

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

SUPPORT DATA
IN FILE # 61-12095

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Attorneys for Juniper Station Farm, LLC

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

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

**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**

COMES NOW Juniper Station Farm, LLC (“Juniper”) by and through its attorneys of record, McHugh Bromley, PLLC, and pursuant to Department Rule of Procedure 303, IDAPA 37.01.01.303, and hereby notices the withdrawal of its February 2, 2023 *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*

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

the Alternative to Provide a Forum for Challenging Requests for Extension of Time in the I-84 Corridor (“Motion”).

BACKGROUND

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

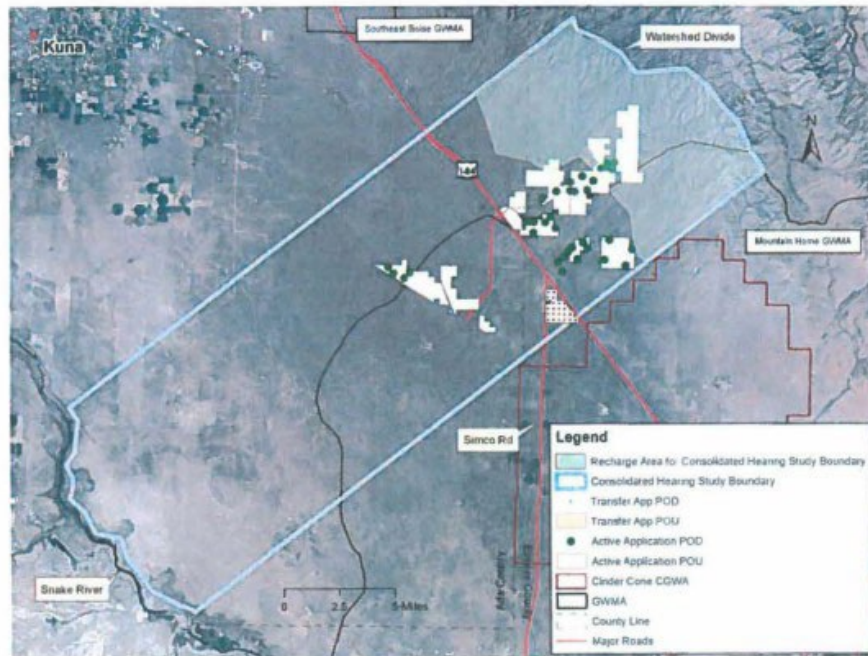


Figure 2. Consolidated hearing study area boundary.

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

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

On November 4, 2013, after considering the applications and evidence before him, the Director found: “[T]he estimated net annual recharge volume for the study area to be 7,440 AFA. On a continuous basis, this amount is equivalent to 10.3 cfs, which is significantly less than the total maximum flow rates sought by the consolidated applications.” *Final Order* at 10. According to the *Final Order*, there is a maximum, sufficient supply to satisfy only two applications and part of a third: 63-32499 (Mayfield), 73811 (Shekinah), and part of 61-12066 (Nevid):

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

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

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 CCBCGWA into 184 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.

Since issuance of the *Final Order*, and pursuant to Idaho Code § 42-204, IDWR has issued requests for extension of time within the I-84 Corridor that have prejudiced Juniper’s ability to move up the processing queue and appropriate the unappropriated waters of the State.

On February 2, 2023, Juniper filed its *Motion*. On February 16, 2023, responses to the *Motion* were filed by counsel for Intermountain Sewer & Water Corp. (“Intermountain”) and counsel for Nevid, LLC, Orchard Ranch, LLC, and Ark Properties-Mayfield Townsite, LLC (collectively “Nevid”). The responses raised procedural questions as to whether Juniper’s *Motion* could be addressed in the I-84 Corridor proceeding that concluded with issuance of the *Final Order*. The response filed by Intermountain requested a status conference with IDWR to further address the *Motion* and the procedural questions. On February 23, 2023, Juniper filed a reply, which, among other things, agreed with the need to schedule a status conference.

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

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. During the status conference it was agreed that the proper procedure for addressing future requests for extension of time is to file pleadings in the water right numbers that are associated with the permits that have filed or can file requests for extension of time. 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. Since the *Final Order* was issued in 2013, Mr. Miller agreed to provide the parties with updated ownership records for the permits associated with the I-84 Corridor. Further, it was agreed that Juniper should withdraw the *Motion* in the proceeding involving the *Final Order*.

REQUEST FOR RELIEF

Consistent with the status conference, Juniper hereby notices the withdrawal of its *Motion*, without prejudice, and will refile for relief in the particular water right numbers associated with the permits that are able to file requests for extension of time.

RESPECTFULLY SUBMITTED this 12th day of September, 2023.

