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DEPARTMENT OF
WATER RESOURCES

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF 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

**REPLY BRIEF OF BOWNS CREEK
PROPERTIES LLC IN RESPONSE TO
REQUEST FOR BRIEFS**

I. INTRODUCTION

Bowns Creek Properties LLC (hereinafter “*Bowns Creek*”) submits this Reply Brief to address the arguments raised by Juniper Station Farm, LLC (“*Juniper Station*”) in its Opening Brief filed June 26, 2026. Mayfield Ranch Estates, LLC (“*Mayfield Ranch*”) also filed an Opening Brief and Bowns Creek supports to the arguments made by Mayfield Ranch.

Juniper Station’s Opening Brief rests on a fundamental misreading of Idaho water law: it seeks to resurrect an antiquated statutory framework that the Idaho Legislature deliberately superseded more than half a century ago. Juniper Station asks the Hearing Officer to apply Idaho Code § 42-301—a statute enacted to mirror permit conditions that no longer exist—while ignoring the comprehensive extension and proof framework established by Idaho Code § 42-204 as amended in 1967, 1982, 2020, and 2021. The Department granted Bowns Creek and the other

permit holders request for extensions of time in accordance with Idaho Code § 42-204(3), which provides discretion to approve extensions upon a showing of reasonable diligence and good cause. Those extensions are presumptively valid administrative decisions. Any further proceedings in these consolidated matters must be governed by I.C. § 42-204, I.C. § 42-1701A(3) and the current Department Rules of Procedure and not by some superseded and antiquated process provided in Chapter 3, Title 42.

II. ARGUMENT

1. Does Idaho Code § 42-301 Establish Permit Requirements Independent of and in Addition to Any Conditions Listed on a Permit Issued by the Department?

Juniper Station ignores and fails to address the plain language of the statute. Instead, Juniper Station makes the misplaced argument that every law need not be restated as a condition in a permit for it to be applicable. It is true that every law need not be restated as a condition, it is equally true that inapplicable, outdated, superseded laws will not be read into a permit as being applicable requirements/conditions. As explained in Bowns Creek's Opening Brief, and as further explained by Mayfield Ranch in its Opening Brief, the specific and plain language of Idaho Code § 42-301 does not create additional/independent permit requirements but merely referenced the permit conditions in effect at the time of its enactment. These conditions no longer exist or apply given the numerous amendments to Idaho Code § 42-204. Moreover, the plain statutory language of I.C. § 42-301 provides that the provisions are applicable to the "requirements of his permit" and "within the time specified in his permit."

Juniper Station relies solely on the fact that the statute still exists and has not been repealed, but provides no argument as to why the statute remains applicable given the application of Idaho Code § 42-204 and the amendments thereto, or the fact that the plain language ties the

requirements to the requirements of the permit or the time period provided in the permit. The permit conditions in effect at the time Idaho Code § 42-301 was enacted are no longer applicable, have been replaced and superseded by Idaho Code § 42-204 and the amendments thereto. Indeed, the amendments to Idaho Code § 42-204 struck the very requirements referenced in Idaho Code § 42-301, rendering those provisions inapplicable to permits issued thereafter. The commencement, construction progress, and completion are governed exclusively by Idaho Code § 42-204 and the permit conditions issued thereunder.

It is also interesting that Juniper Station makes several misguided arguments that “ignorance of the law is not a defense” or that the permit holders “have tied up the State’s water resources” when Juniper Station is well aware of and cannot ignore: 1) commencement, construction, progress, and even extensions of time are governed by Idaho Code § 42-204 and the amendments thereto; and 2) Juniper Station’s Transfer and Applications for Permit were submitted after the *Final Sufficiency Order* issued in 2013 and after the permits of Bowns Creek, Mayfield Townsite and Mayfield Ranch Estates were applied for and approved by the Department. In other words, if anyone should be “eyes wide open” it should be Juniper Station who was well aware of and cannot ignore the statutory process provided by Idaho Code § 42-204 as commencement, construction, progress and extensions, the existence of the *Final Sufficiency Order* or the existence of the existing permits when it chose to file a new Transfer and Applications for Permit. In any event, Juniper Station’s remedy, if any, lies in challenging the Department’s extension decisions under the applicable administrative review standards, not in invoking a defunct cancellation process.

