

Miller, Nick

From: Miller, Nick
Sent: Friday, October 11, 2024 4:03 PM
To: Chris Bromley (cbromley@mchughbromley.com); Candice McHugh<cmchugh@mchughbromley.com>; Norman M. Semanko; Garrett M. Kitamura <GKitamura@parsonsbehle.com>; Michael Lawrence (MPL@givenspursley.com); Bryce Farris (bryce@sawtoothlaw.com)
Cc: ecf@parsonsbehle.com
Subject: Preliminary order on Juniper Farms' Motion to Deny Extensions of Time for Permits in the I-84 Corridor
Attachments: Preliminary Order on Motions_10112024.pdf

Please see the attached preliminary order in the above-referenced matter of Permit Nos. 61-12090, 61-12096, 63-32225, 63-32499 & 63-35473.

Sincerely,

Nick Miller
Manager, IDWR Western Region

SUPPORT DATA

IN FILE # 61-12090

**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))
PERMIT NO. 63-32225)
(INTERMOUNTAIN SEWER AND)
WATER); NO. 63-32499 (MAYFIELD)
TOWNSITE LLC); and PERMIT NO.)
63-35473 (MAYFIELD RANCH LLC))
)**

**PRELIMINARY ORDER
ON MOTIONS**

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

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:

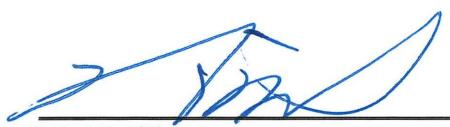
- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

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.

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:

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



Nick Miller
 Manager, IDWR Western Region

CERTIFICATE OF SERVICE

IN THE MATTER OF PERMIT NOS. 61-12090, 61-12096, 63-32225, 63-32499, AND 63-35473

Evans, Lynne

From: Chris Bromley <cbromley@mchughbromley.com>
Sent: Tuesday, October 3, 2023 9:14 AM
To: 'Debby Long'; IDWR File; Miller, Nick; cmchugh@mchughbromley.com; NSemanko@parsonsbehle.com; gkitamura@parsonsbehle.com; ecf@parsonsbehle.com; mpl@givenspursley.com; 'Bryce Farris'
Cc: Candice McHugh
Subject: Permit Nos. 61-12090, 61-12096, 63-32225, 63-32499 & 63-35473 - Reply to Responses
Attachments: 20231003 Reply to Responses to Motion to Deny Extensions.pdf

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.

Hello,

Please find attached for filing a Reply from Juniper Station Farm, LLC in this matter.

Thank you,

Chris M. Bromley
McHugh Bromley, PLLC
380 S. 4th St., Ste. 103
Boise, Idaho 83702
(208) 287-0991
www.mchughbromley.com

From: Debby Long <debby@sawtoothlaw.com>
Sent: Tuesday, September 26, 2023 2:24 PM
To: file@idwr.idaho.gov; Miller, Nick <Nick.Miller@idwr.idaho.gov>; cbromley@mchughbromley.com; cmchugh@mchughbromley.com; NSemanko@parsonsbehle.com; gkitamura@parsonsbehle.com; ecf@parsonsbehle.com; mpl@givenspursley.com; Bryce Farris <bryce@sawtoothlaw.com>
Subject: Permit Nos. 61-12090, 61-12096, 63-32225, 63-32499 & 63-35473 - Notice of Appearance and Response to Motion

Good afternoon,

Please find attached Intermountain Sewer & Water Corp.'s *Notice of Appearance; and Response to 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* for filing and e-service with the Idaho Department of Water Resources in the above-referenced matter.

Thank you.

Debby Long
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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 PERMIT NO. 61-12090
(NEVID LLC); PERMIT NO. 61-12096
(NEVID LLC); PERMIT NO. 63-32225
(INTERMOUNTAIN SEWER AND WATER);
NO. 63-32499 (MAYFIELD TOWNSITE
LLC); and PERMIT NO. 63-35473
(MAYFIELD RANCH LLC)

**REPLY TO RESPONSES TO
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**

COMES NOW Juniper Station Farm, LLC (“Juniper”) by and through its attorneys of record, McHugh Bromley, PLLC, and pursuant to Idaho Department of Water Resources’ (“IDWR” or “Department”) Rule of Procedure 220, IDAPA 37.01.01.220.02.c, hereby replies to the responses filed on September 26, 2023 by Nevid, LLC, Ark Properties-Mayfield Townsite, LLC (collectively “Nevid-Ark”), Intermountain Sewer & Water Corp. (“Intermountain”), and Mayfield Ranch, LLC (“Mayfield”). Based on the following, the Department should grant Juniper’s *Motion*.

**REPLY TO RESPONSES TO 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**

I. PROCEDURAL BACKGROUND

On September 12, 2023, Juniper filed its *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”) in the above-captioned permits.

The *Motion* asked the Department to issue an order “deny[ing] any additional requests for extension of time by the Holders, or their successors, of the above-captioned Permits, or in the alternative, provide Juniper with actual notice and an opportunity to be heard to challenge any additional requests for extension of time before they are approved.” *Motion* at 9.

On September 26, 2023, responses to the *Motion* were filed by Nevid-Ark (“Nevid-Ark Response”), Intermountain (“Intermountain Response”), and by Mayfield (“Mayfield Response”).

II. ARGUMENT

1. The Department Should Deny Additional Requests For Extension Of Time

a. Idaho Code § 42-204 Supports Juniper And Does Not Prevent The Department From Granting Relief

Respondents incorrectly claim Idaho Code § 42-204 prevents the Department from granting the *Motion*:

Idaho Code Section 42-204(3) provides permit holders with a right to request extensions of time to submit proof of beneficial use. . . . There is no legal basis for the Department to deny extensions requests before they are made and before the Department can evaluate them on a case-by-case basis to determine whether they should be granted.

Mayfield Response at 1-2.

Idaho Code § 42-204 specifically and expressly provides applicants with a statutory right to seek extensions of time based upon certain grounds and Juniper is essentially asking IDWR to ignore such statutory rights. IDWR does not have the authority to override and ignore the statutory rights provided in I.C. § 42-204.

Intermountain Response at 2.

Nothing in Section 42-204 states (or even suggests) that the Department has the power to categorically deny requests for extension of time or otherwise prejudge such requests.

Nevid-Ark Response at 2.