MCHUGH BROMLEY, PLLC



CHRIS M. BROMLEY

Attorneys for Juniper Station Farm, LLC

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:

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

Tim Conrads
75 S. Pronghorn Rd.
Boise, ID 83716

SPF Water Engineering
300 E. Mallard Dr. Ste. 350
Boise, ID 83706

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

Michael Creamer
Michael Lawrence
Givens Pursley
PO Box 2720
Boise, ID 83701-2720

Cleveland Corder LLC
622 Zoe Ln.
Garden City, ID 83714

Tonya D. Bolshaw
PO Box 16022
Boise, ID 83715

Mary Firsch
155 S. Pronghorn Dr.
Boise, ID 83716

Dana Quinney
Scott Quinney
160 S. Pronghorn
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Brown Farms LLC
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PO Box 737
Boise, ID 83701-0737

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

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Lori Atkins
602 E. Mike's Pl.
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Wayne Shepherd
Director of Public Works
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Boise, ID 83707

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

Director Weaver
Idaho Dept. of Water Res.
PO Box 83720
Boise, ID 83720-0098
file@idwr.idaho.gov



CHRIS M. BROMLEY

Evans, Lynne

From: Michael P. Lawrence <mpl@givenspursley.com>
Sent: Friday, August 11, 2023 4:56 PM
To: IDWR File
Cc: Miller, Nick
Subject: I-84 Corridor applications and permits [IWOV-GPDMS.FID1118772]
Attachments: 16889811_1_Notice of Appearance - MPL.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.

Attached is a notice of appearance in the matter involving applications and permits in the I-84 corridor.

Nick Miller at Western Region recently held a status conference to address this matter.

Please call with any questions.

Thanks,
Mike

MICHAEL P. LAWRENCE
GIVENS PURSLEY LLP
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CONFIDENTIALITY NOTICE: This communication is confidential and may contain privileged information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

Michael P. Lawrence [ISB No. 7288]
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Fax: (208) 388-1300
www.givenspursley.com
Attorneys for Mayfield Ranch LLC

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

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 78356 (THE NAME OF
SHEKINAH INDUSTRIES); APPLICATION
FOR TRANSFER NO. 78355 (ORCHARD
RANCH) APPLICATION FOR PERMIT
NO. 63-32499 (MAYFIELD TOWNSITE);
APPLICATION FOR PERMIT NO. 61-
12095 (NEVID-CORDER); APPLICATION
FOR PERMIT NO. 63-32703 (ORCHARD
RANCH); APPLICATION FOR PERMIT
NO. 61-12226 (INTERMOUNTAIN SEWER
AND WATER); APPLICATION FOR
PERMIT NO. 63-33344 (ARK
PROPERTIES-MAYFIELD TOWNSITE)

NOTICE OF APPEARANCE

Michael P. Lawrence, of the firm Givens Pursley LLP, pursuant to Rule 201 of the Rules of Procedure of the Idaho Department of Water Resources, IDAPA 37.01.01.201, hereby enters his appearance as attorney of record in the above-captioned proceeding for Mayfield Ranch LLC, which is the owner of water permit no. 63-35473, which was split from water permit no. 63-32499 originally issued to Mayfield Townsite LLC. A copy of the IDWR water right report for permit no. 63-35473 is attached.


Copies of all correspondence, pleadings, orders, and other documents should be served on the following:

Michael P. Lawrence
Givens Pursley LLP

601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720
Fax: (208) 388-1300
mpl@givenspursley.com

Respectfully submitted this 11th day of August, 2023.

GIVENS PURSLEY LLP

By: 

Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of August, 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:

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

Tim Conrads
75 S. Pronghorn Rd.
Boise, ID 83716

SPF Water Engineering
300 E. Mallard Dr. Ste. 350
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Moore Smith
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Garden City, ID 83714

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1516 W. Hays St.
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Meridian, ID 83642

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Director of Public Works
City of Mountain Home
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147 E. Indian Cr. Dr.
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Boise, ID 83707

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

Director Spackman
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098



Michael P. Lawrence

**IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit 63-35473**

8/11/2023

<u>Owner Type</u>	<u>Name and Address</u>
Attorney	MICHAEL P LAWRENCE GIVENS PURSLEY LLP 601 W BANNOCK ST BOISE, ID 83702-5919 (208) 447-9473
Current Owner	MAYFIELD RANCH LLC C/O MICHAEL P LAWRENCE 601 W BANNOCK ST BOISE, ID 83702-5919 (208) 388-1200
Interested Party	CHARLES L HONSINGER PO BOX 517 BOISE, ID 83701-0517 (208) 863-6106
Original Owner	MARTY GOLDSMITH PO BOX 1359 CALDWELL, ID 83606 (208) 850-9654
Previous Owner	MAYFIELD TOWNSITE LLC 11204 N BAR 21 DR GLENN'S FERRY, ID 83623-5028 (208) 366-7931
Representative	SPF WATER ENGINEERING LLC C/O SCOTT N KING 300 E MALLARD DR STE 350 BOISE, ID 83706 (208) 383-4140

Priority Date: 7/28/2006

Status: Active

Source
GROUND WATER

Tributary

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
MUNICIPAL	01/01	12/31	3.480 CFS	
	<u>Total Diversion</u>		3.480 CFS	

Source and Point(s) of Diversion:

GROUND WATER	SWNE	Sec. 24, Twp 01N, Rge 04E, ELMORE County
GROUND WATER	SESW	Sec. 23, Twp 01N, Rge 04E, ELMORE County
GROUND WATER	SENE	Sec. 27, Twp 01N, Rge 04E, ELMORE County

IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit 63-35473

8/11/2023

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

Place Of Use:

MUNICIPAL within ELMORE County

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

Conditions of Approval:

