will consider the pending applications in the chronological order the applications were received unless an applicant is not prepared to proceed with its application."

¹ Intermountain Sewer & Water Corp.'s permit, 63-32225, for 10.00 cfs for municipal purposes, with a priority date of 9/16/2005, was not at issue in the *Final Order* and is identified by IDWR as within the I-84 Corridor. See *Order on Exceptions; Final Order Approving Application for Amendment of Permit with Conditions Denying Transfer* (September 2, 2021).

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Final Order at 14 (emphasis added). Further troubling is the granting of requests for extension of time in this area without notice and opportunity to be heard runs contrary to the requirement of law that unappropriated water should be put to beneficial use: “The right to divert and appropriate the unappropriated waters . . . shall never be denied” Idaho Const. Art. XV § 3. Moreover, the reason for requiring water be put to beneficial use within five years is to preventing locking up the State’s water for speculative purposes as against subsequent appropriators. *North Snake Ground Water Dist. v. Idaho Dept. of Water Res.*, 160 518, 527, 376 P.3d 722, 731 (2016) citing IDAPA 37.03.08.045.01.c (“Speculation for the purpose of this rule is an intention to obtain a permit to appropriate water without the intention of apply the water to beneficial use with reasonable diligence.”). Because Juniper is ready, willing, and able to put water to beneficial use, now, it is prejudiced by the granting of requests for extension of time within the I-84 Corridor.

1. IDWR Should Designate Whether Its Decisions Granting Requests For Extension Of Time In The I-84 Corridor Are Recommended, Preliminary, Or Final Orders Of The Agency

IDWR Rule of Procedure 11, IDAPA 37.01.01.011, defines an “Order” as “An agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons.” The approvals of requests for extension of time determine legal rights, duties, privileges and other legal interests of specific persons and specifically impact Juniper’s legal rights, duties, privileges and interests. Thus, the approvals fall within the definition of an “Order” under Rule 11.

As stated previously, IDWR has granted at least three requests for extension of time in the I-84 Corridor:

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- **Mayfield Townsite, permit no. 63-32499.** Proof of beneficial use was due on January 1, 2021 and has been extended to January 1, 2026. A stated basis for this request for extension of time was: “Property and project are pending sale.”
- **Nevid, LLC, permit no. 61-12096.** Proof of beneficial use was due on December 1, 2020 and has been extended to December 1, 2025. A stated basis for this request for extension of time was: “Market conditions have not been conducive to planned use developments in this area.”
- **Intermountain Sewer & Water Corp., permit no. 63-32225.** Proof of beneficial use was due on February 1, 2012 and has been extended four times until April 14, 2025. A stated basis for this request for extension of time was: “County and state approval processes have taken longer than expected, prohibiting actual work from beginning on the project.”

As to Mayfield Townsite and Nevid, LLC, market forces are the stated basis for the requests for extension of time. Market forces are not defined by statute as a basis for granting extensions of time. *See* I.C. § 42-204. As to Intermountain Sewer & Water Corp., allowing a permit to be extended four times in an area of limited supply locks up the resource and prevents other users from developing projects that will actually divert and put water to beneficial use.

Also worth noting is each of the permits are for municipal purposes of use, not RAFN municipal purposes of use. With the granting of requests for extensions of time, these permits have taken on the appearance of RAFN permits, with speculative planning horizons that greatly

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exceed the 5-year proof of beneficial use requirement for non-RAFN municipal permits, despite the fact that the permits were not filed as RAFN. I.C. § 42-204(4).

Without knowledge as to what type of order is approving the requests for extension of time, and without notice as to the issuance of the decisions, Juniper is without a remedy to assess the same. Therefore, pursuant to Rule 750, IDAPA 37.01.01.750, Juniper moves IDWR to designate if the granting of requests for extension of time in the I-84 Corridor are recommended, preliminary, or final orders of the agency.

