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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

**JUNIPER STATION'S
SUPPLEMENTAL BRIEF**

COMES NOW Juniper Station Farm, LLC (“Juniper Station”) by and through its attorneys of record, McHugh Bromley, PLLC, and hereby responds to the Hearing Officer’s request for supplemental briefing and his decision to take “official notice” of the following documents: “Permits 13-2314 (originally Permit No. R-1162), 02-2336 (originally Permit No. 32129), 33-2131 (originally Permit No. G-33364), and 73-7000. . . . 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.” *Email from J. Cefalo to the Parties* (July 21, 2026). Further, the Hearing Officer elected to take official notice of two documents that post-date the Idaho Supreme Court’s

decision in *Shokal v. Dunn*, 109 Idaho 330, 707 P.2d 441 (1985), wherein the parties and the Department agreed to resolve the matter, without further litigation: “*Proposed Order Modifying and Reaffirming Permit*, issued on March 20, 1986, and the *Final Order Modifying and Reaffirming Permit*, issued on April 1, 1986.” *Id.*

I. INTRODUCTION

Juniper Station does not oppose the Hearing Officer taking official notice of the above-referenced permits, provided that the Hearing Officer accepts into the record other official documents of the Department that are attached as exhibits to the *Second Declaration of Chris M. Bromley*, filed contemporaneously herewith. Juniper Station does not oppose the Hearing Officer taking official notice of the *Proposed Order Modifying and Reaffirming Permit* and the *Final Order Modifying and Reaffirming Permit*, as those documents simply show what occurred following the Court’s decision in *Shokal*, with the Court’s opinion standing on its own.

II. RESPONSE

A. The Permits Selected by the Hearing Officer Show that the Department Modified its Application for Permit Forms, with Only the Law Controlling what Must Occur during Permit Development and the Rights of Juniper Station to Cancel the Permits at Issue

1. Applications for Permit Nos. 2-2336, 13-2314, and 33-2131 pre-date 1967

Applications for Permit Nos. 2-2336, 13-2314, and 33-2131 were chosen by the Hearing Officer as potentially significant because they pre-date the 1967 amendments to Chapter 2, Title 42, Idaho Code.

Each of the aforementioned permits have a field in the form for the filing of a bond, with that field filled in for Permit No. 2-2336 (\$1,000) and Permit No. 13-2314 (\$1,000), whereas the bond field was left blank in Permit No. 33-2131. That the posting of a bond is a discretionary

decision of the Director is consistent with arguments previously made by Juniper Station. *See Juniper Station Response Brief* at 5 (July 17, 2026).

Furthermore, each of the aforementioned permits have a field in the form for when “One-fifth of the work” must be completed, with a date certain that appears to be consistent with when “one-half (1/2) the time allotted for the entire completion of such construction work” must occur by.¹ I.C. § 42-301. It is undisputed that the Legislature’s 1967 amendments to Chapter 2, Title 42, Idaho Code, removed the one-fifth (1/5) and one-half (1/2) requirements that were previously contained in I.C. § 42-204, with those requirements remaining unaltered in I.C. § 42-301.

Lastly, each of the aforementioned permits has a field for when work must be completed and when beneficial use must be made. As to Permit No. 2-2336, work was to be completed by November 13, 1969, with beneficial use to be made six (6) years later, on November 13, 1975.

Approval of State Reclamation Engineer

The number of this permit is 32129
Recorded in Book 112 Page 32129 Approved November 13, 1964
This is to certify that I have examined the within application for a permit to appropriate the public waters of the State of Idaho, and hereby approve the same, subject to the following limitations and conditions:
Bond in the sum of \$ 1000.00 to be filed on or before January 13, 1965
Work to begin on or before and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which permit holder has no control.
One-fifth of the work above specified to be completed on or before May 13, 1967
The whole of said work to be completed on or before November 13, 1969
Beneficial use of water appropriated in accordance herewith, to be made on or before November 13, 1975
WITNESS My hand this 13th day of November, 1964
s/ RALPH W. THOMAS, Deputy
State Reclamation Engineer.

Permit No. 2-2336.

¹ For example, Permit No. 13-2314, was issued on September 17, 1963, in the name of the Idaho Water Resource Board, and was applied for and issued with a two-year completion deadline. “One-fifth of the work” was scheduled to be completed one-year later, on September 17, 1964. While the form does not have a field that says when “one-half (1/2) of the time allotted” will run, the choosing of September 17, 1964, represents the half-way point of that permit’s development. It is impossible to know if the Department was or was not always consistent with filling in the field. What is consistent is the fact that I.C. § 42-301 has not been amended; therefore, if the Department chose a time that was greater or less than the half-way point of permit development, the statute would control the rights of third party permit holders and the authorities of the Director in the event of conflict, not the form. *See Saint Alphonsus Reg'l Med. Ctr. v. Elmore County*, 158 Idaho 648, 654, 350 P.3d 1025, 1031 (2015). The Court’s decision in *Elmore County* will be discussed, below.