1. 128 Place of use is within the area served by the public water supply system of Mayfield Townsite. The place of use is generally located within Sections 12-15 and 22-27, Township 1N, Range 4E and Sections 5, 7, 8 and 17-21, Township 1N, Range 5E.
2. 180 A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustrative purposes.
3. Prior to submitting proof of beneficial use, the right holder shall not assign ownership of the permit to another owner without prior notification to the

IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit 63-35473

8/11/2023

- Department.
4. 134 Prior to or in connection with the proof of beneficial use statement to be submitted for municipal water use under this right, the right holder shall provide the department with documentation showing that the water supply system is being regulated by the Idaho Department of Environmental Quality as a public water supply and that it has been issued a public water supply number.
 5. 26A Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
 6. 004 This right does not grant any right-of-way or easement across the land of another.
 7. 046 Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
 8. 121 The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.
 9. 196 The right holder shall install or construct a straight length of conduit or ditch suitable for installation of a device for measuring the entire flow of water being diverted in connection with this right. If the right holder uses conduit, the straight length of conduit shall be at least fifteen times the diameter of the conduit and shall be above ground or otherwise easily accessible.
 10. R64 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for municipal type irrigation within the place of use.
 11. Diversion of water under this water right will impact the sufficiency of the supply for the Swan Falls minimum flows, because of the direct hydraulic connection between the ground water being appropriated by the applications and the Snake River above Swan Falls Dam. The water right holder shall fully participate in any requirement imposed upon other junior water right holders and trust water right holders needed to satisfy the Swan Falls minimum flows.
 12. Prior to diversion and use of water under this right, the right holder shall install a flow measurement and volume totalizing device of a type approved by the Department on each point of diversion to measure flow and volume of water diverted.
 13. Diversion and use of water in connection with this right is subject to a Monitoring-Reporting Plan. The right holder shall provide the Department with a plan for monitoring-reporting aquifer levels, diversion flow rates, and volumes. The monitoring-reporting should occur in parallel with land development and production and should include identification of non-production wells and timelines for measuring and reporting. The right holder shall not divert water in connection with this right until the plan is approved by the Department. Failure to comply with the plan once it is accepted shall be cause for the Department to cancel or revoke the right.
 14. Common areas, parks, school grounds, golf courses, and any other large parcels may only be irrigated under this water right with wastewater that has been previously beneficially used for potable or culinary purposes, has been treated in a waste water treatment plant, and is delivered from the wastewater treatment plant to the parcel to be irrigated.

IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit 63-35473

8/11/2023

15. Water diverted under this right may be used for direct irrigation of up to ½ acre per residential lot upon which a home has been constructed.
16. This right is limited to a total diversion volume of 1503.4 acre-feet annually.

Comments:

1 jhersley 8/11/2023 POU
Updated Shape

2 jhersley 8/11/2023 Split Right
This right is the result of split from 63-32499. the warranty deed dated 2022 conveyed 1.25 cfs to Mayfield Ranch, LLC and a special warranty deed and assignment of water right dated July, 2023, conveyed 2.23 cfs and 963.4 afa. Totals being 3.48 cfs and 1503.4 afa.

Dates and Other Information:

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

Combined Use Limits:

N/A

SubCase:

N/A

Water Supply Bank:

N/A

Miller, Nick

From: Miller, Nick
Sent: Thursday, August 10, 2023 2:13 PM
To: Chris Bromley (cbromley@mchughbromley.com); Bryce Farris (bryce@sawtoothlaw.com); Norman M. Semanko; Michael Lawrence (MPL@givenspursley.com); jsimpson@martenlaw.com
Subject: I84 Corridor current applications and permits
Attachments: Active Transfer Rights I84.docx; Active Applications I84.docx; Active I84 Permits.docx; 63-32225 Older Comments.docx

Hi,

As we discussed at the conference on Tuesday, I have attached three documents. One contains proof reports for each of the active permits, one contains proof reports for each of the active applications, and one contains a transfer proof report for the Juniper Station transfer (Transfer Application 81327). The proof reports for the permits have up to date ownership information (with the exception of 63-32499 split) and should have an up to date listing of the proof due date. Past extensions are noted in the comments section, except for 63-32225 where only the most recent extension is listed. This is because something odd happened with the recent amendment of permit and the older comments are not included on the proof report. I pulled those older comments from the database and included them as a fourth attachment.

Here is a link to an IDWR web page that will allow you to put in the basin, sequence, and suffix of any water right and it will return all of the documents we have on file for that water right: [IDWR Laser Fiche -- Document Search \(idaho.gov\)](https://www.idaho.gov/idwr/laser-fiche) it defaults to 61-12096 just because that is the link I copied, but you can put in any water right number and click on "search" and get the info for that right.

I am not able to send along the ownership change information for 63-32499 for the Mayfield Ranch folks as it is being processed at the State Office and has not yet been scanned, but I seem to recall Mike was going to forward that along with a notice of appearance.

I hope this helps .

IDAHO DEPARTMENT OF WATER RESOURCES
ROSTER OF ATTENDANCE

Status Conference

Juniper Motion RE: Extensions of time in I-84 Corridor

Place: IDWR – State Office 6th Floor Conference Rooms

Date: Tuesday, August 8, 2023

Time: 10:00 am

NAME

ORGANIZATION

1. Nick Miller	IDWR
2. Bryce Farri's	Sawtooth Law
3. Norm Semanko	Parsons Behle & Lohner
4. Teresa & Terri McCallan	Mayfield Townsites
5. Mary Firsich	- Phone - Lives in Vernal
6. Chris Bramley	Meltygh Bramley
7. Richard Urquidic	-
8. John Simpson	- IPCO
9. Mike Lawrence	- Maxwell Ranch LLC
10.	

