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Jun 26, 2026

DEPARTMENT OF
WATER RESOURCES

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMITS 61-12096 IN
THE NAME OF BOWNS CREEK
PROPERTIES LLC, 63-32499 IN THE NAME
OF MAYFIELD TOWNSITE LLC, AND 63-
35473 IN THE NAME OF MAYFIELD
RANCH LLC

JUNIPER STATION FARM'S
OPENING BRIEF

COMES NOW Juniper Station Farm, LLC ("Juniper Station") by and through its attorneys of record, McHugh Bromley, PLLC, and hereby submits this *Opening Brief* in response to the *Request for Briefs* (May 12, 2026) from Hearing Officer James Cefalo.

I. BACKGROUND

A. The Permit Holders Seek To Divert 30.48 cfs In Order To Build 12,603 Homes And Commercial Buildings With Non-RAFN Municipal Permits

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At issue are permits held by Bowns Creek Properties, LLC (“Bowns Creek”),¹ Mayfield Townsite, LLC (“Mayfield Townsite”),² and Mayfield Ranch, LLC (“Mayfield Ranch”)² (collectively the “Permit Holders”). The Permit Holders are collectively attempting to beneficially use 30.48 cfs for non-reasonably anticipated future needs municipal use (“Non-RAFN”),³ all in order to build 12,603 homes and commercial buildings in unincorporated Ada County, summarized as follows (collectively the “Permits”):

Permit Holder	Permit No.	Purpose	Div. Rate (cfs)	Number of Residences	Priority
Bowns Creek	61-12096	Municipal and Fire Protection	14.91 (M.); 5.57 (FP)	4,603	4/3/2007
Mayfield Townsite	63-32499 ⁴	Municipal	6.52	4,000	7/28/2006
Mayfield Ranch ⁵	63-35473 ⁴	Municipal	3.48	4,000	7/28/2006

¹ According to Line 12 of the *Amended Application for Permit* that is the subject of Bowns Creek’s Permit No. 61-12096, the “14.91 cfs municipal diversion rate is based on 4,603 commercial and residential units using 200 gpd/unit, and the irrigation of 0.1 acre per unit. Irrigation of parks and common areas will be accomplished with reclaimed municipal water.” <https://research.idwr.idaho.gov/apps/Shared/LfRelatedDocs/Home/DownloadDoc?eid=2102603> (visited June 26, 2026).

² According to Line 8.e. of the *Amended Application for Permit* that is the subject of Mayfield Townsite’s Permit No. 63-32499 and Mayfield Ranch’s Permit No. 63-35473, the 10.00 cfs diversion rate was intended to supply “up to 8,000 homes.” <https://research.idwr.idaho.gov/apps/Shared/LfRelatedDocs/Home/DownloadDoc?eid=2178892> (visited June 26, 2026).

³ Idaho Code §§ 42-202B(8) and 42-204(3) explain the benefits and burdens associated with municipal water rights for “reasonably anticipated future needs,” most notably the ability for the holders of RAFN permits to put municipal water to beneficial use over a period that exceeds five years.

⁴ According to the records of the Department, the permits now held by Mayfield Ranch and Mayfield Townsite are splits of Application for Permit No. 61-12083, originally in the name of Marty Goldsmith, for a total diversion rate of 10.00 cfs. Application for Permit No. 61-12083 was renumbered to Application for Permit No. 63-32499 and, on September 7, 2007, was assigned by Mr. Goldsmith to Mayfield Townsite. According to a December 18, 2025 letter filed with the Department by HDR, Mayfield Townsite “sold a portion of the planned community project land to Mayfield Ranch LLC in 2022 and 2023, and portions of permit 63-32499 totaling 3.48 cfs and 1,503.4 AF were conveyed to Mayfield Ranch LLC on January 13, 2022 and July 24, 2023, and subsequently renumbered as 63-35473. This split reduced 63-32499 to 6.52 cfs and 2,816.6 AF.”

