

Miller, Nick

From: Miller, Nick
Sent: Thursday, March 06, 2025 10:16 AM
To: Chris Bromley; NSemanko@parsonsbehle.com; 'Michael P. Lawrence'; bryce@sawtoothlaw.com
Cc: Candice McHugh; Garrett M. Kitamura <GKitamura@parsonsbehle.com>; ecf@parsonsbehle.com
Subject: RE: In re Permit Nos. 61-12090, 61-12096, 63-32499, and 63-35473
Attachments: 20250306_Juniper Preliminary Order.pdf

Please see the attached order in this matter.

Nick Miller
Manager, IDWR Western Region.

From: Chris Bromley <cbromley@mchughbromley.com>
Sent: Monday, February 10, 2025 4:36 PM
To: IDWR File <file@idwr.idaho.gov>; NSemanko@parsonsbehle.com; 'Michael P. Lawrence' <mpl@givenspursley.com>; bryce@sawtoothlaw.com
Cc: Baxter, Garrick <Garrick.Baxter@idwr.idaho.gov>; Candice McHugh <cmchugh@mchughbromley.com>; Miller, Nick <Nick.Miller@idwr.idaho.gov>
Subject: In re Permit Nos. 61-12090, 61-12096, 63-32499, and 63-35473

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

Thank you,

Chris M. Bromley
McHugh Bromley, PLLC
PO Box 107
Boise, Idaho 83701
(208) 287-0991
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**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);)
NO. 63-32499 (MAYFIELD)
TOWNSITE LLC; and PERMIT NO.)
63-35473 (MAYFIELD RANCH LLC))

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**PRELIMINARY ORDER
DENYING PETITION**

PROCEDURAL HISTORY

On February 10, 2025, the Idaho Department of Water Resources (“Department”) received *Petition to Cancel and Void Permit Nos. 61-12090, 61-12096, 63-32499 & 63-35473* (“Petition”) filed by Juniper Station Farm LLC (“Juniper”). Juniper served a copy of the Motion on representatives of Nevid LLC (“Nevid”), Mayfield Townsite LLC (“Mayfield”), and Mayfield Ranch LLC (“Mayfield Ranch”).

The Petition asks the Department to “notice this matter for hearing consistent with I.C. § 42-303”, and to “cancel and void the Permits pursuant to the authorities found in Idaho Code §42-301 et seq.” Juniper adds, in a footnote, “The language of I.C. § 42-301 requires the filing of a ‘petition’ with IDWR to commence this process. If the Department believes the document is more properly filed as a ‘motion,’ then this document is also filed pursuant to IDAPA 37.01.01.220.”

On February 24, 2025, the Department received a notice of appearance in this matter stating that Patagonia lakes Development, LLC, Wood Properties, LLC, and Richland Properties, LLC (“Nevid’s Successors”) are successors in interest to Nevid in this matter. On that date, the Department also received initial responses to the Petition from Mayfield Ranch and Nevid’s Successors, as well as correspondence from Mayfield concurring with and joining in the arguments made in the initial responses. The initial responses were filed in response to the Juniper’s suggestion that the Petition was also filed as a motion pursuant to IDAPA 37.01.01.220.

FINDINGS OF FACT

1. Juniper’s Petition seeks to contest permits 61-12090, 61-12096, 63-32499, and 63-35473 as contemplated by §42-301 - §42-310, Idaho Code.
2. Permits 61-12090, 61-12096, 63-32499, and 63-35473 are approved permits for which proof of beneficial use has not been submitted.
3. Juniper is the holder of water right nos. 61-7283A, 61-11966, and 61-12133, each of which is for an irrigation purpose of use, from ground water, which are the subject of Application for Transfer No. 81327, which was filed with the Department on December 6, 2016.

SUPPORT DATA

IN FILE # 61-12090

4. Juniper is the holder of Application for Permit 61-12319 that bears a priority date of August 3, 2017, and proposes diversion and use of Ground Water for irrigation of 640 acres.

RELEVANT STATUTES

Idaho Code § 42-301 (emphasis added):

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

Idaho Code § 42-302 (emphasis added):

Petition for cancellation. *Any person as above specified* desiring the cancellation of a permit shall file with the department of water resources a petition clearly setting forth the facts upon which he bases his prayer for cancellation, plainly stating wherein the holder of the permit, which is sought to be cancelled, has failed to comply with the law and with the requirements of his permit.

Idaho Code § 42-303:

Notice of contest. Upon receipt of such petition, the department of water resources shall issue a notice, naming the petitioner as contestant and all persons, shown by the records of the department of water resources to have any claim of title or interest in the permit sought to be cancelled as contestees, and requiring all contestees to appear at the office of the department on a day to be specified therein, which day shall be not less than sixty (60) nor more than ninety (90) days from the date of the notice, and show cause, by affidavit, if any there be, why said permit should not be cancelled. Such notice shall be sent by registered mail, addressed to every person named therein at his last known post-office address.

ANALYSIS

Juniper frames the Petition as the petition contemplated in § 42-301, but includes a footnote contemplating that the Petition is also filed as a motion under the Department's Rules of Procedure (IDAPA 37.01.01.220), "if the Department believes the document is more properly filed as a 'motion.'" The Department does not consider the filing to be a "motion" as defined in the Department's Rules of Procedure (IDAPA 37.01.01.220.01) because it is not asking the Department to take an action in a contested case. The Petition asks the Department for a "declaration or construction of a person's rights or obligations under the law

administered by the agency.” See (IDAPA 37.01.01.02.14). The Department will consider the Petition within the context of § 42-301 *et seq*, as requested by Juniper.

The plain language of the sections 42-301 and 42-302, Idaho Code, is clear – a petition for cancellation must be filed by someone holding a later in time permit from the same source as the contested permit. §42-301, Idaho Code (emphasis added) “...at the instance of any person or persons *holding any permit* for the diversion of water from the same stream ...” and §42-302, Idaho Code (emphasis added) “Any person *as above specified...*”

Here, Juniper does not hold a permit from the same source as the contested permits. It has two *applications*: an application for transfer and an application for permit. The Department disagrees with Juniper’s apparent view that § 42-301, Idaho code authorizes petitions to be filed by any water user whose “interests” post-date the permit to be contested. Such interpretation is contrary to the plain language of sections 42-301 and 42-302, Idaho Code.

CONCLUSIONS OF LAW

1. Idaho Code § 42-301 and § 42-302 authorize a holder of a later in time permit to contest a permit from the same source.
2. Juniper does not hold a permit from ground water that is later in time than the permits it seeks to contest in its Petition.
3. The Department cannot grant Juniper’s Petition, and should deny the petition.

ORDER

Based on the foregoing, IT IS HEREBY ORDERED that Juniper’s *Petition to Cancel and Void Permit Nos. 61-12090, 61-12096, 63-32499 & 63-35473* is DENIED.

Dated this 6^b day of March 2025



Nick Miller
Manager, IDWR Western Region

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6¹ day of March, 2025, 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 checked="" 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 Patagonia Lakes Development, LLC,</i> <i>Wood Properties, LLC, and Richland Properties,</i> <i>LLC.</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

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.