To the contrary, the plain language of I.C. § 42-204 establishes that holders of non-reasonably anticipated future needs (“RAFN”) municipal permits (all of the respondents herein are holders of non-RAFN municipal permits) are statutorily required to put water to full beneficial use within five years, with IDWR possessing the discretionary ability to grant an extension of time if the facts and circumstances warrant:

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 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 The department may approve a timely request for extension of time in the following circumstances

I.C. § 42-204(3).

Respondents do not assert that they fall within a recognized exception to the requirement of putting water to full beneficial use within five years. As argued in the *Motion* and not addressed by the Respondents, each of the above-captioned permits has obtained extensions of time that greatly exceed the five-year development period, with Nevid-Ark and Mayfield enjoying development periods of at least 10 years¹ and Intermountain enjoying an 18-year development period. *Motion* at 7-8.

¹ Nevid-Ark’s permit no. 61-12090 enjoys a development period of 15 years. *Motion* at 7. Nevid-Ark’s permit nos. 61-12096 and 63-32499 enjoy development periods of 10 years. *Id.* at 7-8. Mayfield’s permit no. 63-35473 enjoys a development period of 10 years. *Id.* at 8.

Also unaddressed by Respondents is the fact that if they ask for and are granted any additional extensions of time, they will violate the development period for non-RAFN municipal permits: “[It is important to note that] [t]he maximum development period for beneficial use associated with a non-RAFN water right is five years, which can be extended five to ten years for a total of ten to fifteen years.” *Motion* at 8 (citing *RAFN Municipal Water Right Handbook (Amended October 2021)* at 9) (“RAFN Handbook”); *see also RAFN Municipal Water Right Handbook (Amended 2015)* at 8 (stating same). Because these are non-RAFN permits, any additional granting of requests for extension of time will exceed the “ten to fifteen year[] . . . maximum development period . . .”

Juniper is therefore asking IDWR to exercise its authority, consistent with Idaho Code and the *RAFN Handbook*, by ordering that it will no longer accept requests for extension of time in the above-captioned permits because to do so will violate I.C. § 42-204(3).

b. The Limited Water Supply And Processing Queue Are Relevant

Intermountain argues that Juniper must take the water supply as it finds it and cannot complain of being in the processing queue because the “existing permit holders seek to retain the rights they have acquired.” *Intermountain Response* at 4, fn. 2. Juniper would take no exception if the above-captioned permit holders kept themselves within the law by putting water to beneficial use within the time periods expressed in the permits and as further defined in the *RAFN Handbook*; yet, they have not and now complain that it would violate their rights if IDWR does not grant future extensions. Respondents have enlarged their permits to the detriment of Juniper with development periods contrary to the requirement to timely put water to beneficial use. Idaho Const. Art. XV § 3; I.C. § 42-204(3); *RAFN Handbook* at 9.

c. Juniper Has Standing To Bring The Motion And The Issue Is Ripe

Intermountain argues, without legal citation and through an aside in a footnote, that “IDWR should deny Juniper’s *Motion* because it lacks standing and/or is not ripe for consideration.” *Intermountain Response* at 2, fn. 1. The failure to provide authority to support an argument means the claim cannot be heard. *State v. Zichko*, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996). If the unsupported issues will be entertained, Juniper possess standing and the issue is ripe for consideration.

As for standing:

[T]he doctrine is imprecise and difficult to apply. Standing focuses on the party seeking relief and not on the issues the party wishes to have adjudicated. To satisfy the case or controversy requirement of standing, a litigant must allege or demonstrate an injury in fact and a substantial likelihood the relief requested will prevent or redress the claimed injury. This requires a showing of a distinct palpable³ injury and fairly traceable causal connection between the claimed injury and the challenged conduct. But even if a showing can be made of an injury in fact, standing may be denied when the asserted harm is a generalized grievance shared by all or a large class of citizens.

George Martin & Martin Custom Homes, LLC v. Camas Cnty., 150 Idaho 508, 513, 248 P.3d 1243, 1248 (2011).

Here, Juniper has demonstrated an injury in fact and the likelihood of relief will redress the claimed injury. When the permit holders fail to put water to beneficial use, and with the presence of the processing queue, Juniper is prevented from putting water to beneficial use. The presence of the processing queue establishes that the relief Juniper is seeking is not a generalized grievance shared by a large class of citizens. When the permit holders in the I-84 Corridor fail to put water to beneficial use or do not put the permitted quantity to full beneficial use, applicants in the processing queue are prevented from moving forward. If additional extensions of time are granted, it will lock the water resource as against subsequent appropriators for speculative

purposes, meaning Juniper has standing to bring its *Motion*. *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 applying the water to beneficial use with reasonable diligence.”)).

Regarding ripeness: “The traditional ripeness doctrine requires a petitioner or plaintiff to prove 1) that the case presents definite and concrete issues, 2) that a real and substantial controversy exists, and 3) that there is a present need for adjudication.” *Noh v. Cenarrusa*, 137 Idaho 798, 801, 53 P.3d 1217, 1220 (2002). Here, all three factors are met. As to the first and second factors, there are real and definite issues, with a real controversy, which is whether Nevid-Ark and Intermountain, with their respective 15-year and 18-year development periods, are entitled to additional extensions of time given the requirements of I.C. § 42-204(8) and the *RAFN Handbook*. As to the third factor, a present need exists to adjudicate the issue, which is to determine if Nevid-Ark and Intermountain are entitled to obtain additional requests for extension of time. To promote actual development of the State’s water resources, the issue should be decided now.

2. If The Department Declines To Rule That Future Requests For Extension Of Time Will Not Be Entertained, The Department Should Provide A Forum In Which To Address Subsequently Filed Requests For Extension Of Time Before They Are Granted

Respondents also disagree with Juniper’s alternative argument, claiming there is no basis to provide a forum in which subsequent requests for extension of time would be noticed before they are ruled upon. Intermountain and Mayfield take very hardline approaches, arguing there is no ability for Juniper to participate in future requests for extension of time:

REPLY TO RESPONSES TO 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

Juniper should take up its concerns with the statutory process concerning the approval of permits and extension rights with the Idaho Legislature as IDWR is not at liberty to re-write Idaho Code. Once a permit is issued the permit holder has a statutory right provided by the Idaho Legislature to seek extensions of time.

....

There is simply no right, reason or basis for Juniper to be provided an opportunity to be heard, and challenge, any subsequent requests for extension of time. Idaho Code and the Legislature have not provided for such a procedural process and the right to seek an extension was confirmed when the permits were granted.

Intermountain Response at 3, 5.