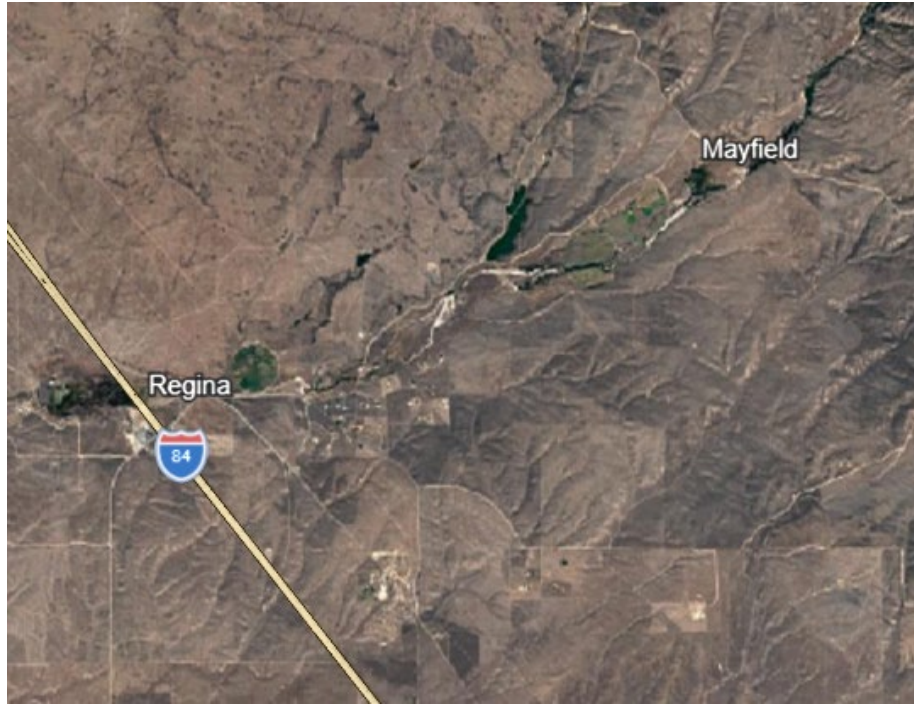
⁵ According to the records of the Idaho Secretary of State, Mayfield Ranch was administratively dissolved on May 7, 2024. On June 16, 2025, during the pendency of these proceedings, Mayfield Ranch applied for reinstatement with the Secretary of State. On February 28, 2026, Mayfield Ranch filed an annual report with the Secretary of State naming its Members and a Registered Agent.

Therefore, the Permit Holders asked for and were granted Permits to develop ground water for Non-RAFN municipal purposes with 5-year beneficial use deadlines, “[p]roject construction [to] commence within one year from the date of permit issuance”⁶ Undoubtedly knowing that projects of this size and scope could not be started, let alone completed in five years, the Permit Holders have sought multiple extensions of time, summarized below:

Permit Holder	Permit No.	Permit Approval	Original Proof Due	First Extension Proof Due	Second Extension Proof Due	Development Period
Bowns Creek	61-12096	11/30/2015	12/1/2020	1/1/2025	12/1/2027	12 years
Mayfield Townsite	63-32499	1/13/2016	1/1/2021	1/1/2026	8/23/2029	13 years and 7 months
Mayfield Ranch	63-35473	1/13/2016	1/1/2021	1/1/2026	8/23/2029	13 years and 7 months

As seen through aerial photographs from Google Earth, and purely for illustrative purposes at this point in the proceeding, the Permit Holders have taken no obvious steps to build the 12,603 homes and businesses, with very little difference seen today when compared with when the Permits were issued, shown below:

⁶ Each Permit contains the same language regarding commencement: “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.”



Google Earth (12/31/2015) (screenshot from June 23, 2026).



Google Earth (6/16/2024) (screenshot from June 23, 2026).

The points of diversion and places of use for the Permits, generally depicted above in unincorporated Ada County, are located within an area of limited water supply, generally referred to by IDWR as the I-84 Corridor. *See Final Order Regarding Water Right Sufficiency*

(Nov. 4, 2013) (“Final Order”). Within the I-84 Corridor, IDWR found there is 7,440 acre-feet of available ground water for development. *Id.* at 10. While the Director established a process of development beginning first with the Permit Holders and then onto the holders of other applications, *Id.* at 14 (“the remaining applications should be evaluated to determine what additional water might be available for appropriation”), nowhere in the Final Order did the Director grant perpetual rights to the Permit Holders to hoard and lock up the resource to the detriment of others beyond the 5-year Non-RAFN beneficial use period established in the Permits, nor did he limit the rights of third parties to contest the Permit Holders’ failure to put water to beneficial use.

Lastly, given the size and scope of the projects, there is no likelihood that the Permit Holders will be able to build the 12,603 homes and commercial buildings in the next few years that have been granted under the latest extensions of time, meaning the Permit Holders will be back, seeking additional extensions of time unless this endless cycle is put to a stop.