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
2735 Airport Way
Boise, Idaho 83705-5082

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JUL 28 2023

WATER RESOURCES
WESTERN REGION

ATTN: CLIFFORD BROWN ESQ.
BROWN FARMS LLC
HOLZER ED
1516 W HAYS
BOISE ID 83

NIXIE 980 FE 1300 0007/25/23

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FRONT 08370

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
2735 Airport Way
Boise, Idaho 83705-5082

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JUL 28 2023

WATER RESOURCES
WESTERN REGION

BRUCE SMITH
MOORE SMITH
950 W BANN
BOISE ID 83

*Response to Request for status
conference; notice of status conference
- mailed 7/18/2023 -*

NIXIE 980 FE 1300 0007/25/23

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

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UTF

BC: 83705508235 *1695-06032-25-19

FRONT 08370

Evans, Lynne

From: Mary Barnes <marybarnes@givenspursley.com>
Sent: Thursday, July 20, 2023 3:22 PM
To: IDWR File
Cc: Michael P. Lawrence
Subject: IN THE MATTER OF APPLICATION FOR TRANSFER NO. 78356 (THE NAME OF SHEKINAH INDUSTRIES), et al. [IWOV-GPDMS.FID494885]
Attachments: Notice of Withdrawal of Representative.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.

Good afternoon,

Please accept the attached Notice of Withdrawal of Representative for filing in the above referenced matter. Please return a time stamped copy of same at your convenience.

Thank you,

Mary Barnes, Legal Assistant

GIVENS PURSLEY LLP

601 West Bannock Street, Boise, ID 83702

main [208-388-1200](tel:208-388-1200)

direct [208-388-1248](tel:208-388-1248)

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marybarnes@givenspursley.com

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CONFIDENTIALITY NOTICE: This communication is confidential and may contain privileged information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

RECEIVED

Jul 20, 2023

DEPARTMENT OF
WATER RESOURCES

Michael C. Creamer [ISB #4030]
Michael P. Lawrence [ISB #7288]
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Fax: (208) 388-1300
mpl@givenspursley.com

Attorneys for D. Michael Preston and Shekinah Industries, Inc.

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

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 78356 (THE NAME OF
SHEKINAH INDUSTRIES); APPLICATION
FOR TRANSFER NO. 78355 (ORCHARD
RANCH) APPLICATION FOR PERMIT NO.
63-32499 (MAYFIELD TOWNSITE);
APPLICATION FOR PERMIT NO. 61-12095
(NEVID-CORDER); APPLICATION FOR
PERMIT NO. 63-32703 (ORCHARD RANCH);
APPLICATION FOR PERMIT NO. 61-12226
(INTERMOUNTAIN SEWER AND WATER);
APPLICATION FOR PERMIT NO. 63-33344
(ARK PROPERTIES-MAYFIELD
TOWNSITE)

NOTICE OF WITHDRAWAL OF
REPRESENTATIVE

Pursuant to Idaho Department of Water Resources Rule of Procedure 204, IDAPA
37.01.01.204, undersigned counsel hereby provides notice of the law firm of Givens Pursley
LLP's withdrawal as representative for D. Michael Preston and Shekinah Industries, Inc. in the
above captioned matter.

Respectfully submitted this 20th day of July, 2023.

GIVENS PURSLEY LLP

By



Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of July, 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:

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

Tim Conrads
75 S. Pronghorn Rd.
Boise, ID 83716

SPF Water Engineering
300 E. Mallard Dr. Ste. 350
Boise, ID 83706

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

Cleveland Corder LLC
622 Zoe Ln.
Garden City, ID 83714

Tonya D. Bolshaw
PO Box 16022
Boise, ID 83715

Mary Firsch
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Boise, ID 83716

Dana Quinney
Scott Quinney
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Attn. Clifford Brown Esq.
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Lori Atkins
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Darwin Roy
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Mayfield, ID 83716

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



Michael P. Lawrence

Evans, Lynne

From: Evans, Lynne
Sent: Tuesday, July 18, 2023 12:52 PM
To: Chris Bromley; cmchugh@mchughbromley.com; Norman M. Semanko; gkitamura@parsonsbehle.com; ecf@parsonsbehle.com; bryce@sawtoothlaw.com; katiev@sawtoothlaw.com
Cc: Miller, Nick
Subject: Notice of Status Conference: Pending Applications in the I-84 Corridor
Attachments: Status Conference I84.pdf

Dear parties:

Please see the attached Response to Request for Status Conference and Notice of Status Conference regarding applications pending in the I-84 Corridor.

If you have any questions, please reach out to myself or Nick Miller.