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2. If Idaho Code § 42-301 Establishes an Independent Requirement for a Permit Holder to Commence Work, When Must the Permit Holder Commence Work?

As provided in Bowns Creek's Opening Brief, and reiterated herein, Idaho Code § 42-301 does not establish an independent requirement for a permit holder to commence work. Commencement, construction and completion are governed by Idaho Code § 42-204 and the permit conditions thereunder.

Juniper Station attempts to conflate Idaho Code § 42-204 and Idaho Code § 42-301 to be read in tandem even though it is clear that the requirements of Idaho Code § 42-301 are not applicable to the permits at issue in this consolidated matter and even though the very requirements of Idaho Code § 42-301 Juniper Station would like to challenge, have been stricken, removed and superseded by the later enacted and more specific requirements of Idaho Code § 42-204. Indeed, even Juniper Station appears to be confused given its argument that commencement is guided by the permit conditions which follows from the requirements provided in Idaho Code § 42-204(3). *Juniper Station's Opening Brief*, pgs. 9-10. There simply is no basis or reason to apply language in Idaho Code § 42-301 when it specifically states that it is conditioned by the "requirements in his permit", the conditions provided in Idaho Code § 42-301 are not in any of the permits at issue in this consolidated matter, and the more specific conditions are provided in the more recent, updated and applicable Idaho Code § 42-204.¹ As explained below, Juniper Station still has a remedy to challenge the extensions of time which have been granted by the Department pursuant to Idaho Code § 42-204.

¹ Given that Idaho Code § 42-301 specifically ties the requirements to the permit conditions themselves, there is no practical utility to Juniper Station's continued insistence that Idaho Code § 42-301 remains applicable because ultimately analysis will still go back to the conditions in effect at this time, the permit conditions themselves, and the rights provided in Idaho Code § 42-204. In other words, there are no independent requirements provided in Idaho Code § 42-301 and thus Juniper Station cannot avoid the rights, including the rights to seek extensions, expressly provided in Idaho Code § 42-204.

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?

As stated in its Opening Brief, there is no independent requirement provided for or established in Idaho Code § 42-301. Juniper Station fails to address the question and instead make several misplaced and misguided arguments related to the purposes of performance bonds and suggests that the permit holders “could have petitioned the Director to post a bond” to extend the time for commencement or completion. Again, there is no bond requirement in any of the permits at issue and the bond requirement has been stricken from Idaho Code § 42-204. Moreover, Juniper Station ignores the fact that posting a bond to extend the time to commence or completion of a project is clearly not applicable given the statutory rights to seek extensions of time under Idaho Code § 42-204. There is no basis or reason to petition the Director to post a bond when the bond requirements have been specifically stricken and there is a clear process for seeking extensions of time from the Department. Juniper Station would like the permit holders to avail themselves to a process which does not exist and is not necessary given the current statutory regime.

4. How Do the 1967 and 2020 Amendments to Idaho Code § 42-204 Affect Idaho Code § 42-301, Specifically the Provisions 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?

Juniper Station contends the amendments to Idaho Code § 42-204 have no impact on the application of Idaho Code § 42-301 based upon the simplistic argument the Legislature did not amend Idaho Code § 42-301. However, Juniper Station ignores the fact that Idaho Code § 42-301 does not establish independent requirements and plainly and clearly provides that the requirements are tied to the conditions of the permits themselves. Idaho Code § 42-301 attempted to mirror permit conditions in place at the time it was enacted, but those conditions are not in any of the permits at issue in these proceedings, and instead the conditions have been amended, stricken and superseded by the amendments to Idaho Code § 42-204. Juniper Station misses the point that

the more recent, specific amendments to Idaho Code § 42-204 fundamentally altered the permit conditions that Idaho Code § 42-301 attempted to reference/mirror. Thus, rendering the conditions stated in Idaho Code § 42-301 no longer applicable or relevant to permits issued after 1967. Because Idaho Code § 42-301 operates by reference to permit conditions, and because those conditions no longer exist in permits issued after the amendments to Idaho Code § 42-204, Idaho Code § 42-301 has no operative effect or utility on the permits at issue in this matter. Courts presume that the Legislature intended to reject or modify the earlier requirements and if the Legislature intended Idaho Code § 42-301 to remain a viable enforcement mechanism independent of Idaho Code § 42-204, it would have amended both statutes in tandem. It did not.