B. Juniper Station’s Interests

Juniper Station is the holder of Permit No. 61-12525, for domestic use from ground water, with a priority date of May 5, 2025, located within the I-84 Corridor. Permit No. 61-12525 is junior in priority to the Permits discussed above.

Juniper Station is also the holder of Water Right Nos. 61-7283A (8/23/1976), 61-11966 (12/16/1975), and 61-12133 (12/16/1975), each of which is for an irrigation purpose of use, from ground water, which are the subject of Transfer No. 81327 (“Transfer”). Generally, the Transfer proposes to move the three water rights into the I-84 Corridor from a location that is slightly to the east of Simco Road. Collectively, the three water rights authorize the irrigation of 151 acres, with priority dates that are senior to the Permits.

Also within the I-84 Corridor, Juniper Station is the holder of Application for Permit No. 61-12319 (“Application”) for the irrigation of 640 acres within a 1,437-acre permissible place of use, with a diversion rate of 12.80 cfs / 2,880 acre-feet per annum from ground water. The Application has a priority date of August 3, 2017, thereby post-dating the Permits.

On May 6, 2019, and due to the limited water supply in the I-84 Corridor that is presently locked up by the Permit Holders, Juniper Station received a letter from IDWR explaining that neither the Transfer⁷ nor the Application⁸ can move forward unless and until water becomes available.

As the holder of Permit No. 61-12525, Juniper Station is authorized to seek the cancellation of the Permits held by the Permit Holders.

II. ARGUMENT

A central hallmark of Idaho water law is the requirement that water is diverted and put to actual beneficial use, to prevent the hoarding, locking up, and wasting of the State’s water resources. *See 3G AG LLC v. Idaho Dept. of Water Res.*, 170 Idaho 251, 262, 509 P.3d 1180, 1191 (2022). Consistent with the foregoing: “Any concern which may exist about tying up the water to the prejudice of a potential junior applicant is adequately satisfied by other statutory provisions requiring timely commencement, progress and completion of works. I.C. §§ 42-204 and 42-301.” *Shokal v. Dunn*, 109 Idaho 330, 336, 707 P.2d 441, 447 (1985); *see also Woodruff v. Butte and Market Lake Canal Co.*, 64 Idaho 735, 137 P.2d 325 (1943); *Syster v. Hazzard*, 39

⁷ <https://research.idwr.idaho.gov/apps/Shared/LfRelatedDocs/Home/DownloadDoc?eid=1866359> (visited June 26, 2026).

⁸ <https://research.idwr.idaho.gov/apps/Shared/LfRelatedDocs/Home/DownloadDoc?eid=1866370> (visited June 26, 2026).

Idaho 580, 229 P. 1110 (1924); *Clark v. Hansen*, 35 Idaho 449, 206 P. 808 (1922); *Washington State Sugar Co. v. Goodrich*, 27 Idaho 26, 147 P. 1073 (1915).

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

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

I.C. § 42-301 (emphasis added).

Here, Juniper Station will demonstrate that the Permit Holders have tied up the State's water resources, resulting in the inescapable conclusion that the Permits should be cancelled, as will be explained through the Hearing Officer's six (6) enumerated issues.

1. Does Idaho Code § 42-301 establish permit requirements independent of and in addition to any conditions listed on a permit to appropriate water issued by the Department?

Yes. This is due to the overarching principle of law that the "Court has consistently held to be axiomatic, 'ignorance of the law is not a defense.'" *Morley v. RS Unlimited, Inc.*, 173 Idaho 14, 19, 538 P.3d 383, 388 (2023). Because ignorance of the law is not an excuse, permits issued by the Department do not repeat every requirement imposed by law. *North Snake Ground Water Dist. v. Gisler*, 136 Idaho 747, 749, 40 P.3d 105, 107 (2002) ("Finally, the qualifying language proposed by NSGWD was not necessary because it was merely a restatement of the law, by which the Gislers would be bound.") (emphasis added); *see also Memorandum Decision*

on *Cross-Motions for Summary Judgment*, SRBA Subcase No. 91-63, at 29 (Sept. 2, 2004) (J. Melanson) (“The Court generally views [restatements of law] as unnecessary because the parties have the right to rely on the backdrop of existing law for the definition and administration of their water right.”) (emphasis added).⁹ Indeed, if restatements of law were required, where would they end – with recitation to the Code of Hammurabi and the Magna Carta? *Hayman v. State, Dept. of Health and Welfare*, 100 Idaho 710, 714-15, 604 P.2d 724, 728-29 (1979) (“From time to time throughout man’s social evolution, society has perceived various duties of the individual to society, and obligations of society to the individual. These changing perceptions are evidenced in society’s written laws beginning with the Code of Hammurabi through the Magna Charta, the State and Federal Constitutions and down through Title 56, Chapter 2 of the Idaho Code.”).

