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Sent: Monday, February 10, 2025 4:36 PM
To: IDWR File; NSemanko@parsonsbehle.com; 'Michael P. Lawrence';
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Cc: Baxter, Garrick; Candice McHugh; Miller, Nick
Subject: In re Permit Nos. 61-12090, 61-12096, 63-32499, and 63-35473
Attachments: 20250205 M Eisenman Dec.pdf; 20250210 Petition to Cancel Permits.pdf

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Hello,

Please see attached for filing a Petition to Cancel and Void Permit Nos. 61-12090, 61-12096, 63-32499, and 63-35473, supported by the Declaration of Mike Eisenman. Hard copies have been mailed to the address of record with IDWR, as indicated in the certificate of service.

Thank you,

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RECEIVED

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DEPARTMENT OF
WATER RESOURCES

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT NOS. 61-12090 (NEVID LLC); PERMIT NO. 61-12096 (NEVID LLC); PERMIT NO. NO. 63-32499 (MAYFIELD TOWNSITE LLC); and PERMIT NO. 63-35473 (MAYFIELD RANCH LLC)

**PETITION TO CANCEL AND VOID
PERMIT NOS. 61-12090, 61-12096, 63-32499 & 63-35473**

COMES NOW Juniper Station Farm, LLC (“Juniper”) by and through its attorneys of record, McHugh Bromley, PLLC, pursuant to Department Rule of Procedure 152, IDAPA 37.01.01.152 and Idaho Code § 42-301 *et seq.*, hereby petitions the Idaho Department of Water Resources (“IDWR” or “Department”) to set a hearing in order to cancel and void permit nos. 61-12090 (Nevid, LLC), 61-12096 (Nevid, LLC), 63-32499 (Mayfield Townsite, LLC), and 63-35473 (Mayfield Ranch, LLC), due to the permit holders’ failure to comply with the requirements law.¹ The *Petition* is supported by the *Declaration of Mike Eisenman*, filed herewith (“Eisenman Dec.”).

SUPPORT DATA

IN FILE # 61-12090

¹ The language of I.C. § 42-301 requires the filing of a “petition” with IDWR to commence this process. If the Department believes the document is more properly filed as a “motion,” then this document is also filed pursuant to IDAPA 37.01.01.220.

I. BACKGROUND

A. The Permits

Nevid, LLC (“Nevid”), Mayfield Townsite, LLC (“Townsite”), and Mayfield Ranch, LLC (“Ranch”) hold the following permits (collectively the “Permits”):

Owner	Permit No.	Purpose	Div. Rate (cfs)	Priority	Permit Approval	Proof Due
Townsite	63-32499	Municipal	6.52	7/28/2006	1/13/2016	1/1/2026
Ranch ²	63-35473	Municipal	3.48	7/28/2006	1/13/2016	1/1/2026
Nevid	61-12090	Municipal and Fire Protection	1.82 (Muni.); 2.20 (Fire Pro.)	9/28/2006	11/24/2009	10/1/2024 ³
Nevid	61-12096	Municipal and Fire Protection	14.91 (Muni.); 5.57 (Fire Pro.)	4/3/2007	11/30/2015	12/1/2025

The points of diversion and places of use for the Permits are geographically located within what is known as the I-84 Corridor, an area of limited water supply near the Ada County and Elmore County line. *See Final Order Regarding Water Right Sufficiency* (Nov. 4, 2013). Within the I-84 Corridor, IDWR has found there is 7,440 acre-feet of available ground water for development. *Id.* at 10.

Nevid, Ranch, and Townsite (collectively the “Permit Holders”) are authorized by IDWR to develop ground water within the I-84 Corridor and have been granted multiple extensions of time to develop the Permits, with the “Proof Due Date” column in the table above representing the current date upon which water must be put to beneficial use. *Eisenman Dec.* at 2. Unless and until water is put to beneficial use by the Permit Holders, other water users whose interests post-date the Permits are prevented by IDWR from putting water to beneficial use. *Final Order*

² According to the records of the Idaho Secretary of State, Mayfield Ranch, LLC was administratively dissolved on May 7, 2024. According to the records of IDWR, the address for Mayfield Ranch, LLC is with its attorney, Michael P. Lawrence, Givens Pursley, LLP.

³ According to the records of IDWR, Permit No. 12090 has lapsed.

Regarding Water Sufficiency at 14 (“Subsequent applications will be processed in the chronological order of receipt.”); *Eisenman Dec., Exs. 1 & 2*.

B. Juniper’s Interests

Juniper is the holder of water right nos. 61-7283A, 61-11966, and 61-12133, each of which is for an irrigation purpose of use, from ground water, which are the subject of Transfer No. 81327 (“Transfer”). *Eisenman Dec.* at 1-2. Generally, the Transfer proposes to move the three water rights from a point of diversion and place of use within the Cinder Cone Butte Critical Ground Water Management Area to points of diversion and places of use within the I-84 Corridor. *Id.* Collectively, the three water rights authorize the irrigation of 151 acres. *Id.* The Transfer was filed with IDWR on December 6, 2016, thereby postdating the Permits. *Id.*

Juniper is also the holder of application for permit 61-12319 (“Application”) for the irrigation of 640 acres within a 1,437-acre permissible place of use, with a diversion rate of 12.80 cfs / 2,880 acre-feet per annum from ground water. *Id.* at 2. The Application has a priority date of August 3, 2017, thereby post-dating the Permits. *Id.*

On May 6, 2019, and due to the limited water supply in the I-84 Corridor that is presently locked up by the Permit Holders, Juniper received a letter from IDWR explaining that neither the Transfer nor the Application can move forward unless and until water becomes available for development. *Id., Ex. 1*. This is despite the fact that Juniper is ready, willing, and able to put water to beneficial use, yet is prevented from doing so because of the inactions of the Permit Holders. *Id.* at 4.

