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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 ESTATES, LLC

**MAYFIELD RANCH'S
SUPPLEMENTAL BRIEF
REGARDING HEARING OFFICER'S
OFFICIAL NOTICE OF
DOCUMENTS**

Mayfield Ranch Estates, LLC ("Mayfield Ranch"), by and through its counsel of record, Givens Pursley LLP, hereby files this supplemental brief pursuant to the Hearing Officer's July 21, 2026, email notifying the parties of his decision to take official notice of several documents in the Department's records under Rule of Procedure 602 (IDAPA 37.01.01.602).

BACKGROUND

The Hearing Officer took official notice of the following documents:

1. approval of application for Permit No. 13-2314 (originally Permit No. R-1162);
2. approval of application for Permit No. 02-2336 (originally Permit No. 32129);
3. approval of application for Permit No. 33-2131 (originally Permit No. G-33364);
4. approval of application for Permit No. 73-7000;

5. proposed order modifying and reaffirming Permit No. 36-7834; and
6. final order modifying and reaffirming Permit No. 36-7834.

The Hearing Officer explained:

I selected Permits 13-2314 and 02-2336 because they are active permits that were issued prior to the 1967 amendment to Section 42-204, Idaho Code. I also selected a random permit (33-2131) approved shortly before the 1967 amendment and a random permit (73-7000) approved shortly after the 1967 amendment.

Although the Hearing Officer did not explain why he took official notice of the orders concerning Permit No. 36-7834, the apparent reason is that the orders resulted from a remand ordered by the Idaho Supreme Court in *Shokal v. Dunn*, 109 Idaho 330, 707 P.2d 441 (1985), a case which featured heavily in briefing previously submitted by Juniper Station Farm, LLC (“Juniper”).

These documents allow one to compare Department practice with respect to approving permits before and after the 1967 amendment to Section 42-204 (the water permitting statute). The relevant provisions of this statute, and their relation to Section 42-301, Idaho Code, were thoroughly discussed in *Mayfield Ranch’s Opening Brief* dated June 26, 2026 (“*Mayfield’s Opening Brief*”).

When Section 42-301 was enacted in 1909, Idaho’s water permitting statutes (now in Section 42-204) stated in relevant part:

In his endorsement of approval on any [permit] application, the State engineer shall require that actual construction work shall be completed within a period of five years from date of such approval and that one-fifth of such work of construction shall be done within one-half the period of time allowed for the completion of such works [called the “Completion” and “One-Fifth Work” requirements in *Mayfield’s Opening Brief*]

Every holder of a permit which shall be issued under the

terms and conditions of an application filed hereafter appropriating 25 cubic feet or less per second, must, within 60 days from the date upon which said permit issues from the office of the State Engineer, commence the excavation or construction of the works by which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted through no fault of the holder of such permit by circumstances over which he has no control [called the “Commencement” requirement in *Mayfield’s Opening Brief*].

Every holder of a permit which shall be issued under the terms and conditions of an application filed hereafter, appropriating more than 25 cubic feet per second, must, within 60 days from the date upon which the said permit issues from the office of the State engineer, file with the State engineer a bond in an amount to be fixed by the State engineer, not exceeding ten thousand (\$10,000) dollars, in form and sufficiency of sureties to be approved by him, conditioned upon faithfully carrying to completion the works of diversion as specified in said permit; the amount of the bond to be fixed by the State engineer within the limits hereinbefore prescribed [called the “Bonding” requirement in *Mayfield’s Opening Brief*].

Mayfield’s Opening Brief at 8; 1905 Idaho Sess. Laws, pp. 360-61 (S.B. No. 63, § 2).

Notably, the Completion and One-Fifth Work requirements were required to be included in the State engineer’s “endorsement of approval on any [permit] application,” while the statute did not demand that the Bonding or Commencement requirements be imposed on the face of the permit. In any case, until 1967, all four requirements applied to new permits. In 1967, the Idaho Legislature eliminated the Bonding and One-Fifth Work requirements, such that only the Commencement and Completion requirements remained. 1967 Idaho Sess. Laws, ch. 374, § 3, pp. 1089, 1091–92 (H.B. No. 293). In 1982, the Commencement requirement was changed from 60 days to 1 year following permit approval. 1982 Idaho Sess. Laws, ch. 62, § 1 p. 124 (S.B. No. 1246). Then, in 2020, the Commencement requirement was eliminated in its entirety. 2020 Idaho Sess. Laws, ch. 164, § 1, p. 479 (S.B. No. 1316). As a result, of the four permit

requirements existing when Section 42-301 was enacted in 1909, only the Completion requirement still remains.

Section 42-301 contains criteria that may be used to cancel a permit, each of which correspond to the Bonding, Commencement, One-Fifth Work, and Completion requirements. As discussed in *Mayfield's Opening Brief*, Section 42-301's criteria are not stand-alone permit requirements, but rather may be used to cancel a permit only if the corresponding permit criteria in Section 42-204 existed when the permit was issued or are expressly stated on the face of the permit. *Mayfield's Opening Brief* at 4-10.