For example, the Permits in this proceeding are silent as to whether the Permit Holders may put water to beneficial use through trespass. Of course, the absence of a “no trespass condition” does not open the door for the Permit Holders to sidestep the law by perfecting the Permits through trespass. *Lemmon v. Hardy*, 95 Idaho 778, 780, 519 P.2d 1168, 1170 (1974) (“a water right initiated by trespass is void”). Furthermore, while the Permits are silent as to whether they are subject to the prior appropriation doctrine, it does not mean that the Permit Holders may validly assert that the use of ground water is subject to the correlative rights doctrine. *Baker v. Ore-Ida Foods, Inc.*, 95 Idaho 575, 583, 513 P.2d 627, 635 (1973) (“The doctrine of correlative rights is repugnant to our constitutionally mandated prior appropriation doctrine.”).

⁹ Located here: <http://srba.state.id.us/Images/2026-05/0091063xx00232.pdf> (visited June 26, 2026). Although not addressed therein, Judge Melanson’s *Memorandum Decision and Order on Cross-Motions for Summary Judgment* was the subject of the Idaho Supreme Court’s decision concerning title to United States Bureau of Reclamation projects in *United State v. Pioneer Irr. Dist.*, 144 Idaho 106, 157 P.3d 600 (2007).

Thus, and consistent with the foregoing, the provisions of Chapter 3, Title 42, Idaho Code, apply with the same force as those contained in Chapter 2, Title 42, Idaho Code, together with common law principles, because the law is not required to be restated for it to remain valid.

2. If Idaho Code § 42-301 establishes an independent requirement for a permit holder to commence work, when must the permit holder commence work?

Idaho Code § 42-301 does not establish an independent requirement for commencement of work; rather, it works in tandem with I.C. § 42-204. Together, those sections of Idaho Code require the Director to issue a permit, thereby starting the clock on the 5-year beneficial use period, with third party permit holders empowered to guard against the hoarding and locking up of the water resource to the detriment of others, such that if a project is not commenced, progress is not demonstrated through construction of one-fifth of the project within one-half of the five-year beneficial use time period, or the entire project is not completed within five years, the permit may be cancelled. *Shokal* at 336, 707 P.2d at 447 (“Any concern which may exist about tying up the water . . . is adequately satisfied by . . . timely commencement, progress and completion of works. I.C. §§ 42-204 and 42-301.”) (emphasis added); *Clark* at 454, 206 P. at 809 (“respondents were entitled to a cancelation of the permit on account of the failure of appellant to complete one-fifth of work of construction within one-half of the period allowed”); *Washington State Sugar* at 36, 147 P. at 1076 (“A total failure, however, to commence the work within the time specified in the permit, or to complete one-fifth of the work within the time limited in the permit, would not be cured by extending the time within which to make proof of beneficial use of the water so attempted to be appropriated.”).

Here, and consistent with I.C. §§ 42-204 and 42-301, the Director authorized the Permit Holders to “commence . . . [p]roject construction . . . within one year from the date of permit issuance and shall proceed diligently to completion” *See Permits* (emphasis added).

Because the Permits are Non-RAFN, the Permit Holders were required to commence work, show progress through diligence, and then complete the projects within five years. I.C. § 42-204(3) (“The provisions of this subsection shall not apply to permits held by municipal providers for reasonably anticipated future needs. For all other permits, the department shall require that actual construction work and application of the water to full beneficial use shall be complete within a period of five (5) years from the date of such approval, but may limit permit development to a shorter period than requested in the application, and the permit shall set forth the date when beneficial application of the water to be diverted by such works shall be made.”). Due to the failures of the Permit Holders to comply with Idaho law, Juniper Station is within its rights to seek to cancel the Permits. I.C. § 42-301.

3. If Idaho Code § 42-301 establishes an independent requirement for a permit holder to file a bond, what is the amount of the bond?