As explained through the *Declaration of Mike Eisenman* and shown through photographs from the air and the public right-of-way that are attached thereto, the Permit Holders have failed to develop infrastructure for their municipal development projects. *Eisenman Dec., Exs. 3-8*.

Consequently, Juniper petitions IDWR to cancel and void the Permits pursuant to the authorities found in Idaho Code § 42-301 *et seq.*

II. ARGUMENT

A hallmark of Idaho's water law is the requirement that water is diverted and put to actual beneficial use, so as to prevent the hoarding, locking up, and wasting of the State's water resources. *See 3G AG LLC v. Idaho Dept. of Water Res.*, 509 P.3d 1180, 1191 (2022). Particular to permits: "Any concern which may exist about tying up the water to the prejudice of a potential junior applicant is adequately satisfied by other statutory provisions requiring timely commencement, progress and completion of works. I.C. §§ 42-204 and 42-301." *Shokal v. Dunn*, 109 Idaho 330, 336, 707 P.2d 441, 447 (1985); *see also Woodruff v. Butte and Market Lake Canal Co.*, 64 Idaho 735, 137 P.2d 325 (1943); *Syster v. Hazzard*, 39 Idaho 580, 229 P. 1110 (1924); *Clark v. Hansen*, 35 Idaho 449, 206 P. 808 (1922); *Washington State Sugar Co. v. Goodrich*, 27 Idaho 26, 147 P. 1073 (1915).

According to I.C. § 42-301, third parties are entitled to petition the Department to cancel and void a permit when a permit holder fails to complete one-fifth of the construction within one-half of the time allowed for completion of the project:

If the holder of a permit to appropriate the public waters shall fail to comply with the requirements of his permit as to the commencing of work or the filing of bond there under, or the completion of one-fifth (1/5) of the construction work within one-half (1/2) the time allowed for the entire completion of such construction work, or shall fail to complete the entire construction work within the time specified in his permit, said permit may be cancelled and voided by the department of water resources as hereinafter provided at the instance of any person or persons holding any permit for the diversion of water from the same stream, such permit postdating the permit which is sought to be cancelled.

I.C. § 42-301 (emphasis added).

If a water user petitions to cancel a permit, said user “shall filed with the department of water resources a petition clearly setting forth the facts upon which he bases his prayer for cancellation, plainly stating wherein the holder of the permit, which is sought to be cancelled, has failed to comply with the law and with the requirements of his permit.” I.C. § 42-302.

Here, Permit Nos. 61-12090 and 61-12096, held by Nevid, have priority dates of September 28, 2006 and April 3, 2007, respectively, were approved by IDWR for development on November 24, 2009 and November 30, 2015, respectively, and are required to file proof of beneficial use with IDWR by October 1, 2024 and December 1, 2025, respectively.⁴ Accordingly, more than one-half (1/2) of the time allowed for the entire completion of the projects has passed. As documented in the *Declaration of Mike Eisenman*, it is not apparent that the permits have been developed in order to satisfy the requirements of I.C. § 42-301.

Here, Permit Nos. 63-32499 and 63-35473, held by Townsite and Ranch, respectively, share the same priority date, July 28, 2006, were approved by IDWR for development on the same day, January 13, 2006, and are required to file proof with IDWR on the same day, January 1, 2026.⁵ Accordingly, more than one-half (1/2) of the time allowed for the entire completion of the projects has passed. As documented in the *Declaration of Mike Eisenman*, it is not apparent that the permits have been developed in order to satisfy the requirements of I.C. § 42-301.

If a petition for cancellation is filed, the Department “shall issue a notice, naming the petitioner as contestant and all persons, shown by the records of the department of water resources to have any claim of title or interest in the permit sought to be cancelled as contestees,

⁴ As explained through the records of IDWR, Permit No. 61-12090 has lapsed. Nonetheless, because lapsed permits may be reinstated, I.C. § 42-218a, it is appropriate for IDWR to examine evidence concerning the lack of progress associated with said permit.

⁵ According to the records of IDWR, Permit Nos. 63-32499 and 63-35473 are splits of Application No. 61-12083.

and requiring all contestees to appear at the office of the department on a day to be specified therein, which day shall not be less than sixty (60) nor more than ninety (90) days from the date of the notice, and show cause, by affidavit, if any there be, why said permit should not be cancelled.” I.C. § 42-303.

III. CONCLUSION

Based on the foregoing, the *Petition to Cancel and Void Permit Nos. 61-12090, 61-12096, 63-32499, and 63-35473* is supported by the *Declaration of Mike Eisenman*, which clearly and plainly sets forth the bases upon which the Permits should be canceled and voided; accordingly, the Department should notice this matter for hearing consistent with I.C. § 42-303.

RESPECTFULLY SUBMITTED this 10th day of February, 2025.

MCHUGH BROMLEY, PLLC



CHRIS M. BROMLEY

Attorneys for Juniper Station Farm, LLC

CERTIFICATE OF SERVICE

I certify that on this 10th day of February, 2025, 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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