That beneficial use could occur years after completion of work is consistent with I.C. § 42-204, prior to the 1967 amendments, as evidenced in the session laws: “In its endorsement of approval on any application the department shall require that actual construction of work shall be complete within a period of five years from the date of such approval . . . and such endorsement shall give the date when . . . beneficial application of the water . . . shall be made.” Idaho Sess. Laws, ch. 374, p. 1089 (1967).

2. Application for Permit No. 73-7000 post-dates 1967

Application for Permit No. 73-7000 was received by the Department on October 26, 1967, thereby post-dating the 1967 amendments to Chapter 2, Title 42, Idaho Code. As seen in the form, there are some differences between it and the previously discussed permits, notably removal of fields for the dollar amount for a bond and completion of one-fifth (1/5) of the work. Juniper Station has previously acknowledged that the 1967 amendments removed these requirements from Chapter 2, Title 42, Idaho Code, with those requirements remaining in Chapter 3, Title 42, Idaho Code, as a check against the hoarding, wasting, and locking up of the State’s water resources by permit holders, as specifically recognized by the Department and the Supreme Court in *Shokal*: “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.” 109 Idaho at 336, 707 P.2d at 447 (emphasis added).

3. The problem with “random” selection of permits is it cannot tell the entire story of what was occurring at the Department leading up to and following the 1967 amendment of Chapter 2, Title 42, Idaho Code

As stated by the Hearing Officer, Permit Nos. 33-2131 and 73-7000 were “random[ly] . . . selected” as representative of how the Department was treating applications “shortly before” and “shortly after” the 1967 amendments. *Email from J. Cefalo to the Parties* (July 21, 2026).

The problem with random selection is it cannot tell the entire story of what was occurring sixty (60) years ago. Indeed, when counsel for Juniper Station used IDWR's public website to look for water rights with priority dates shortly before the 1967 amendments, it was discovered that the Department made the decision to process pre-1967 permits in accordance with Chapter 2, Title 42, Idaho Code, as amended by the Legislature in 1967, with written notice to permit holders of an *Order Modifying Requirements for Completion of Permit to Appropriate Water* ("Order").² *Second Declaration of Chris M. Bromley*, Ex. A (emphasis added); *see also id.*, Exs. B - E.³ As we know from the briefing in these proceedings, the requirement to complete one-fifth (1/5) of the work within one-half (1/2) the time was removed in 1967 from Chapter 2, Title 42, Idaho Code, with those requirements remaining in Chapter 3, Title 42, Idaho Code. Even though it was not required to do so, the Department elected to restate the law by reminding permit holders of the ongoing duty to complete their projects, otherwise risk cancellation:

WHEREAS, the 39th Idaho Legislature made certain amendments to the Idaho Water Law; and

WHEREAS, these changes raised questions as to the procedures to be followed by holders of permits issued prior to the effective date of the amendments, May 31, 1967; and

WHEREAS, on August 1, 1968, the Department of Reclamation adopted Rules of Practice and Procedures for the processing of such permits issued prior to May 31, 1967; and

WHEREAS, Permit No. 33439 was issued previous to that date;

² The *Order Modifying Requirements for Completion of Permit to Appropriate Water* ("Order") was mailed by the Department to the permit holders with a letter. *Second Declaration of Chris M. Bromley*, Exs. A - E. According to the letter, it was the Department's opinion that "the amended law make[s] it simpler for a person to make proof and relieve[s] the permit holder from making separate proofs of completion of works and beneficial use of water." The letter does not state that the permit holders would somehow be relieved from the requirements of Idaho law, with the Order specifically saying that Idaho law continues to apply, and the Order making clear that permits are subject to cancellation, consistent with Chapter 3, Title 42, Idaho Code.

³ As evidenced by the water right numbers, the documents that are included as exhibits were chosen from multiple basins and different IDWR regions.

NOW THEREFORE, the requirements for completion of the above-numbered permit are hereby modified to conform to the adopted Rules of Practice and Procedures as follows:

1. The above-numbered permit will be completed under the terms of Title 42, Chapter 2, Idaho Code, as amended by the 39th Idaho Legislature.
2. The conditions of the above-numbered permit are modified as follows:
 - a. Notice of the issuance of the permit will be published at the permit holders expense for two weekly issues in the official newspaper of the county in which the point of diversion lies.
 - b. The permittee will not be required to submit proof of completion of works as originally specified, but will be required to submit proof to the Department of Reclamation of the application of the water to beneficial use on or before February 1, 1978. The permit holder should be aware that failure to complete one-fifth (1/5) of the works within one-half (1/2) of the time originally set for Completion of Works may be grounds for cancellation at the instance of the Department.

Declaration of Chris M. Bromley, Ex. A (emphasis added); *see also id.*, Exs. C - E.