Idaho Code § 42-301 does establish the possibility for the filing of a bond, without an independent way of computing the amount of the bond, due to the fact that every water right project is different and evaluated on its own merits, with bonds calculated differently. *See e.g.* I.C. § 54-1926(1) (“A performance bond in any amount to be fixed by the contracting body, but in no event less than eighty-five percent (85%) of the contract amount conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions thereof. Said bond shall be solely for the protection of the public body executing the contract.”). As will be explained through the language of the statute – with the statute written in the disjunctive, separating requirements through the use of commas – the filing of a bond is but one step in a sequenced series of events, all impressing upon the permit holder the requirement to put water to beneficial use:

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.

I.C. § 42-301 (emphasis added); see *Ada Cnty. Prosecuting Attorney v. 2007 Legendary Motorcycle*, 154 Idaho 351, 355-56, 298 P.3d 245, 248-49 (2013) (“Where a sentence contains several antecedents and several consequents they are to be read distributively.”).

First, when the Department issues a permit, I.C. § 42-204(2), with a five-year beneficial use period, I.C. § 42-204(3), the permit holder must either post a bond or commence actual work to keep the permit valid, by preventing unfounded speculation through diligence. *Nye v. Katsilometes*, 165 Idaho 455, 465, 447 P.3d 903, 913 (2019) (a bond “ensure[s] the swift and proper resolution of an election by deterring unfounded attacks on election results which might undermine or unreasonably delay them”); *Athay v. Stacey*, 146 Idaho 407, 412, 196 P.3d 325, 330 (2008) (“purpose of the bond is to ensure diligen[ce]”).

Second, if either a bond is posted or work is commenced, then the permit holder is subject to the requirement to show progress by developing at least one-fifth (1/5) of the work within one-half (1/2) of the five-year beneficial use period. Said another way, one-half of five years is equal to two-and-a-half years.

Finally, if one-fifth (1/5) of the project is completed within two-and-a-half-years, then the permit holder is entitled to move forward with the entirety of the project, such that if beneficial use is not established, the permit may be canceled, in whole or in part, I.C. § 42-301, prior to licensing, I.C. § 42-219. The sequencing of the steps to establish diligence and beneficial use in accordance with a recognized timeline is consistent with the decisions of the Court. *Shokal* at

336, 707 P.2d at 447; *Woodruff* at 747, 137 P.2d at 329-30; *Syster* at 585-86, 229 P. at 1111; *Clark* at 453-54, 206 P. at 809-10; *Washington State Sugar* at 35-36, 147 P. at 1076.

Here, the Director authorized the Permit Holders to “commence . . . [p]roject construction . . . within one year from the date of permit issuance . . .” *See Permits*. Thus, the Permit Holders could have petitioned the Director to post a bond – with no evidence to support that they did – and since they did not, they were required to commence work as follows:

Permit Holder	Permit No.	Priority Date	Permit Approval	Commencement of Work
Bowns Creek	61-12096	4/3/2007	11/30/2015	11/30/2016
Mayfield Townsite	63-32499	7/28/2006	1/13/2016	1/13/2017
Mayfield Ranch	63-35473	7/28/2006	1/13/2016	1/13/2017

Because the Permits are Non-RAFN, with five-year beneficial use deadlines, the Permit Holders were required to show progress by completing one-fifth (1/5) of the work within two-and-a-half-years, and complete the projects within five years, as follows:¹⁰

Permit Holder	Div. Rate (cfs)	Number of Residences	Permit Approval	Commencement of Work	2.5-Year Progress	5-Year Completion
Bowns Creek	14.91 (M); 5.57 (F.P.)	4,603	11/30/2015	11/30/2016	5/30/2018	12/1/2020
Mayfield Townsite	6.52	4,000	1/13/2016	1/13/2017	7/13/2018	1/13/2021
Mayfield Ranch	3.48	4,000	1/13/2016	1/13/2017	7/13/2018	1/13/2021
TOTAL	30.48	12,603				

¹⁰ The words “Commencement,” “Progress,” and “Completion” that are used in the above table were intentionally chosen as they are used by the Court to describe the sequencing of steps towards beneficial use, in order to guard against hoarding and speculation: “Any concern which may exist about tying up the water . . . is adequately satisfied by . . . timely commencement, progress and completion of works. I.C. §§ 42-204 and 42-301.” *Shokal* at 336, 707 P.2d at 447.

While I.C. § 42-204(3)(a)-(f) does allow for extensions of time upon a showing of diligence and good faith, among other things, there is no evidence to support that any steps have been taken by the Permit Holders to satisfy the deadlines for:

1. Commencement of work;
2. 2.5-year progress with application of one-fifth of the total quantity of water to beneficial use (6.1 cfs) and construction of one-fifth of the total residences (2,521); and
3. 5-year completion with beneficial use of the entire 30.48 cfs and construction of 12,603 residences.