As discussed further below, the Hearing Officer's officially noticed documents support this conclusion.

ARGUMENT

I. Permit Nos. 13-2314, 02-2336, and 33-2131 are consistent with the pre-1967 amendments to Section 42-204.

Application for Permit Nos. 13-2314, 02-2336, and 33-2131 were applied for and approved on the following dates:

Permit No.	Application Date	Approval Date
13-2314	April 19, 1963	September 17, 1963
02-2336	September 25, 1964	November 13, 1964
33-2131	December 5, 1966	December 13, 1966

These permit approvals all are on pre-printed Department forms that contain fields for writing in the Bonding, Commencement, One-Fifth Work, and Completion requirements existing under Section 42-204 when they were issued, confirming the Department's standard practice prior to the 1967 amendment. Approval conditions included on the face of each permit are summarized in the following table:

Permit No.	Not required on face of permit		Required on face of permit	
	Bonding amount	Commencement deadline	One-Fifth Work deadline	Completion deadline
13-2314	\$1,000	November 17, 1963	September 17, 1964	September 17, 1965
02-2336	\$1,000	none	May 13, 1967	November 13, 1969
33-2131	none	none	June 13, 1969	December 13, 1971

As mentioned, at the time of these approvals, Section 42-204 required only the One-Fifth Work and Completion deadlines to be stated on the face of a permit—which occurred for each of these permits. The Commencement deadline was not required to be stated on the face of each permit, but nevertheless applied to any permit for 25 cfs or less. And the Bonding requirement also was not required to be stated on the face of each permit, but nevertheless applied to permits appropriating more than 25 cfs.¹

In short, these permit approvals all are consistent with Section 42-204’s requirements existing prior to the 1967 amendments. When comparing these permits to the post-1967 permits discussed below, it is clear that these requirements stem from that statute and not from Section 42-301.

II. Permit No. 73-7000 is consistent with the post-1967 amendments to Section 42-204.

The 1967 amendments to Section 42-204 were approved April 10, 1967, and came into effect on May 30, 1967. 1967 Idaho Sess. Laws, ch. 374, p. 1100 (H.B. No. 293); Idaho Const. art. III, § 22.² Application for Permit No. 73-7000 was filed on October 26, 1967 and approved on December 26, 1967.

¹ Permit No. 13-2314 was for 40,000 acre-feet per year of storage, which equates to more than 25 cfs if diverted 24/7/365. Permit No. 02-2336 was for 70.4 cfs. Permit No. 33-2131 was for 1.6 cfs.

² “No act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the pre-amble or in the body of the law.”

In contrast to the pre-1967 permits described above, the approval of Permit No. 73-7000 contained only one field: the Completion deadline (in which December 1, 1972 was written). The approval form did not contain fields for the Bonding or One-Fifth Work requirements, reflecting the fact that the 1967 amendments to Section 42-204 eliminated those requirements. And, although the permit holder was obligated to comply with Section 42-204's Commencement requirement, the approval form did not contain such a field, presumably because Section 42-204 did not require one to be stated on the face of the permit. Accordingly, the approval for Permit No. 73-7000 is consistent with Section 42-204's requirements existing at the time, exemplifying that post-1967 permits contained conditions adhering to Section 42-204 rather than Section 42-301.

III. Permit No. 36-7834 is consistent with the post-1967 amendments to Section 42-204.

Permit No. 36-7834 was applied for on December 21, 1978 and finally approved on March 31, 1986, upon the stipulation of the applicant and protestants following remand of the Idaho Supreme Court's decision in *Shokal v. Dunn*, 109 Idaho 330, 707 P.2d 441 (1985). Obviously, the entire matter post-dated the 1967 amendments to Section 42-204.

Notably, the Department's approval contained only a Completion deadline—it did not include any Commencement, Bonding, or One-Fifth Work requirements. This makes sense because, when the permit was issued in 1986, Section 42-204 required that the Department include only a Completion deadline on the face of a permit. *See* 1982 Idaho Sess. Laws, ch. 62, § 1 p. 123 (S.B. No. 1246). As already noted, the Legislature eliminated the Bonding and One-Fifth Work requirements from the statute in 1967, and Section 42-204 at the time did not require

Idaho Const. art. III, § 22. The 1967 Legislature adjourned on March 31, 1967, and no emergency was declared. 1967 Idaho Sess. Laws (cover page).

a Commencement deadline to be stated on the face of the permit. Moreover, in 1986, Section 42-204 required a Commencement deadline only for appropriations of 25 cfs or less, and Permit No. 36-7834 was approved for 100 cfs. In short, this permit was approved consistent with Section 42-204 as it existed at the time.