Regards,

Lynne Evans | Administrative Assistant I
IDWR - Western Region
2735 W Airport Way, Boise ID 83705
(208) 334-2190 | lynne.evans@idwr.idaho.gov

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

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

**RESPONSE TO REQUEST FOR STATUS CONFERENCE;
NOTICE OF STATUS CONFERENCE**

BACKGROUND

On February 2, 2023, in the above-captioned matter, Juniper Station Farm, LLC (“Juniper”) filed with Idaho Department of Water Resources (“Department”) a motion requesting the Director “designate prior approvals of extension of time for applications pending in the I- 84 Corridor as either recommended, preliminary, or final orders of the agency” pursuant to IDAPA 37.01.01.750 and “deny any subsequent requests for extension of time, or in the alternative, to provide notice and an opportunity to be heard in a forum for challenging subsequent requests for extension of time in the I-84 Corridor” pursuant to IDAPA 37.01.01.220 (“Motion”). *Motion* at 1–2.

In response, on February 13, 2023, Shekinah Industries Inc. filed with the Department a clarification letter regarding their Transfer No. 78356. On February 16, 2023, Nevid, LLC, Orchard Ranch, LLC, and Ark Properties-Mayfield Townsite, LLC (“Nevid et al.”) filed a response in opposition to Juniper’s Motion. Also on February 16, 2023, Intermountain Sewer & Water Corp. (“Intermountain”) filed its notice of appearance and response Juniper’s Motion. (“Intermountain’s Response”). Intermountain’s Response requests the Department schedule “a status conference to discuss and determine how to procedurally proceed and/or provide guidance as to the forum and process for addressing Juniper Station's Motion.” *Intermountain’s Response* at 3.

On February 23, 2023, Juniper filed a reply to Nevid et al.’s and Intermountain’s responses (“Reply”). The Reply includes a concurrence with Intermountain’s request for a status conference and/or guidance. *Reply* at 3.

RESPONSE

The Director will grant Intermountain's and Juniper's request for a status conference to discuss how to address Juniper's Motion. The status conference will be set for August 8, 2023, at the time and location described below.

NOTICE OF STATUS CONFERENCE

The Director hereby notifies the parties that a status conference in this matter will be held on **August 8, 2023, at 10:00 a.m. (MST)**, at the Department's State Office, located at 322 E. Front Street, 6th Floor, Boise, Idaho. The purpose of the status conference is to discuss how to procedurally proceed. All parties to the matter must be represented at the status conference in person or by video/telephone conference. The presiding officer will be Nick Miller whose mailing address is 2375 Airport Way, Boise, ID 83705-5082 and whose email address is Nick.Miller@IDWR.Idaho.Gov

To join the conference via computer or smartphone, please click the following Webex link, follow the prompts, and wait to be admitted by the meeting host:
<https://idahogov.webex.com/idahogov/j.php?MTID=m42634393d4523fcf0ae05b7276b81066>.

To join the conference via telephone, please dial 1(415) 655-0001 (US Toll) and enter the following meeting access code when prompted: 2634 191 1847.

The status conference will be held in accordance with the provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, Idaho Code, and the Department's Rules of Procedure, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department upon request or at <https://adminrules.idaho.gov/rules/current/37/370101.pdf>.

The conference will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in, or understand the conference, please contact Lynne Evans at (208) 334-2190 or 2375 Airport Way, Boise, ID 83705-5082, no later than five (5) days prior to the conference.

Dated this 18 day of July 2023.



NICK MILLER
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16 day of July 2023, the above and foregoing was served by U.S. mail, postage prepaid, and addressed to the following:

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SHEKINAH INDUSTRIES INC
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MARTEN LAW
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BOISE ID 83701-2139

MICHAEL CREAMER
GIVENS PURSLEY LLP
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BOISE ID 83701-2720

BRUCE SMITH
MOORE SMITH
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HDR INC
300 E MALLARD DR STE 350
BOISE ID 83706-6660

CLEVELAND CORDER LLC
622 ZOE LN
GARDEN CITY ID 83714-4702

TONYA D. BOLSHAW
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BOISE ID 83716-9501

ROBERT MAYNARD
ERIKA MALMAN
PERKINS COIE LLP
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BOISE ID 83701-0737

ATTN: CLIFFORD BROWN ESQ.
BROWN FARMS LLC
HOLZER EDWARDS & HARRISON
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BRYCE S. FARRIS
KATIE VANDENBERG-VAN VLIET
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BOISE ID 83702-7067

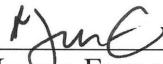
CHRIS M. BROMLEY
CANDICE M. MCHUGH
MCHUGH BROMLEY PLLC
380 S 4TH ST STE 103
BOISE ID 83702-7687

I HEREBY CERTIFY that on this 16 day of June 2023, the above and foregoing was served by email, and addressed to the following:

CHRIS M. BROMLEY
CANDICE M. MCHUGH
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cbromley@mchughbromley.com
cmchugh@mchughbromley.com

BRYCE S. FARRIS
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Lynne Evans
Administrative Assistant 1

RECEIVED

FEB 27 2023

WATER RESOURCES
WESTERN REGION

CHRIS M. BROMLEY ISB #6530
CANDICE M. MCHUGH ISB #5908
MCHUGH BROMLEY, PLLC
380 South 4th Street, Suite 103
BOISE, ID 83702
Telephone (208) 287-0991
Facsimile (208) 287-0864
Email: cbromley@mchughbromley.com
cmchugh@mchughbromley.com