Indeed, the Permit Holders have taken advantage of the extension of time system by filing for and having been granted multiple extensions of time, even including when “[m]arket conditions have not been conducive to planned use developments in this area.”¹¹ Emphasis added. Chapter 2, Title 42, Idaho Code does not contemplate the ability to circumvent the requirements of Chapter 3, Title 42, Idaho Code, with Juniper Station entitled to move forward with cancelation.

4. How do the 1967 and 2020 amendments to Idaho Code § 42-204 affect Idaho Code § 42-301, specifically the provisions in Idaho Code § 42-301 about commencing work, filing a bond, and completing one-fifth of the construction work within one-half of the time allowed for completion of such construction work?

First, the phrasing of the question is written in the conjunctive (“commencing work, filing a bond, and completing one-fifth of the construction work within one-half of the time allowed”) (emphasis added), whereas the language of the statute, as explained in the previous

¹¹ *Request for Extension of Time* as to Permit No. 61-12096, now held by Bowns Creek: <https://research.idwr.idaho.gov/apps/Shared/LfRelatedDocs/Home/DownloadDoc?eid=1818744> (visited June 26, 2026). The aerial images from Google Earth, shown above, clearly agree that something has not been conducive to the construction of more than 12,000 homes and businesses. Bowns Creek’s predecessor-in-interest, Nevid, LLC, sat on its hands and filed the first Request for Extension of Time with the Department on the date proof of beneficial use was due, December 1, 2020. Thus, no evidence was presented to the Department that one-fifth of the project had been completed in two-and-a-half-years and that the project had been completed with construction of 4,603 residences and beneficial use of 20.48 cfs. Much the same can be said for Mayfield Ranch and Mayfield Townsite.

section, is written in the disjunctive (“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”) (emphasis added). With the language of the statute in mind, the amendments to I.C. § 42-204 in 1967 and 2020 have no impact on the application of I.C. § 42-301, because the Legislature did not amend I.C. § 42-301.

In 1967, the Legislature removed from I.C. § 42-204 the requirements for “one-fifth” of the work to be completed in “one-half the period of time allowed for completion of such works,” Idaho Sess. Laws, ch. 374, sec. 3, p. 1089 (1967), as well as the necessity for the Department to collect “a bond in an amount to be fixed by the department, not exceeding \$10,000, in form and sufficiency of sureties to be approved by the department, conditioned upon faithfully carrying to completion the works of diversion as specified in said permit,” *id.* at 1091-92. Also in 1967, the Legislature expressed the ability for the holder of a permit to extend the 5-year beneficial use period, provided “said applicant is proceeding diligently and in good faith,” or for “good cause.” *Id.* at 1089-90 (1967). Importantly, no amendments were made to Chapter 3, with the Legislature fully aware that the requirements and remedies in I.C. § 42-301 remained applicable. *Pioneer Irr. Dist. v. City of Caldwell*, 153 Idaho 593, 600, 288 P.3d 810, 817 (2012) (“Statutes are construed under the assumption that the legislature was aware of all other statutes and legal precedence at the time the statute was passed.”). Indeed, nearly twenty years after the 1967 amendments to I.C. § 42-204, the Court continued to recognize the ongoing interplay between I.C. §§ 42-204 and 42-301. *Shokal* at 336, 707 P.2d at 447 (“Any concern which may exist about tying up the water . . . is adequately satisfied by . . . timely commencement, progress and completion of works. I.C. §§ 42-204 and 42-301.”).

In 1986, when the Legislature took the occasion to amend both Chapter 2 and Chapter 3, Title 42, Idaho Code, Idaho Sess. Laws, ch. 313, sec. 3, p. 765, 772 (1986), and with full knowledge of the Court’s 1985 decision in *Shokal*, the Legislature again chose not to amend I.C. § 42-301 or otherwise address the decision: “Certainly, our Legislature knows how to abrogate decisions from this Court.” *State v. Owens*, 158 Idaho 1, 10, 343 P.3d 30, 39 (2015). That Chapter 2 and Chapter 3, Title 42, Idaho Code were addressed in the same legislative session gives “peculiar force” to the ongoing application of I.C. § 42-301. *Ada County v. Bottolfsen*, 61 Idaho 363, 376-77, 102 P.2d 287, 300-01 (1940) citing *Peavy v. McCombs*, 26 Idaho 143, 149, 140 P. 965, 967 (1914) (“The rule that statutes *in pari materia* should be construed together applies with peculiar force to statutes passed at the same session of the legislature; they are to be construed together, and should be so construed, if possible, as to harmonize and give force and effect to the provisions of each. If, however, they are necessarily inconsistent, the statute which deals with the common subject matter in a more minute and particular way will prevail over a statute of a more general nature. These rules are so well established as to neither require nor justify any citations of authorities in support of them.”).