The *Shokal* case is heavily relied upon by Juniper. *See generally Juniper Station Farm's Opening Brief* (June 26, 2026) ("*Juniper's Opening Brief*") and *Juniper Station's Response Brief* (July 17, 2026) ("*Juniper's Response Brief*"). Specifically, Juniper points to the following statement from the Court: "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." *See, e.g., Juniper's Opening Brief* at 6 (quoting *Shokal*, 109 Idaho at 336, 707 P.2d at 447).

But this statement does not support Juniper's position that Section 42-301 creates independent permit requirements. The *Shokal* Court addressed two criteria for approving permit applications under Section 42-203A: (1) the sufficiency of an applicant's financial resources; and (2) the local public interest. *Shokal*, 109 Idaho at 335-41, 707 P.2d at 446-52. It was in the context of evaluating the financial resources criterion that the Court cited Sections 42-204 and 42-301:

The financial resources requirement, added in 1935, was clearly intended to prevent the tying up of our water resources by persons unable to complete a project because of financial limitations. The financial requirement provision was added at a time when unscrupulous promoters were obtaining permits and lulling unsuspecting investors into purchasing worthless securities on worthless projects. The legislature has provided Water Resources with the authority to weed out the financially insufficient applications. We believe a showing by the applicant that it is "reasonably probable" that financing can be secured to complete the project within five years serves the purpose of screening out

undeserving projects without being destructive of growth and development in the state. 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.

Id. at 336, 707 P.2d at 447 (internal citations omitted).

At the time of the *Shokal* decision, Section 42-204 required the Department to impose a deadline on the face of a permit for submitting proof of construction and beneficial use, and required a permit holder to commence construction within 1 year and to proceed diligently with its work for permits appropriating 25 cfs or less. 1982 Idaho Sess. Laws, ch. 62, § 1 p. 123-24 (S.B. No. 1246). Thus, although the Court’s reference to Sections 42-204 and 42-301 arguably was dicta (as the statutes were not at issue in the case), the Court was not mistaken that Section 42-204 at the time generally contained “timely commencement, progress and completion of works” requirements or that Section 42-301 could be used to enforce those requirements. Of course, only the Completion requirement remains in Section 42-204 today.

IV. Permit Nos. 13-2314 and 02-2336 suggest that Section 42-301 may still apply to existing permits with Commencement, Bonding, and One-Fifth Work Requirements on their face.

The Hearing Officer’s May 12, 2026 *Request for Briefs* (“*Request*”) asked:

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?

Request at 2. In *Mayfield’s Opening Brief*, Mayfield Ranch argued that, while Section 42-301’s practical utility has been diminished, it presumably remains available as an enforcement mechanism if and to the extent such requirements are contained on the face of existing permits.

Mayfield's Opening Brief at 12-13. Permit Nos. 13-2314 and 02-2336 confirm this conclusion as they still remain listed as active in the Department's database.

Permit No. 13-2314 was issued on September 17, 1963, and it continues to remain active in the Department's database (although the last extension document in the Department's records show that proof was due on January 1, 2023). Likewise, Permit No. 02-2336 was issued on November 13, 1964, and a split portion of that permit (No. 02-2336F) remains active today in the Department's database. Setting aside possible laches considerations, an affected junior permit holder may presumably still utilize Section 42-301 to challenge these permits on any Commencement, Bonding, One-Fifth Work (or Completion) insufficiencies.³

As these existing permits indicate, Section 42-301 has not been entirely nullified by amendments to Section 42-204. However, because 42-301 does not impose independent permit requirements, the continuing applicability of its Commencement, Bonding, and One-Fifth Work grounds for cancellation is limited to the shrinking body of permits that contain such express requirements.

CONCLUSION

As discussed in *Mayfield's Opening Brief*, the permit requirements listed as grounds for permit cancellation under Section 42-301 are applicable only to the extent they were required by the permitting statutes at the time of permit issuance and/or were included on the face of the permits. The documents officially noticed by the Hearing Officer support this conclusion. The pre-1967 permit approvals are consistent with the Bonding, Commencement, One-Fifth Work,

³ As noted, Permit No. 02-2336 authorized 70.4 cfs, which means the Commencement grounds may not be applicable since it is not on the face of the permit and Section 42-204 only required a Commencement deadline for permits less than 25 cfs. Permit No. 13-1314 allowed at least 25 cfs to divert up to 40,000 acre-feet in a year, but a Commencement deadline was imposed on the face of the permit.

and Completion requirements in Section 42-204, as the statute existed at that time. And the post-1967 permit approvals are consistent with the Commencement and Completion requirements in Section 42-204 when they were issued. The *Shokal* Court's citation to Sections 42-204 and 42-301 does not indicate that Section 42-301 creates independent permit requirements. Rather, the Court correctly recognized that 42-204, at the time, generally required "timely commencement, progress and completion of works," which could be enforced under Section 42-301.

In short, the Hearing Officer's officially noticed documents support the conclusion that Section 42-301 does not create independent permit requirements.

DATED August 21, 2026.

GIVENS PURSLEY LLP



By: _____
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of August, 2026, 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 email as indicated below.

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