Attorneys for Juniper Station Farm, LLC

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

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

**REPLY TO NEVID, LLC, ORCHARD
RANCH, LLC, ARK PROPERTIES-
MAYFIELD TOWNSITE, LLC, AND
INTERMOUNTAIN SEWER & WATER
CORP. RESPOSES TO MOTION TO
DESIGNATE PRIOR APPROVALS FOR
EXTENSION OF TIME IN THE I-84
CORRIDOR AS PRELIMINARY,
RECOMMENDED, OR FINAL ORDERS;
TO DENY SUBSEQUENT REQUESTS
FOR EXTENSIONS OF TIME IN THE I-
84 CORRIDOR; OR IN THE
ALTERNATIVE TO PROVIDE A
FORUM FOR CHALLENGING
REQUESTS FOR EXTENSION OF TIME
IN THE I-84 CORRIDOR**

COMES NOW Juniper Station Farms, LLC ("Juniper") by and through its attorneys of
record, McHugh Bromley, PLLC, and pursuant to Rule of Procedure 220.02.c, IDAPA

**REPLY TO NEVID, LLC, ORCHARD RANCH, LLC, ARK PROPERTIES-MAYFIELD
TOWNSITE, LLC, AND INTERMOUNTAIN SEWER & WATER CORP. RESOPNSES TO
MOTION TO DESIGNATE PRIOR APPROVALS FOR EXTENSION OF TIME IN THE I-84
CORRIDOR AS PRELIMINARY, RECOMMENDED, OR FINAL ORDERS; TO DENY
SUBSEQUENT REQUESTS FOR EXTENSIONS OF TIME IN THE I-84 CORRIDOR; OR IN THE
ALTERNATIVE TO PROVIDE A FORUM FOR CHALLENGING REQUESTS FOR EXTENSION
OF TIME IN THE I-84 CORRIDOR**

37.01.01.220.02.c, hereby replies to the February 16, 2023 responses filed by Nevid LLC, Orchard Ranch, LLC, Ark Properties-Mayfield Townsite, LLC (collectively “Nevid”), and Intermountain Sewer & Water Corp. (“Intermountain”).

1. IDWR Should Confirm That Approvals For Requests For Extension Of Time In The I-84 Corridor Are Preliminary Orders Of The Agency

Juniper concurs with Intermountain that at least one of IDWR’s approvals of a request for extension of time in the I-84 Corridor was issued as a preliminary order. *See Intermountain Response* at 1, fn. 1. If IDWR will confirm that it issues approvals for requests for extension of time in the I-84 Corridor as preliminary orders, Juniper’s first request for relief will be satisfied. To be clear, Juniper is not asking to challenge the previously issued approvals; rather, the purpose in asking IDWR to identify the type of order was to understand how to potentially challenge approvals in the future.

2. Juniper Disagrees That Notice Is Given Of Requests For Extension Of Time In The I-84 Corridor

Juniper is unclear what Nevid is attempting to argue when it says “Juniper is not a party to the extensions of time matters” *Nevid Reply* at 2. Assuming for the sake of argument that all previously issued approvals were preliminary orders, Juniper agrees it is not a party, nor can Juniper become a party because the time for challenging the approvals has run. Where it appears Nevid may be heading is to prevent Juniper from ever becoming a party in the future. Nevid argues, incorrectly, that notice has been given of requests for extension of time. Unlike applications for permit, applications for transfer, or applications for extension of time to avoid forfeiture of a water right, requests for extension of time are neither advertised in newspapers of

general circulation nor posted in a conspicuous location on IDWR's website. To the extent that requests for extension of time are available for review, that wholly depends on whether IDWR scans and profiles each request for extension of time to the water right file, with third parties required to monitor each water right file on a daily basis.

It is precisely for this reason that Juniper has moved IDWR to create a forum in which requests for extension of time in the I-84 Corridor are made known. It is not unreasonable for Juniper to move IDWR to create a forum for addressing subsequently filed requests for extension of time in a previously identified area of limited water supply.

3. Juniper Concurs With Intermountain That A Status Conference Is Appropriate

Juniper concurs with Intermountain "that IDWR either schedule a status conference to discuss and determine how to procedurally proceed and/or provide guidance as to the forum and process for addressing Juniper Station's *Motion*." *Intermountain Response* at 3. Holding a status conference would be in line with IDWR's procedural rules: "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. The issues framed in Juniper's *Motion* are understandable, legitimate, and entitled to be heard.

RESPECTFULLY SUBMITTED this 23rd day of February, 2023.

MCHUGH BROMLEY, PLLC



CHRIS M. BROMLEY

Attorneys for Juniper Station Farms, LLC

REPLY TO NEVID, LLC, ORCHARD RANCH, LLC, ARK PROPERTIES-MAYFIELD TOWNSITE, LLC, AND INTERMOUNTAIN SEWER & WATER CORP. RESOPNSSES TO MOTION TO DESIGNATE PRIOR APPROVALS FOR EXTENSION OF TIME IN THE I-84 CORRIDOR AS PRELIMINARY, RECOMMENDED, OR FINAL ORDERS; TO DENY SUBSEQUET 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

CERTIFICATE OF SERVICE

I certify that on this 23rd day of February, 2023, I caused to be served a true and correct copy of the foregoing upon the following persons by the method(s) indicated:

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

Tim Conrads
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Boise, ID 83716

SPF Water Engineering
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Boise, ID 83706