There is no statute specifically giving Juniper a right to participate in extension requests filed by other permit holders.

Mayfield Response at 3.

Nevid-Ark takes a slightly lighter tone, arguing that a process already exists for Juniper to become involved:

With regard to notice, existing law provides a sufficient means for Juniper to receive notice of the Department's orders regarding requests for extension of time. Such orders 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.

....

Juniper has not explained why the existing means of notice and protest [I.C. § 42-1701A(3)] are insufficient to facilitate Juniper's objections to future requests for extension of time.

Nevid-Ark Response at 2-3.

The arguments presented are merely designed to frustrate Juniper from getting to root of the issue, which is the ability to have a forum in which subsequent requests for extension of time are noticed with an opportunity to be heard. Concerning Intermountain and Mayfield, the legislative authority to rule on Juniper's motion is already established in the procedural rules:

REPLY TO RESPONSES TO 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

“The rules in this chapter will be liberally construed to ensure just, speedy and economical determination of all issues presented to the agency.” IDAPA 37.01.01.051 (emphasis added).

Furthermore, the Department has the authority to issue orders that “determine[] the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons.” IDAPA 37.01.01.11.

Concerning Nevid-Ark, it fails to address the fact that Juniper previously asked for notice, with the request unfulfilled:

On August 8, 2023, a status conference was held at the Department’s State Office on Front Street. Presiding over the status conference was Nick Miller, Western Regional Manager. Counsel for Intermountain and Nevid were present at the status conference, as were others. . . . While it was discussed that Juniper could send a letter to IDWR asking for notice of requests for extension of time, Mr. Miller acknowledged that Juniper’s prior counsel, Charles L. Honsinger, prior to his retirement, filed a letter with IDWR on April 27, 2016, asking for this type of notice. Counsel for Juniper informed Mr. Miller and the parties that Juniper did not receive notice.

Notice of Withdrawal of 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 Extension 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 at 5 (emphasis added).

Furthermore, all practitioners know that Department staff does its best to scan and profile documents to the backfiles, but depending on where the documents are filed and who is receiving them, the backfiles are not always up to date, meaning the method of checking the backfiles is not the failsafe that Nevid-Ark claims.

The alternative relief requested by Juniper is straightforward and can be addressed with the issuance of an order establishing that when future requests for extension of time are filed in the above-captioned permits, notice must be given before they are ruled on.

III. CONCLUSION

Based on the foregoing, the responses filed by Nevid-Ark, Mayfield, and Intermountain do not establish a basis to deny Juniper's *Motion*.

RESPECTFULLY SUBMITTED this 3rd day of October, 2023.

MCHUGH BROMLEY, PLLC



CHRIS M. BROMLEY

Attorneys for Juniper Station Farm, LLC

CERTIFICATE OF SERVICE

I certify that on this 3rd day of October, 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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Subject: Mayfield Ranch's Response to Juniper's Motion to Deny Extension Requests, Etc. [GP-DMS.016316.0002.FID1021522]
Attachments: 18004909_1_Mayfield Ranch Response to Juniper Motion 2023-09-26.pdf

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DEPARTMENT OF
WATER RESOURCES

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

IN THE MATTER OF PERMIT NO
APPLICATION FOR TRANSFER NO. 61-
12090 (NEVID LLC); PERMIT NO. 61-
12096 (NEVID LLC); PERMIT NO. 63-
32225 (INTERMOUNTAIN SEWER AND
WATER); PERMIT NO. 63-32499
(MAYFIELD TOWNSITE LLC); AND
PERMIT NO. 63-35473 (MAYFIELD
RANCH LLC)

**MAYFIELD RANCH'S RESPONSE
IN OPPOSITION TO 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**

Mayfield Ranch LLC (“Mayfield Ranch”), by and through its attorneys of record, Givens Pursley LLP, pursuant to Rule 220.02.b of the Rules of Procedure of the Idaho Department of Water Resources, IDAPA 37.01.01.220.02.b, hereby responds to the *Motion to Deny 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”) on September 12, 2023. Mayfield Ranch requests that the *Motion* be denied.

Juniper asks the Idaho Department of Water Resources (“IDWR” or “Department”) to issue a blanket denial of all future requests for extension of time to submit proof of beneficial use for the above-captioned permits. This request should be denied because it is contrary to the law.

Idaho Code Section 42-204(3) provides permit holders with a right to request extensions of time to submit proof of beneficial use. Permit holders are entitled to have the Department

MAYFIELD RANCH'S RESPONSE TO JUNIPER'S MOTION TO DENY EXTENSION REQUESTS, ETC.

Mayfield Ranch Response to Juniper Motion 2023-09-26(18003763.5).doc [16316-2]

Page 1 of 5

evaluate the merits of each extension request against the statutory criteria set forth in the statute. In fact, the statute requires the Department to grant extensions in some cases. I.C. § 42-204(3)(a) (stating that the Department “shall extend the time” if a development of the permit is delayed by governmental processes or litigation). There is no legal basis for the Department to deny extension requests before they are made and before the Department can evaluate them on a case-by-case basis to determine whether they should be granted.

It does not matter that the municipal permit holders captioned above have exceeded the original 5-year proof period. The Legislature has provided them the opportunity to obtain the maximum possible time to prove beneficial use. Section 42-204(7) states:

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.

(Emphasis added.)

Mayfield Townsite LLC (the former owner of Mayfield Ranch’s permitted right) filed its extension request in October 2020 and received a 5-year extension “based on evidence of reasonable diligence.” *Letter from Debbi Judd to Mayfield Townsite LLC* (Jan. 21, 2021). For its part, Mayfield Ranch has been working diligently to design its project, order an purchase infrastructure equipment and materials, and obtain the land use approvals needed to put water to beneficial use under its permit (a preliminary plat hearing is scheduled for November 16, 2023). After all this effort, denying them the opportunity to seek additional time (if needed) would be illegal and would prejudice their substantial rights.

Juniper contends that further extensions would prejudice their rights. But this is not the case. Juniper’s permits are junior in priority to the permits captioned above. A junior permit

holder simply cannot be prejudiced by a senior exercising its legal right to develop its permit, including seeking extensions allowed by statute.

Also, it does not appear that Juniper is entitled to its alternative relief of receiving specific notice of extension requests. Section 42-204(5) states:

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.