In 2020, and in order to clarify how beneficial use for RAFN permits should be addressed, the Legislature amended I.C. § 42-204. Idaho Sess. Laws, ch. 164, sec. 1, p. 477 (2020) (“The provisions of this subsection shall not apply to permits held by municipal providers for reasonably anticipated future needs.”). Even with the addition of a “planning horizon” that could extend for decades, the Legislature still imposed on the holders of RAFN permits the requirement to “submit to the department incremental statements . . . showing beneficial use . . . to any duration not shorter than five (5) years . . . failure to timely submit an incremental statement shall result in a lapse of that portion of the permit” *Id.* at 479 (emphasis added).

Here, the 2020 amendments have no impact on the Permit Holders as their Permits are Non-RAFN, with Juniper Station within its rights to invoke I.C. § 42-301, due to the Permit Holders' failure commence work, show progress, and complete the process of putting water to beneficial use.

5. If the amendments to Idaho Code § 42-204 have eliminated the requirements that a permit holder commence project construction within one year, file a bond, and complete one-fifth of the construction work within one-half of the time allowed for completion of such construction work, is Idaho Code § 42-301 still applicable?

First, the phrasing of the question is written in the conjunctive (“commencing project construction within one year, file a bond, and complete one-fifth of the construction work within one-half of the time allowed”) (emphasis added), whereas the language of the statute, as cited in the previous section, is written in the disjunctive (“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”) (emphasis added). With the language of the statute in mind, yes, I.C. § 42-301 remains applicable.

As stated previously, and despite amendments to I.C. § 42-204, the Legislature has never taken the occasion to amend I.C. § 42-301, meaning it remains in force and effect. “[T]he wisdom, justice, policy, or expediency of a statute are questions for the legislature alone.” *In Matter of Permit No. 36-7200*, 121 Idaho 819, 824, 828 P.2d 848, 853 (1992). Idaho Code § 42-301 complements I.C. § 42-204, giving third party permit holders, like Juniper Station, the ability to petition the Director to cancel permits where work has not been commenced, progress has not been demonstrated through construction of one-fifth of the work within two-and-a-half-years, or the projected has not been completed within 5 years. As a statewide agency with limited staff and resources, the Department does not have the ability to visit every point of diversion and place of use that is the subject of a permit to assess progress (or lack thereof). In

most cases, the lack of progress is of little consequence, due to many basins in the State remaining open to appropriation, or new applications and/or permits mitigated with existing rights in closed basins. Here, however, the parties are in an area of limited water supply where the speculative Permit Holders have **locked up all of the water**. Thus, I.C. § 42-301 remains a viable way in which to ensure that Idaho's water resources remain open to appropriation in the case like we have here, when another permit holder is denied any opportunity to use the resource. Idaho Const. Art. XV § 1 ("use of all waters now appropriated, or that may hereafter be appropriated . . . is hereby declared to be a public use, and subject to the regulations and control of the state"); Idaho Const. Art. XV § 3 ("right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied"); *3G AG LLC v. Idaho Dept. of Water Res.*, 170 Idaho 251, 262, 509 P.3d 1180, 1191 (2022) (discussing "Idaho's longstanding principle that individual water right holders cannot 'waste' or 'unnecessarily hoard' water without putting it to beneficial use.").

6. Idaho Code § 42-301 states that a permit may be cancelled if the permit holder "shall fail to complete the entire construction work within the time specified in his permit." Idaho Code § 42-204(6) states that "a permit holder who fails to comply with the provisions of this section within the time or times specified shall be deemed to have relinquished all rights under its permit." If the relinquishment described in Section 42-204(6) is automatic, is there any practical utility in the process created by Chapter 3, Title 42, for a proposed project that is not completed by the proof due date established in the permit?