Juniper Station also suggests that a reference to Idaho Code § 42-301 in *Shokal v. Dunn*, 109 Idaho 330, 336, 707 P.2d 441, 447 (1985) somehow provides legislative intent for Idaho Code § 42-301 to remain applicable. However, *Shokal v. Dunn* did not analyze whether Idaho Code § 42-301 remains viable for permits issued after 1967 or whether or whether the amendments to Idaho Code § 42-204 superseded the conditions and rights provided in Idaho Code § 42-301. Instead, *Shokal v. Dunn*, which dealt with the standards provided for in Idaho Code § 42-203A, did nothing more than the rights provided in Idaho Code § § 42-204 and 42-301 when addressing the financial resources requirement provided in I.C. § 42-203A. When *Shokal v. Dunn* was issued in 1985, which dealt with an application for permit filed in 1978, there may or may not have been outstanding permits issued prior to 1967 which contained conditions provided for in Idaho Code § 42-301. In any event, the Court clearly did not go any further than the mention of the statute, and more specifically, the Court did not address the questions posed by the Hearing Officer in this matter. Idaho Code § 42-301 has not been repealed but that does not mean that it remains applicable or viable to the current permits and *Shokal v. Dunn's* mention of the statute does not

mean that the Legislature's amendments to Idaho Code § 42-204 did not supersede the conditions provided in Idaho Code § 42-301.

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?

As discussed throughout this Reply Brief, Bowns Creek's Opening Brief, and the Opening Brief of Mayfield Ranch, Idaho Code § 42-301 has been superseded and replaced by Idaho Code § 42-204 and the amendments thereto and thus Idaho Code § 42-301 is no longer applicable. The amendments to Idaho Code § 42-204 reflect legislative intent that rigid deadlines and mechanical progress requirements are incompatible with the practical realities of water resource development. Large-scale municipal projects face regulatory delays, financing challenges, market fluctuations, and other obstacles beyond the permit holder's control. The Legislature responded by eliminating the one-fifth/one-half progress requirement and granting the Department discretion to approve extensions based on reasonable diligence and good cause.

This flexible framework serves important policy objectives. It prevents forfeiture of permits due to circumstances beyond the permit holder's control while still requiring permit holders to demonstrate diligence and good cause. It allows the Department to evaluate extension requests on a case-by-case basis rather than applying arbitrary deadlines. And it provides procedural safeguards through the notice and hearing process.

Juniper Station's interpretation would undermine these objectives by resurrecting a rigid, outdated framework that the Legislature deliberately abandoned. If the Legislature intended to retain the one-fifth/one-half progress requirement as an independent statutory obligation enforceable through cancellation petitions, it would not have struck that language from Idaho Code § 42-204.

Juniper Station makes a strained argument that Idaho Code § 42-301 remains viable because it prevents permit holders from locking up water and the opportunity to ensure Idaho's water resources remain open for appropriation. However, Juniper Station simply ignores the rights of permit holders to exercise valid rights as provided in Idaho Code § 42-204, including the right to seek extensions based upon case-by-case circumstances and on reasonable diligence and good cause. Juniper Station cannot ignore these rights.