(Emphasis added.) The Legislature did not give anyone but the permit holder the right to challenge a Department decision on an extension request, let alone receive notice and be given an opportunity to be heard. This specific statute should be interpreted as controlling over statutes that more generally provide persons with a right to challenge agency decisions, such as Section 42-1701A(3). *Jones v. Lynn*, 169 Idaho 545, 564-65, 498 P.3d 1174, 1193-94 (2021) (“A basic tenet of statutory construction is that the more specific statute or section addressing the issue controls over the statute that is more general. Thus, the more general statute should not be interpreted as encompassing an area already covered by one which is more specific.”). There is no statute specifically giving Juniper a right to participate in extension requests filed by other permit holders.¹

Moreover, even if Section 42-204(5) does not control, it is not apparent that Juniper is a “person aggrieved” by an extension granted to another permit holder and therefore entitled to a hearing under Section 42-1701A(3). Juniper’s concerns about its place in the “queue” of junior permits reflect “possible or remote consequences” resulting from additional extensions granted to other permit holders, which is not enough to be “aggrieved” under the law. *Ashton Urb.*

¹ Despite the fact that Juniper holds a permit (*i.e.*, is a “permit holder”), it is absurd to believe that Legislature intended to extend the right to challenge an extension decision to anyone but the permit holder requesting the extension.

Renewal Agency v. Ashton Mem'l, Inc., 155 Idaho 309, 311, 311 P.3d 730, 732 (2013) (“a person is aggrieved by an order when the order affects his or her present personal, pecuniary, or property interest. The effect on the person’s interest must be more than a possible or remote consequence of the order.” (internal citations omitted)).

In conclusion, Mayfield Ranch respectfully requests that the Department deny Juniper’s *Motion*.

Respectfully submitted this 26th day of September, 2023.

GIVENS PURSLEY LLP

By: 

Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of September, 2023, a true and correct copy of the foregoing was filed electronically with the Idaho Department of Water Resources (file@idwr.idaho.gov) and served by United States mail, postage prepaid and properly addressed to the following (with courtesy copies via email):

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Subject: Permit Nos. 61-12090, 61-12096, 63-32225, 63-32499 & 63-35473 - Notice of Appearance and Response to Motion
Attachments: Notice of Appearance and Response to 2nd Motion from Juniper.pdf

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Good afternoon,

Please find attached Intermountain Sewer & Water Corp.'s *Notice of Appearance; and Response to 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* for filing and e-service with the Idaho Department of Water Resources in the above-referenced matter.

Thank you.

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
PERMIT NO. 61-12090 (NEVID LLC);
APPLICATION FOR PERMIT NO. 61-12096
(NEVID LLC); APPLICATION FOR
PERMIT NO. 63-32225 (INTERMOUNTAIN
SEWER AND WATER); APPLICATION
FOR PERMIT NO. 63-32499 (MAYFIELD
TOWNSITE); AND APPLICATION FOR
PERMIT NO. 63-35473 (MAYFIELD
RANCH LLC)

NOTICE OF APPEARANCE; AND RESPONSE
TO 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

A. Notice of Appearance

COMES NOW Intermountain Sewer & Water Corp., (hereinafter "Intermountain") by and through its attorneys, S. Bryce Farris of Sawtooth Law Offices, PLLC, and hereby gives notice of appearance in said cause and controversy by said firm, and requests that all documents and pleadings filed herein be duly and regularly served upon said attorneys at the email address noticed above.

B. Response to Motion to Deny Any Additional Requests for Extension of Time.

Juniper Station Farms, LLC (hereinafter "Juniper Station") filed a motion pursuant to Rule of Procedure 220, IDAPA .37.01.01.220, and is moving the Director of the Idaho Department of

**NOTICE OF APPEARANCE; AND RESPONSE TO 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 – Page 1**

Water Resources (“Director” or “IDWR”) 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*”).¹

With respect to the first part of Juniper’s *Motion*, which seeks to prematurely deny future requests for extensions of time, this request should be denied. Juniper is requesting that the IDWR categorically deny all future requests for extension without considering the grounds, facts, circumstances, basis or reasons for such requests. Idaho Code § 42-204 specifically and expressly provides applicants with a statutory right to seek extensions of time based upon certain grounds and Juniper is essentially asking IDWR to ignore such statutory rights. IDWR does not have the authority to override and ignore the statutory rights provided in I.C. § 42-204. To the contrary, IDWR is statutorily required to consider such extension requests and to consider the merits, facts and circumstances for such requests to determine whether good cause exists.

Juniper then argues that it is not reasonable to grant subsequent requests for the I-84 Corridor because there is limited water supply. However, the fact that there is limited water supply does not negate the requirements and rights provided in Idaho Code § 42-204. Indeed, most administrative basins, aquifers and water supplies in the State of Idaho are in limited supply, fully

¹ Intermountain appreciates the fact that Juniper withdrew its previous *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* for procedural reasons and it was discussed at the Status Conference held on August 8, 2023 that Juniper would file a new motion referencing individual permits, which it has now done. However, Juniper is still not a party to the individual permits and thus it does not have standing to seek the relief requested. Juniper is filing a motion concerning previously issued permits, which it failed to properly protest, and which it now seeks challenge future requests for extension which are not pending before IDWR. Thus, in addition to the other grounds stated herein, IDWR should deny Juniper’s *Motion* because it lacks standing and/or is not ripe for consideration.

appropriated or even over appropriated and there is no reason or basis to treat Juniper's situation any different. IDWR is expressly and statutorily required to consider and review future extension requests based upon the facts, basis and grounds which exist at the time of the extension request and to determine whether the request meets the statutory requirements. There are no heightened requirements of an applicant simply because there is a limited water supply. Accordingly, IDWR should continue to apply the same standards in the I-84 Corridor as it would with any other extension request, and continue to consider the facts, circumstances and basis as and when the extension requests are submitted to IDWR. IDWR should deny Juniper's *Motion* to categorically and prematurely deny all future requests for extension.

C. Response to Motion for Forum and Opportunity to be Heard on All Subsequent Requests for Extension of Time.

In the alternative Juniper moves IDWR for actual notice of all subsequent requests for extension and an opportunity to be heard and then challenge such requests. In other words, Juniper seeks to establish a process and procedure which does not exist under Idaho law and thus asks IDWR to re-write Idaho Code for its own benefit based upon a misplaced suggestion that Juniper is somehow being unfairly treated.