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

Michael Creamer
Givens Pursley
PO Box 2720
Boise, ID 83701-2720

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Erick Powell
Brockway Engineering
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James Tucker
Idaho Power Company
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Boise, ID 83707

Norman Semanko
Parsons Behle & Latimer
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Boise, ID 83702

Darla Bateman
404 E. Indian Cr. Rd.
Boise, ID 83716

REPLY TO NEVID, LLC, ORCHARD RANCH, LLC, ARK PROPERTIES-MAYFIELD TOWNSITE, LLC, AND INTERMOUNTAIN SEWER & WATER CORP. RESOPNSES TO MOTION TO DESIGNATE PRIOR APPROVALS FOR EXTENSION OF TIME IN THE I-84 CORRIDOR AS PRELIMINARY, RECOMMENDED, OR FINAL ORDERS; TO DENY SUBSEQUENT REQUESTS FOR EXTENSIONS OF TIME IN THE I-84 CORRIDOR; OR IN THE ALTERNATIVE TO PROVIDE A FORUM FOR CHALLENGING REQUESTS FOR EXTENSION OF TIME IN THE I-84 CORRIDOR

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Wayne Shepherd
Director of Public Works
City of Mountain Home
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Mayfield, ID 83716

Bryce S. Farris
Sawtooth Law Offices PLLC
1101 W. River St., Ste. 110
Boise, ID 83707

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

Director Spackman
Idaho Dept. of Water Res.
PO Box 83720
Boise, ID 83720-0098
file@idwr.idaho.gov



CHRIS M. BROMLEY

REPLY TO NEVID, LLC, ORCHARD RANCH, LLC, ARK PROPERTIES-MAYFIELD TOWNSITE, LLC, AND INTERMOUNTAIN SEWER & WATER CORP. RESOPNSES TO MOTION TO DESIGNATE PRIOR APPROVALS FOR EXTENSION OF TIME IN THE I-84 CORRIDOR AS PRELIMINARY, RECOMMENDED, OR FINAL ORDERS; TO DENY SUBSEQUENT REQUESTS FOR EXTENSIONS OF TIME IN THE I-84 CORRIDOR; OR IN THE ALTERNATIVE TO PROVIDE A FORUM FOR CHALLENGING REQUESTS FOR EXTENSION OF TIME IN THE I-84 CORRIDOR

FEB 21 2023

WATER RESOURCES
WESTERN REGION

S. Bryce Farris, ISB No. 5636
 Katie L. Vandenberg-Van Vliet, ISB No. 10969
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Attorneys for Intermountain Sewer & Water Corp.

BEFORE THE DEPARTMENT OF WATER RESOURCES
 OF THE STATE OF IDAHO

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

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

A. Notice of Appearance

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

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

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

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

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

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


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

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

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

DATED this 16th day of February, 2023.

SAWTOOTH LAW OFFICES, PLLC

By 

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

CERTIFICATE OF SERVICE

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

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

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

Chris M. Bromley
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McHugh Bromley PLLC
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Wayne Shepherd
Director of Public Works
City of Mountain Home
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Bruce Smith
Moore Smith
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Boise, ID 83702

NOTICE OF APPEARANCE; AND RESPONSE TO MOTION TO DESIGNATE PRIOR APPROVALS FOR EXTENSION OF TIME IN THE I-84 CORRIDOR AS PRELIMINARY, RECOMMENDED, OR FINAL ORDERS; TO DENY SUBSEQUENT REQUESTS FOR EXTENSIONS OF TIME IN THE I-84 CORRIDOR; OR IN THE ALTERNATIVE TO PROVIDE A FORUM FOR CHALLENGING REQUESTS FOR EXTENSION OF TIME IN THE I-84 CORRIDOR – Page 4

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S. Bryce Farris
Katie L. Vandenberg-Van Vliet

Evans, Lynne

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

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

Good afternoon:

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

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



A Professional
Law Corporation

Kimberly Aulenbacher

Legal Secretary

Parsons Behle & Latimer

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Feb 16, 2023

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

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

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

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

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

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

I. ARGUMENT

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

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

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

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

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

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

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

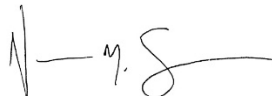
On a final overarching note, to the extent Juniper’s present Motion is based on its objections to the Department’s past grants of extension of time, the provisions of Idaho Code § 42-1701A(3) further reveal that Juniper’s Motion is untimely and must be denied. In support of its Motion, Juniper cites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

II. CONCLUSION

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

DATED this 16th day of February, 2023.

PARSONS BEHLE & LATIMER



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

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

CERTIFICATE OF SERVICE

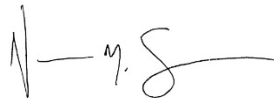
I hereby certify that on this 16th day of February, 2023, I served a true and correct copy of the foregoing document on the parties listed below by their designated method of service.