Juniper Station also cannot ignore that as a junior appropriator, like any junior appropriator in the State, takes the creek, stream, basin or water supply as they find it and simply because the supply may be limited or the stream may be over appropriated, does not alter the statutory rights afforded to existing permit holders. Juniper Station's contentions that permit holders are locking up water and/or that there is a limit supply in this area have no relevance to the questions posed by the Hearing Officer. As mentioned, *supra*, Juniper Station knew or should have known of the water supply, the Final Sufficiency Order, the existing water rights and permits issued in the area well before Juniper Station filed its Transfer and application for permits, and it cannot now complain of the situation it finds itself as a reason for the Department to ignore the rights afforded to permit holders. Regardless of Juniper Station's unsupported contentions that permit holders have tied up the State's water resources, the bottom line remains that Idaho Code § 42-301 is no longer operative, viable, applicable or relevant, (especially as to the permits at issue in this matter), given the amendments to Idaho Code § 42-204, the conditions of the permits at issue, and the remedies and rights afforded by I.C. §§ 42-204 and I.C. § 42-1701A(3).

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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 § 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?**

Juniper Station bemoans the fact that while Idaho Code § 42-204(6) provides for the relinquishment of rights if the permit holder fails to comply with the provisions of this section, Idaho Code § 42-218(a) allows for reinstatement based upon certain conditions, including potential advancement of the priority date. However, other than criticizing the statutory process expressly provided in Idaho Code § 42-204 and Idaho Code § 42-218a, Juniper Station provides no basis as to why Idaho Code § 42-301 remains viable or why Juniper Station does not have sufficient rights and remedies. As explained herein, the requirements provided in Idaho Code § 42-301, which are tied to the permit conditions, are no longer applicable to permits issued after 1967. Thus, there is utility and applicability of Chapter 3, Title 42 and there is no reason for the parties or the Hearing Officer to continue under an antiquated and defunct process that has no relevance to the permits at issue in these proceedings.

Juniper Station is incorrect that it has no remedy other than those provided in Idaho Code § 42-301. Instead of an antiquated process, which refers to permit conditions which do not exist after 1967, and which has been superseded, Juniper Station’s remedy is to seek a hearing, as it has done so in these proceedings, to challenge the administrative decisions of the Department to approve the extensions granted for each permit under I.C. § 42-1701A(3).

For some reason Juniper Station clings to Idaho Code § 42-301 even though the conditions contained therein are not applicable to these proceedings. At the end of the day, any questions or concerns which Juniper Station has with the permits will still go back to the conditions provided

in Idaho Code § 42-204, the conditions provided in the permits themselves, and the statutory rights, including rights to seek extensions of time, provided in Idaho Code § 42-204.

III. CONCLUSION

For the foregoing reasons, Bowns Creek respectfully requests that the Hearing Officer:

(1) Conclude that Idaho Code § 42-301 does not provide for independent statutory requirements separate from the permit conditions. Idaho Code § 42-301 attempted to mirror permit conditions in place at the time it was enacted but these conditions have since been superseded by the amendments to permit conditions and extension rights provided in I.C. § 42-204;

(2) Conclude that commencement, construction progress and completion requirements are governed by I.C. § 42-204 and the permit conditions issued thereunder;

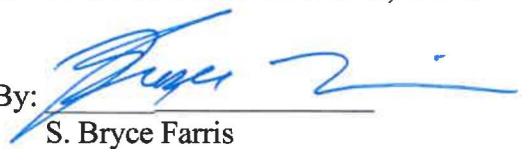
(3) Conclude that Chapter 3, Title 42, Idaho Code is not applicable or relevant to these proceedings, because it has been superseded by the provisions of I.C. § 42-204, and there are specific provisions in I.C. § 42-204 which provide for the relinquishment of the permit under I.C. § 42-204(6), notice provisions from the Department to the permit holder, the right to applicable extensions, and the right of the permit holder or other aggrieved party to request a hearing under I.C. § 42-1701A(3). All rights provided under the antiquated and defunct provisions of Chapter 3, Title 42 have been replaced and superseded by more specific current and applicable provisions in I.C. § 42-204;

(4) Dismiss Juniper Station's petitions to the extent such petitions seek cancellation of permits under I.C. § 42-301 et seq; and

(5) Conclude that any further proceedings in these consolidated matters must be governed by I.C. § 42-204, I.C. § 42-1701A(3) and the current Department Rules of Procedure and not by some superseded and antiquated process provided in Chapter 3, Title 42.

DATED this 17th day of July, 2026.

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By: 

S. Bryce Farris

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following on this 17th day of July, 2026 by the following method:

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