First of all, Juniper should take up its concerns with the statutory process concerning the approval of permits and extension rights with the Idaho Legislature as IDWR is not at liberty to unilaterally re-write Idaho Code. Once a permit is issued the permit holder has a statutory right provided by the Idaho Legislature to seek extensions of time. This statutory right is codified and approved by the Legislature and to re-write a separate procedural process to apply only to Juniper must involve the Idaho Legislature. It is not conceded that the Idaho Legislature would consider or approve a revised process suggested by Juniper but the point is that Juniper's request for IDWR

to provide for a process which simply does not exist is something that should be brought to the Legislature.

Secondly, Juniper suggests or implies that it should be provided an opportunity to be heard because its applications are at the end of the processing queue. Juniper fails to recognize that its own applications were filed “eyes wide open” with full knowledge of the previously approved permits and with full knowledge of the *Final Order Regarding Water Sufficiency*, dated November 4, 2013 (hereinafter “*Final Order*”). Indeed, the *Final Order* was issued in 2013, the previously approved permits are provided in the *Final Order*, the list or status of previously filed permits, and processing of said permits, were provided in the *Final Order*, and yet Juniper chose to file new applications three years later in 2016. In other words, just like any other new applicant that files for a new application, Juniper takes the stream, aquifer or situation as they find it.² The stream or aquifer may already be fully appropriated and the junior applicant cannot seek reallocation of the existing rights or create a new procedural process simply because the applicant is junior.

Moreover, Juniper had the opportunity to be heard with respect to each application for permit which has been issued both before and after the *Final Order*. Each application, whether protested or not, had to meet the statutory requirements provided in Idaho Code § 42-203A. Once approved, then such permits provide a right to the permit holder, including, but not limited to, the

² Juniper attempts to garner sympathy as it laments its position in the processing queue and complains of the previously issued extensions of time in an area of limited water supply. But the fact that there is limited supply, which is not new in the State of Idaho, is also the very reason that existing permit holders seek to retain the rights they have acquired. Just as Juniper knew of the existing permits and *Final Order* at the time Juniper filed its own applications, Juniper knew or should have known that existing permit holders would desire to retain and protect their existing permits. Juniper cannot complain of a processing queue with limited water supply which it chose to join.

right to seek an extension as provided in I.C. § 42-204 (note: even if the application was not protested, IDWR still considered and reviewed the criteria provided in I.C. § 42-203A(5) prior to issuing the permit). Juniper could have voiced concerns at such time but did not. These rights of the permit holder cannot be simply disregarded because Juniper, in most cases decades later, would now like to now consider voicing concerns with the previously issued permits. As previously mentioned, once the permit is issued, the right to an extension is provided by statute and thus Juniper's concerns should have and could have been raised prior to the permits being issued.

There is simply no right, reason or basis for Juniper to be provided an opportunity to be heard, and challenge, any subsequent requests for extension of time. Idaho Code and the Legislature have not provided for such a procedural process and the right to seek an extension was confirmed when the permits were granted. Juniper could have protested and/or raised concerns when it was provided notice and an opportunity to be heard before the permits were issued. Finally, while Juniper infers that it is being unfairly treated because of its place in the processing queue, this is misplaced because Juniper knew or had knowledge of the state of the existing permits, the *Final Order*, and the sufficiency of water supply before it chose to file its own applications for permit three years after the issuance of the *Final Order*. As a new applicant, Juniper takes the stream or aquifer as they find it and it is incumbent upon them to evaluate the situation prior to purchasing property or filing a new application. IDWR must reject Juniper's invitation to create a process or procedure to second guess previously issued permits simply because Juniper does not like the status of the queue Juniper chose to join. Accordingly, IDWR should reject and deny Juniper's request to provide notice and an opportunity to be heard to challenge future extension requests. Future extension requests should be processed in the same

manner as they have, and in the same manner as in other basins or areas, and in accordance with I.C. § 42-204.

D. Conclusion

Juniper's *Motion* to categorically deny future requests for extension of time should be denied. Such a request is premature given IDWR has an obligation to consider the specific circumstances, facts and basis for each request. Moreover, Juniper's alternative request to establish a new procedural process for it to challenge future requests for extension of time should also be denied. Juniper had opportunities to protest the previously issued applications for permit, or to participate in the administrative process relating to the *Final Order*, and it chose to file new applications knowing full well of the status of I-84 Corridor and processing queue. It cannot and should not be allowed to create a new procedural process to challenge the rights of existing permit holders.

DATED this 26 day of September, 2023.

SAWTOOTH LAW OFFICES, PLLC

By



S. Bryce Farris
Attorneys for Intermountain Sewer &
Water Corp.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of September, 2023, I caused a true and correct copy of the foregoing **NOTICE OF APPEARANCE; AND RESPONSE TO 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** to be served by the method indicated below, and addressed to the following:

**Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098
file@idwr.idaho.gov**

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile
 Email / CM/ECF

**Nick Miller
IDWR Western Region
2735 Airport Way
Boise, ID 83705-5082
nick.miller@idwr.idaho.gov**

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile
 Email / CM/ECF

**Chris M. Bromley
Candice M. McHugh
McHugh Bromley PLLC
380 S. 4th Street, Suite 103
Boise, ID 83702
cbromley@mchughbromley.com**

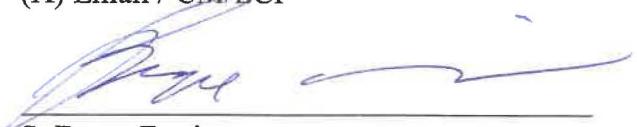
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 Hand Delivered
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 Email / CM/ECF

**Norman Semanko
Garrett M. Kitamura
Parsons Behle & Latimer
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S. Bryce Farris

Evans, Lynne

From: Kimberly Aulenbacher <KAulenbacher@parsonsbehle.com>
Sent: Tuesday, September 26, 2023 7:58 AM
To: IDWR File
Cc: cbromley@mchughbromley.com; cmchugh@mchughbromley.com; Miller, Nick; mpl@givenspursley.com; Bryce Farris; Norman M. Semanko; Garrett M. Kitamura
Subject: Permit Nos. 61-12090, 61-12096, 63-32225, 63-32499 & 63-35473 / Response in Opposition to Motion to Deny Any Additional Requests for Extension
Attachments: Response to Juniper's Motion to Deny any Additional Requests for Extension of Time.pdf

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Good morning:

Attached for filing and e-service is Nevid, LLC and Ark Properties-Mayfield Townsite, LLC's *Response in Opposition to 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* regarding the above-referenced Permits.