Yes, in addition to I.C. § 42-301 never having been amended or otherwise repealed, there is practical utility to the statute, due to the fact that if a permit is relinquished pursuant to I.C. § 42-204(6), said permit may be reinstated pursuant to I.C. § 42-218a, with no such reinstatement for proceedings commenced pursuant to I.C. § 42-301. In fact, IDWR will commonly allow the licensing of just a portion of a project in cases where a permit holder can only show partial beneficial use, I.C. § 42-219 ("the department shall issue to such user or users a license

corresponding to the beneficial use”), with the opportunity for the permit holder to then go back and obtain a second permit for the remaining use, through the application process, when (and if) the permit holder can actually develop that additional amount of water. Of course, the Permit Holders do not want this to occur because they would lose their priority date and revert to the Department’s application processing “queue.”¹² Yet this is what the law provides, with extensions of time not serving as a workaround.

In 1967, the Legislature amended Chapter 2, Title 42, Idaho Code, adding a new section that authorized the Department, in the event that a permit holder did not “submit[] or request for extension of time [and] upon a showing of reasonable cause [to] reinstate the permit with the priority date advanced The original priority date of a lapsed permit shall not be reinstated except upon a showing of error or mistake of the department.” Idaho Sess. Laws, ch. 374, sec. 9, p. 1096 (1967) (emphasis added) (codified as I.C. § 42-218a). Prior to the 1967 amendment, the “holder of any permit who shall fail to comply with the provisions of this section within the time or times specified shall be deemed to have abandoned all rights under his permit.” Idaho Sess. Laws, ch. 374, sec. 3, p. 1092 (1967) (emphasis added) (codified as I.C. § 42-204). With the addition of I.C. § 42-218a, the Legislature authorized the Department to reinstate a permit that was otherwise abandoned pursuant to I.C. § 42-204. In 1967, and as stated previously, the

¹² Exhibit 2, Declaration of Mike Eisenman, <https://research.idwr.idaho.gov/apps/Shared/LfRelatedDocs/Home/-DownloadDoc?eid=3126167> (Memorandum from Nick Miller to Shelley Keen, dated 12/29/2020, discussing IDWR’s process for holding applications for permit in the processing “queue . . . if/when existing permits become licensed and water becomes available or not.”) (visited June 26, 2026). For purposes of updating ownership associated with the aforementioned *Memorandum*, Application for Permit No. 61-12095 is now held by Intermountain Sewer & Water Corp., whose corporate officers are also corporate officers for Bowns Creek. No changes of ownership have been filed as to Application for Permit No. 63-32703 (Orchard Ranch, LLC) and Application for Permit No. 63-33344 (Ark Properties, LLC/Mayfield Townsite, LLC). Application for Permit Nos. 61-12307, 61-34245, and 61-12308, previously held by PARS Holding, LC, are now owned by Intermountain Sewer & Water Corp.

Legislature did not amend Chapter 3, Title 42, Idaho Code, meaning its process for cancellation of permits remained.

In 2020, the Legislature amended Chapter 2, Title 42, Idaho Code by removing the word “abandoned” from I.C. § 42-204, replacing it with the word “relinquished.” Idaho Sess. Laws, ch. 164, sec. 6, p. 480 (2020). While there were amendments to I.C. § 42-218a to address the lapse and reinstatement of RAFN permits, they do not pertain to this proceeding. Presently, I.C. § 42-218a continues to authorize a permit holder to request reinstatement of an otherwise relinquished permit, provided a request for extension of time is filed.

The process contained in I.C. § 42-301 specifically provides third party permit holders with the ability to check the hoarding and locking up of the State’s water resources, with Chapter 2, Title 42, Idaho Code not providing a similar remedy to Juniper Station. The ability for third parties to seek cancelation, pursuant to I.C. § 42-301, is fully consistent with the “policy of the law of this State is to secure the maximum use and benefit, and least wasteful use, of its water resources.” *Poole v. Olaveson*, 82 Idaho 496, 502, 356 P.2d 61, 65 (1960). The Hearing Officer “must strive to give force and effect” to I.C. § 42-301. *Boudreau v. City of Wendell*, 147 Idaho 609, 612, 213 P.3d 394, 397 (2009).

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III. CONCLUSION

Based on the foregoing, the Hearing Officer should allow Juniper Station to proceed with cancelation of the Permits, due to the fact that the remedies in Chapter 3, Title 42, Idaho Code remain viable and are important to further the prior appropriation doctrine's emphasis of actual beneficial use and prohibitions against speculation, hoarding, and the locking up of the water resources.

RESPECTFULLY SUBMITTED this 26th day of June, 2026.

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CERTIFICATE OF SERVICE

I certify that on this 26th day of June, 2026, 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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