2. IDWR Should Deny Subsequent Requests For Extension Of Time In The I-84 Corridor

Requests for extension of time are reviewed pursuant to Idaho Code § 42-204, and may be granted if certain factors exist, as enunciated in section 42-204(a) – (e), provided there is good cause. Here, good cause does not exist to grant subsequent requests for extension of time in the I-84 Corridor. As stated in the *Final Order*, the I-84 Corridor is an area of limited water supply with a processing hold on applications that IDWR continues today:

As you know, the Director’s November 4th, 2013 *Final Order Regarding Water Sufficiency* established that the area was nearly fully appropriated, but that some of the applications in the consolidated matter could be approved and others would remain in queue while those and other pre-existing permits are developed. . . . Since that order was issued, Western Region has received an additional application for transfer and three applications for permit. These are being held and will be processed if/when existing permits become licensed and water becomes available or not.

Memorandum from Nick Miller to Shelley Keen, dated December 29, 2020, re: Status of I84 Applications (“Memorandum”).

In the I-84 Corridor, good cause does not exist to grant subsequent requests for extension of time because water should not be locked up for speculative purposes, particularly when there are water users, like Juniper, who are entitled to an opportunity to put water to beneficial use.

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Juniper therefore moves the Director to deny all future requests for extension of time within the I-84 Corridor. This is consistent with the Director’s conclusion in the *Final Order* that he “will consider the pending applications in the chronological order the applications were received unless an applicant is not prepared to proceed with its application.” *Final Order* at 14 (emphasis added).

3. In The Alternative, IDWR Should Provide A Forum, With Notice And An Opportunity To Be Heard, Of All Subsequent Requests For Extension Of Time In The I-84 Corridor

If the Director will not decide to stop granting subsequent requests for extension of time within the boundaries of the I-84 Corridor, Juniper moves IDWR to provide a forum to evaluate all subsequent requests for extension of time in a way that provides meaningful notice and an opportunity to be heard by those who are in the I-84 contested case and processing queue. As evidenced by the *Final Order*, the parties to the contested case are known, and are identified by Juniper in the certificate of service for this document. Moreover, as evidenced by the *Memorandum*, the water users who are subject to the processing hold consist of Nevid, LLC, Ark Properties, LLC/Mayfield Townsite, LLC, Pars Holding LC,² and Juniper. Providing notice and an opportunity to be heard to those within the I-84 Corridor contested case and queue is therefore neither unreasonable nor unduly burdensome on IDWR, and is substantially similar to IDWR providing actual notice of new water right filings to water users who have been involved in previous contested cases involving the same source.

² On December 23, 2022, IDWR acknowledged the assignment of the Pars Holding, LC applications for permit to Intermountain Sewer & Water Corp. According to the acknowledgment, Intermountain Sewer & Water Corp. is represented by Sawtooth Law Offices. Juniper has included Sawtooth Law Offices in the Certificate of Service for this motion.

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CONCLUSION

Based on the foregoing, Juniper respectfully moves the Director to designate all prior approvals of requests for extension of time for applications for permit in the I-84 Corridor as either preliminary, recommended, or final orders. Juniper further moves the Director to deny any subsequent requests for extension of time in the I-84 Corridor, or in the alternative, to provide a forum for challenging subsequent requests for extension of time in the I-84 Corridor.

RESPECTFULLY SUBMITTED this 2nd day of February, 2023.

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CERTIFICATE OF SERVICE

I certify that on this 2nd day of February, 2023, I caused to be served a true and correct copy of the foregoing upon the following persons by the method(s) indicated:

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**MOTION TO DESIGNATE PRIOR APPROVALS FOR EXTENSION OF TIME IN
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Hersley, Jean

From: Chris Bromley <cbromley@mchughbromley.com>
Sent: Thursday, February 2, 2023 11:16 AM
To: IDWR File
Subject: In Matter of Application for Transfer No. 78356 et al.
Attachments: 20230202 I-84 Corridor Motion.pdf

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Please see the attached for filing.

Thank you,

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