Thank you, and I hope you have a nice day. Kimberly



A Professional
Law Corporation

Kimberly Aulenbacher
Legal Secretary
Parsons Behle & Latimer
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Norman M. Semanko, ISB #4761
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Email: NSemanko@parsonsbehle.com;
GKitamura@parsonsbehle.com; ecf@parsonsbehle.com

Attorneys for Nevid, LLC and Ark Properties-Mayfield Townsite, LLC

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

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

**RESPONSE IN OPPOSITION TO
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**

COMES NOW Nevid, LLC (“Nevid”) and Ark Properties-Mayfield Townsite, LLC (“Mayfield”, and collectively with Nevid, “Respondents”), by and through their attorneys of record, Parsons Behle & Latimer, to submit this response in opposition to Juniper Station Farms, LLC’s (“Juniper”) *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* (“Juniper’s Motion” or the “Motion”).

For the reasons that follow, Respondents respectfully ask the Idaho Department of Water Resources (“Department” or “IDWR”) to deny Juniper’s Motion in its entirety.

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RESPONSE IN OPPOSITION TO 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 - Page 1 4867-5834-6624.V1

I. ARGUMENT

Juniper demands that the Department preemptively issue a blanket denial of all future requests for extension of time for the above-captioned permits. Juniper presents no legal basis for this demand. There is none. On the contrary, Juniper's request contravenes the permitholders' statutory rights. Idaho Code § 42-204 expressly provides permitholders with the right to apply for extensions of time and to have those applications considered by the Department. Nothing in Section 42-204 states (or even suggests) that the Department has the power to categorically deny requests for extension of time or otherwise prejudge such requests. Simply put, Juniper is asking the Department to go against its statutory obligation to review requests for extension of time. Juniper's Motion is contrary to law and should be denied.

Juniper requests, in the alternative, that it be provided with actual notice and an opportunity to be heard to challenge additional requests for extension of time. This request is equally meritless. With regard to notice, existing law provides a sufficient means for Juniper to receive notice of the Department's orders regarding requests for extension of time. Such orders 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. As for a right to challenge requests for extension of time, Idaho Code § 42-1701A(3) already provides an avenue for Juniper to lodge objections to Department decisions:

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 why the existing means of notice and protest are insufficient to facilitate Juniper's objections to future requests for extension.

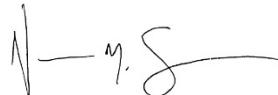
In an apparent attempt to justify its demand for special treatment, Juniper states that water has been "locked up" by permitholders requesting extensions of time while Juniper stands "ready, willing, and able to put water to beneficial use." Motion, p. 7. Juniper presents no evidence to show that it is "ready, willing, and able" to put water to beneficial use. But even if Juniper's assertion is taken at face value, it entirely ignores the fact that the permitholders who have allegedly "locked up" the water processing queue are senior permitholders who have already invested significant resources and had their requests for extension of time approved by the Department after taking the appropriate steps of preparing and submitting a request. Even assuming *arguendo* that the Department's present procedure for handling requests for extension of time are uniquely burdensome to Juniper or otherwise inefficient, Juniper has failed to state any legal basis that would allow the Department to provide the personalized notice and opportunity to be heard that Juniper seeks. The text of I.C. § 42-1701A(3) simply does not provide an aggrieved party such a proactive right.

II. CONCLUSION

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

DATED this 26th day of September, 2023.

PARSONS BEHLE & LATIMER

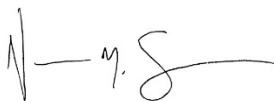


Norman M. Semanko; Garrett M. Kitamura
Attorneys for Nevid, LLC and Mayfield Townsite,
LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of September, 2023, I served a true and correct copy of the foregoing document on the parties listed below by their designated method of service.

Chris M. Bromley Candice M. McHugh MCHUGH BROMLEY, PLLC 380 South 4 th Street, Suite 103 Boise, ID 83702	<input 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
IDAHO DEPARTMENT OF WATER RESOURCES P. O. Box 83720 Boise, ID 83720-0098	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Electronic Mail: file@idwr.idaho.gov <input type="checkbox"/> Facsimile
Nick Miller IDWR WESTERN REGION 2735 Airport Way Boise, ID 83705-5082	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Electronic Mail nick.miller@idwr.idaho.gov <input type="checkbox"/> Facsimile
Michael Lawrence GIVENS PURSLEY P. O. Box 2720 Boise, ID 83701-2720	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Electronic Mail mpl@givenspursley.com <input type="checkbox"/> Facsimile
Bryce S. Farris SAWTOOTH LAW OFFICES PLLC 1101 W. River Street, Ste. 110 Boise, ID 83707	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Electronic Mail bryce@sawtoothlaw.com <input type="checkbox"/> Facsimile



Norman M. Semanko; Garrett M. Kitamura

Evans, Lynne

From: Chris Bromley <cbromley@mchughbromley.com>
Sent: Tuesday, September 12, 2023 2:20 PM
To: IDWR File; Mike Lawrence; 'Norman M. Semanko'; Bryce Farris; Miller, Nick
Cc: Carter, Meghan
Subject: I84 Withdrawal of Pleading and Motion to Deny Extensions of Time
Attachments: 20230912 Motion to Deny Extensions.pdf; 20230912 Notice to Withdraw I84 Filing.pdf

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Please see the attached for filing, with hard copies in the mail:

NOTICE OF WITHDRAWAL OF 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

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

Thank you,

Chris M. Bromley
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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 PERMIT NO. 61-12090
(NEVID LLC); PERMIT NO. 61-12096
(NEVID LLC); PERMIT NO. 63-32225
(INTERMOUNTAIN SEWER AND WATER);
NO. 63-32499 (MAYFIELD TOWNSITE
LLC); and PERMIT NO. 63-35473
(MAYFIELD RANCH LLC)

**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**

COMES NOW Juniper Station Farm, LLC (“Juniper”) by and through its attorneys of record, McHugh Bromley, PLLC, and pursuant to Department Rule of Procedure 220, IDAPA 37.01.01.220, and hereby moves the Idaho Department of Water Resources (“IDWR” or “Department”) for an order to: (1) deny any additional requests for extension of time by the holders, or their successors (“Holder” or “Holders”), of the above-captioned permits (“Permit” or “Permits”); or (2) in the alternative, provide Juniper with actual notice and an opportunity to be heard to challenge any additional requests for extension of time before they are approved.