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

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

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

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



Norman M. Semanko; Garrett M. Kitamura

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FEB 13 2023

WATER RESOURCES
WESTERN REGION

MR. NICK MILLER

FEBRUARY 8, 2023

IDWR WESTERN REGION

2735 AIRPORT WAY

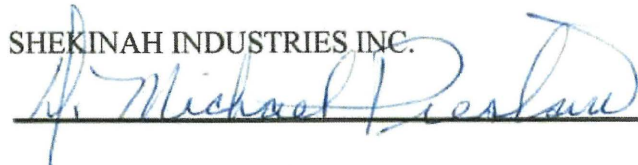
BOISE, ID. 83705 - 5082

DEAR MR. MILLER,

IN RELATION TO TRANSFER NO. 78356 FOR SHEKINAH INDUSTRIES INC, THE 1176A F/A TRANSFER WAS APPROVED BY YOUR OFFICE ON JANUARY 21, 2016 AND WAS PROVED UP WITHIN THE 5 YEAR TIME FRAME ALLOWED BY THE TRANSFER. OUR WATER RIGHTS HAVE BEEN IN USE AS IRRIGATION WATER ON 369 ACRES, THAT WE ARE ALLOWED TO FARM, FOR THE PAST THREE IRRIGATION SEASONS. OUR FARMER IS BENNETT CREEK FARMS AND WE HAVE CONFORMED TO ALL IDWR TRANSFER REQUIREMENTS. SHEKINAH INDUSTRIES INC. AND ITS THREE PARTNERS STILL OWN THE ENTIRE RIGHTS AND WILL BE FARMING IN 2023.

THIS LETTER IS WRITTEN IN DEFERENCE TO MISINFORMATION CONTAINED IN CHRIS M. BROMLEY'S LETTER OF FEBRUARY 2, 2023 CONCERNING WATER TRANSFERS IN THE I-84 CORRIDOR.

SHEKINAH INDUSTRIES INC.



PRESIDENT

D. MICHAEL PRESTON

cc: CHRIS M. BROMLEY

Evans, Lynne

From: Chris Bromley <cbromley@mchughbromley.com>
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Subject: In Matter of Application for Transfer No. 78356 et al.
Attachments: 20230202 I-84 Corridor Motion.pdf

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Thank you,

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RECEIVED

Feb 02, 2023

DEPARTMENT OF
WATER RESOURCES

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

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

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

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

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

INTRODUCTION

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

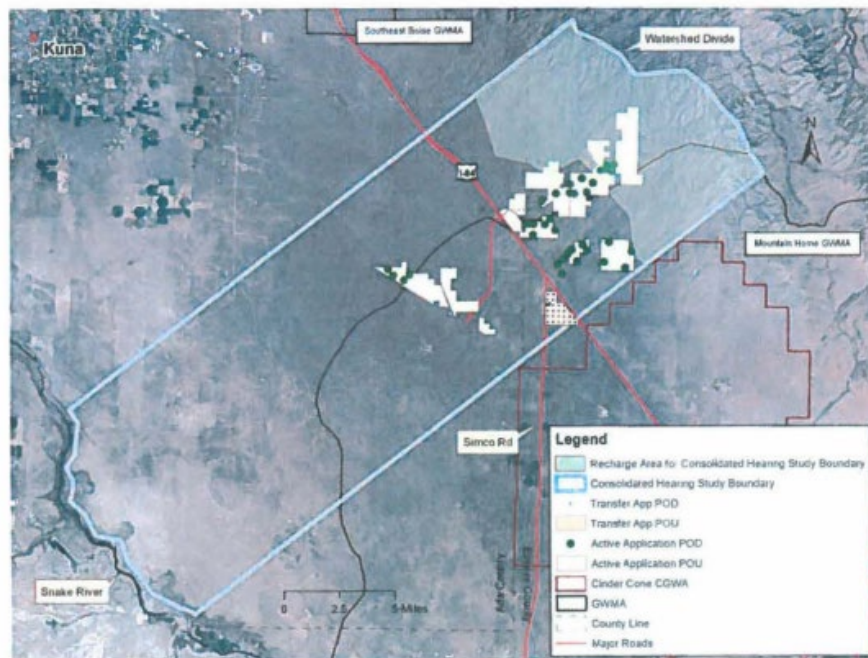


Figure 2. Consolidated hearing study area boundary.

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

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

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

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

NAME	NUMBER	RECEIVED	PRIORITY	WATER USE	CFS
Mayfield Townsite, LLC	63-32499	7/28/2006	7/28/2006	Municipal	10.00
Shekinah Industries, Inc.	Tr. 78356	12/4/2006	1963[]	Irrigation	5.56
Nevid, LLC	61-12095	4/3/2007	4/3/2007	Municipal	5.00
Nevid, LLC	61-12096	4/3/2007	4/3/2007	Municipal & Fire Protection	20.48
Orchard Ranch, LLC	Tr. 73855	6/21/2007	1976	Irrigation (was municipal)	11.36
Orchard Ranch, LLC	63-32703	6/21/2007	6/21/2007	Irrigation (was municipal)	9.60
Intmntn. Sewer & Water	61-12256	1/17/2008	1/17/2008	Municipal	13.76
Ark Properties LLC / Mayfield Townsite, LLC	63-33344	3/1/2010	3/1/2010	Irrigation in planned community 63-32499	9.00
TOTAL					84.76

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Id. at 2.

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

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

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

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

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

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

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

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

ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

RESPECTFULLY SUBMITTED this 2nd day of February, 2023.

MCHUGH BROMLEY, PLLC



CHRIS M. BROMLEY

Attorneys for Juniper Station Farms, LLC

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CERTIFICATE OF SERVICE

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

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