**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**

INTRODUCTION

The Permits are for municipal purposes of use and are located within an area of the State that is commonly referred to as the I-84 Corridor, as shown below:

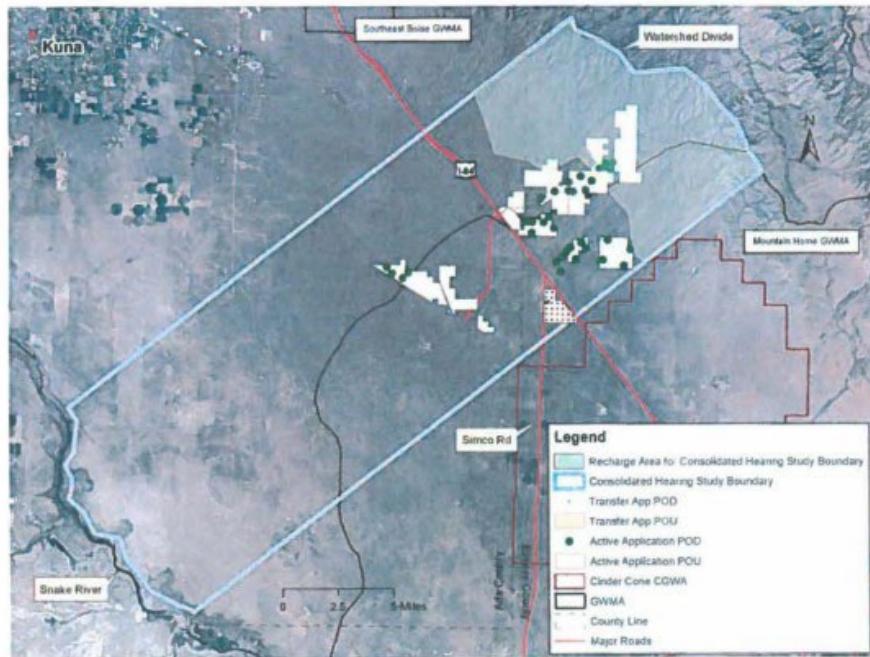


Figure 2. Consolidated hearing study area boundary.

The I-84 Corridor is defined by the Department as an area of limited water supply for planned communities and irrigation projects along Interstate 84 near the Ada County/Elmore County line. *See Final Order Regarding Water Sufficiency* (November 4, 2013) (“Final Order”). According to the *Final Order*: “[T]he estimated net annual recharge volume for the study area [is] 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 be the consolidated applications.” *Final Order* at 10. Because of the water supply, the Department limited the appropriation of water to the Permits. After the *Final Order* was issued, and if water was still available for appropriation, a processing “queue” was developed by the Department to address subsequently

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

filed applications for permit in the chronological order in which they were received; Juniper is in the processing queue.

Despite this fact, and as will be explained below, many requests for extension of time have been granted, and the granting of such prejudices Juniper's ability to move up the Department's processing queue. For this reason, Juniper moves the Department to: (1) deny subsequently filed requests for extension of time by the Holders, or their successors, of the Permits; or (2) in the alternative, provide Juniper with actual notice and an opportunity to be heard to challenge subsequently filed requests for extension of time before they are approved.

ARGUMENT

The I-84 Corridor is an area of limited water supply. *Final Order* at 10. When the Permits were issued, they were conditioned as follows: “Project construction shall commence within one year from the date of permit 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.” Emphasis added. The purpose for diligence is to prevent the locking up of the State’s water resources 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.”).

If there is unappropriated water after development of the Permits, the Department has said it will allow development of water in the chronological order in which the below-listed applications for permit were filed where they reside in the processing queue:

**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**

NAME	NUMBER	RECEIVED	PRIORITY	WATER USE	CFS
Nevid, LLC	61-12095	4/3/2007	4/3/2007	Municipal	5.00
Orchard Ranch, LLC	63-32703	6/21/2007	6/21/2007	Irrigation (was municipal)	9.60
Ark Properties, LLC/ Mayfield Townsite, LLC	63-33344	3/1/2010	3/1/2010	Irrigation in planned community (63-32499)	9.00
PARS HOLDING LC	61-12307	6/15/2016	6/15/2016	Municipal (part replace 61-12256)	5.0
PARS HOLDING LC	63-34245	6/16/2016	6/16/2016	Municipal (Backup in event 63-32225 not full licensed)	5.0
PARS HOLDING LC	61-12308	6/21/2016	6/21/2016	Municipal (part replace 61-12256)	8.76
JUNIPER STATIONS FARM LLC	X 81327	12/5/2016	1975/1976	Irrigation 151 moved from CCBGWA into I84 area – new irrigation	3.02
JUNIPER STATIONS FARM LLC	61-12319	8/3/2017	8/3/2017	Irrigation new 640 acres (with X81327 give 791-acre project)	12.80

Memorandum Regarding Status of I84 Applications from Nick Miller to Shelley Keen, dated December 29, 2020.

Anticipating that the Permits might not develop some or all of the water that is available for appropriation, Juniper’s prior counsel, Charles L. Honsinger, filed a letter with IDWR on April 27, 2016, asking to be notified of any actions of the Department or agency filings by the Holders of the Permits (“Juniper Letter”). Since that time, and without notice to Juniper, IDWR has extended the proof of beneficial use dates to each of the Holders, as follows:

Permit No.	Proof Due	Request Received	Holder's Basis for Request	Request Granted	New Proof Due
61-12090 (Nevid)	10/1/2014	9/22/2014	“The applicant is waiting for approval of water right permit applications 61-12095 and 61-12096 before finalizing development plans with Elmore County. . . . Permit holder request[s] an extension for 10 years.”	9/25/2014	10/1/2024

**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**

Permit No.	Proof Due	Request Received	Holder's Basis for Request	Request Granted	New Proof Due
61-12096 (Nevid)	12/1/2020	12/1/2020	“Elmore County approval of development application remains pending. Market conditions have not been conducive to planned developments in this area. Permit holder request[s] an extension for 10 years.”	1/17/2021	1/1/2025
63-32225 (Inter-mountain)	2/1/2012	1/30/2012	“Currently, we are resolving issues with Idaho Department of Fish and Game. Traffic and road issues are also being addressed with Idaho Department of Transportation, Ada County Highway District, and Mountain Home Highway District. Permit holder request[s] an extension to February 1, 2017.”	2/6/2012	2/1/2017
63-32225 (Inter-mountain)	2/1/2017	1/22/2016	“Since 2012, the permit holder has been diligently proceeding with planning, engineering, and permitting for the project while simultaneously waiting for market conditions to improve before undertaking construction. Permit holder request[s] an extension for 6 years (until 2/1/22).”	1/25/2016	2/1/2021
63-32225 (Inter-mountain)	2/1/2021	10/5/2020	“County and state approval processes have taken longer than expected, prohibiting actual work from beginning on the project. There have also been delays due to COVID-19. Permit holder request[s] an extension for 3 years.”	1/28/2021	9/8/2022

**MOTION TO DENY ANY ADDITIONAL REQUESTS FOR EXTENSION OF TIME OR
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Permit No.	Proof Due	Request Received	Holder's Basis for Request	Request Granted	New Proof Due
63-32225 (Inter-mountain)	9/8/2022	6/9/2022	“County and state approval processes have taken longer than expected, prohibiting actual work from beginning on the project. There have also been delays due to COVID-19. . . . Permit holder request[s] an extension for 3 years.”	7/20/2022	4/14/2025
63-32499 ¹ (Mayfield Townsite)	1/1/2021	10/8/2020	“Property and project are pending sale. Permit development will proceed according to the plans of the new owner. . . . Permit holder request[]s an extension for 10 years.”	1/17/2021	1/1/2026

Because of the lack of diligence by others, Juniper finds itself in the processing queue.

And despite filing the Juniper Letter, no notice has ever been given to Juniper, depriving it from the opportunity to be heard as to the multiple requests for extension of time.

1. IDWR Should Deny Subsequent Requests For Extension Of Time

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 shown. “The standard of what constitutes good cause is the standard of reasonableness” *Ellis v. Northwest Fruit & Produce*, 103 Idaho 821, 822-23, 654 P.2d 914, 915-16 (1982).

Here, it is not reasonable to grant subsequent requests for extension of time for the Permits.

First, the I-84 Corridor is an area of limited water supply with a processing queue:

The Director’s November 4th, 2013 *Final Order Regarding Water Sufficiency* established that the area was nearly fully appropriated, but that some of the

¹ On August 11, 2023, permit no. 63-32499 was split by the Department into 63-32499 (Mayfield Townsite LLC) and 63-35473 (Mayfield Ranch LLC). The result of the split is Mayfield Townsite LLC holds a permit for 6.52 cfs, limited to 2816.6 acre-feet, for a municipal purpose of use; Mayfield Ranch LLC holds a permit for 3.48 cfs, limited to 1503.4 acre-feet, for a municipal purpose of use.

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 Regarding Status of I84 Applications from Nick Miller to Shelley Keen, dated December 29, 2020.

The limited supply and presence of a processing queue differentiates the I-84 Corridor from other areas of the State as water has been locked up by the Holders at the expense of beneficial use, despite the fact that Juniper is ready, willing, and able to put water to beneficial use. “The right to divert and appropriate the unappropriated waters . . . shall never be denied . . .” Idaho Const. Art. XV § 3.

Second, as summarized in the table below, each of the Holders has exceeded the 5-year development period authorized by the Permits:

Permit No.	Quantity (cfs)	Permit Issuance Date	Original Proof Due	Extensions Granted	Current Proof Due	Current Development Period
61-12090 (Nevid)	4.02	11/24/2009	10/1/2014	1 for 10 years	10/1/2024	15 years
61-12096 (Nevid)	20.48	11/30/2015	12/1/2020	1 for 5 years	1/1/2025	10 years
63-32225 (Intermountain)	10	2/16/2007	2/1/2012	4 for 13 years	4/14/2025	18 years

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Permit No.	Quantity (cfs)	Permit Issuance Date	Original Proof Due	Extensions Granted	Current Proof Due	Current Development Period
63-32499 ² (Mayfield Townsite)	6.52	1/13/2016	1/1/2021	1 for 5 years	1/1/2026	10 years
63-35473 (Mayfield Ranch LLC)	3.48	1/13/2016	1/1/2021	1 for 5 years	1/1/2026	10 years

A development period of more than 5 years for a municipal water right, with more than one or two five-year extensions, constitutes a Reasonably Anticipated Future Needs (“RAFN”) water right with an associated “Planning horizon” as those terms are defined by Idaho Code § 42-202B, subsections (7) and (8), respectively. According to the Department:

It is important to note that the maximum development period for 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. Therefore, a planning horizon of less than five years would not warrant a RAFN water right.

RAFN Municipal Water Right Handbook (Amended October 2021) at 9 (“RAFN Handbook”) (emphasis added).³

The Permits were filed to appropriate water for non-RAFN municipal use. However, each of the Permits has been granted at least a 10-year development period, with Nevid (61-12090) and Intermountain (63-32225) enjoying 15-year and 18-year development periods, respectively. Therefore, by the very definition in the Department’s RAFN Handbook, good cause exists to deny any subsequently filed request for extension of time by the Holders of the

² On August 11, 2023, permit no. 63-32499 was split by the Department into 63-32499 (Mayfield Townsite LLC) and 63-35473 (Mayfield Ranch LLC). The result of the split is Mayfield Townsite LLC holds a permit for 6.52 cfs, limited to 2816.6 acre-feet, for a municipal purpose of use; Mayfield Ranch LLC holds a permit for 3.48 cfs, limited to 1503.4 acre-feet, for a municipal purpose of use.

³ The RAFN Handbook may be found here: <https://idwr.idaho.gov/wp-content/uploads/sites/2/legal/guidance/Licensing-13.pdf>.

non-RAFN Permits, because if any additional request for extension of time is granted, it will turn the non-RAFN Permits into RAFN Permits, despite not being applied for as such.

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

If the Department will not issue an order that all subsequent requests for extension of time filed by the Permit Holders will be denied, Juniper moves IDWR to provide Juniper with actual notice of all subsequently filed requests for extension of time, so as to provide an opportunity to be heard. Juniper asked for notice through the Juniper Letter, yet Juniper never received notice of the requests for extension of time. Given the circumstances of a limited water supply and processing queue, moving the Department for an order that provides actual notice and an opportunity to be heard is reasonable and not unduly burdensome.

CONCLUSION

Based on the foregoing, Juniper respectfully moves the Department to deny any additional requests for extension of time by the Holders, or their successors, of the above-captioned Permits, or in the alternative, provide Juniper with actual notice and an opportunity to be heard to challenge any additional requests for extension of time before they are approved.

RESPECTFULLY SUBMITTED this 12th day of September, 2023.

MCHUGH BROMLEY, PLLC



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CERTIFICATE OF SERVICE

I certify that on this 12th day of September, 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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