Through the Order, the notion that permit cancellation only exists for pre-1967 permits, and not for permits processed pursuant to the 1967 amendments has been debunked. *See also Shokal* at 336, 707 P.2d at 447. Indeed, and to further emphasize that point, the Department specifically initiated cancellation proceedings against Permit No. 2-2405B, through an *Order to Show Cause* that was issued pursuant to the authorities contained in Chapter 3, Title 42, Idaho Code. *Second Bromley Dec.*, Ex. B. It must also be pointed out that the Order that accompanied Permit No. 2-2405 did not include the restatement of law as to cancellation of permits; nevertheless, the Department still proceeded with those valid authorities. *Compare* Ex. B. *with* Exs. A, C-E; ; *see also Shokal* at 336, 707 P.2d at 447.

The actions of the Department in relation to the permits that are included as exhibits to the *Second Bromley Dec.* are fully consistent with: (1) the Court's decision in *Shokal*; (2) the

Department's conclusions of law made at the administrative level as to the post-1967 permit that was at issue in *Shokal*; (3) the arguments of the Department's then-counsel, Phillip J. Rassier, to the Court on appeal therein; and (4) statements made by then-Director Kenneth Dunn to the Legislature during the 1986 session regarding the ongoing applicability of Chapter 3, Title 42, Idaho Code. *Juniper Station Response Brief* at 10-13 (July 17, 2026).

4. In the event of conflict between the Department's forms for the appropriation of water and the law, it is the law that controls the outcome

Lastly, Idaho's administrative agencies are empowered to prepare forms to streamline their work. For instance, and particular to these proceedings, the Legislature instructed the Department to prepare forms for the appropriation of water. I.C. § 42-204(1). No matter what the forms prescribe, the forms cannot alter, amend, or modify the requirements of law. This is because: "An administrative agency is a creature of statute, limited to the power and authority granted it by the Legislature and may not exercise its sub-legislative powers to modify, alter, or enlarge the legislative act which it administers." *Welch v. Del Monte Corp.*, 128 Idaho 513, 516, 915 P.2d 1371, 1374 (1996). Therefore, when forms prepared by administrative agencies conflict with the law, the Court has made clear that it is the law that controls.

In *Saint Alphonsus Reg'l Med. Ctr. v. Elmore County*, 158 Idaho 648, 350 P.3d 1025 (2015), the Elmore County Board of Commissioners ("Board") denied applications for medical indigency filed by Saint Alphonsus Regional Medical Center ("Hospital") on behalf of two patients. The form the Hospital used was prepared by the Idaho Department of Health and Welfare, pursuant to the Medical Indigency Act ("Act"), with signature lines for both patients and third parties who file the forms on their behalf. There, the forms were signed by the Hospital on the patients' behalf and filed with the Board. Because the forms were not signed by the patients, the Board denied the applications as incomplete, with the district court affirming the

decision on judicial review. On appeal, the district court were reversed. According to the Court, it was required “to give effect to legislative intent.” *Elmore County* at 652, 350 P.3d at 1029. In reading all of the provisions of the Act together, the Court concluded that even though the form contained multiple signature lines, the Act did not require signatures from both patients and third party applicants: “The Board erred by denying the Applications for incompleteness due to the lack of signatures, and the district court erred by affirming the Board's decision.” 158 Idaho at 654, 350 P.3d at 1031. Therefore, in the event of conflict between a form and the law, the Court’s holding in *Elmore County* clearly establishes that it is the law that controls.

Here, no matter what the Department’s pre- and post-1967 forms say (or do not say) as to the requirement to complete one-fifth (1/5) of the work within one-half (1/2) of the time, the contents of the applications for permit cannot change, modify, or otherwise obviate Idaho law. Accordingly, because I.C. § 42-301 has never been amended by the Legislature, it continues to apply in these proceedings. I.C. § 42-103 (“right to the use of the . . . unappropriated waters of . . . this state shall hereafter be acquired only by appropriation under the application, permit and license procedure as provided for in this title”) (emphasis added); *Idaho Power Co. v. Idaho Dept. of Water Res.*, 151 Idaho 266, 274, 255 P.3d 1152, 1160 (2011) “I.C. § 42-103 specifically requires an individual wishing to appropriate water to abide by the statutory procedures laid out in title 42 of the Idaho Code before obtaining a water right”) (emphasis added).

B. The Documents Issued by the Department Following the Court’s Decision in *Shokal v. Dunn* Simply Establish that the Parties and the Department Resolved their Differences without further Litigation

Juniper Station is not opposed to including in the record the *Proposed Order Modifying and Reaffirming Permit, In the Matter of Protest Against Approval of Application for Permit No. 36-7834 In the Name of Trout Co.* (March 20, 1986) (“Proposed Order”) and the *Final Order*

Modifying and Reaffirming Permit, In the Matter of Protest Against Approval of Application for Permit No. 36-7834 In the Name of Trout Co. (March 31, 1986) (“Final Order”). The Proposed Order and the Final Order simply explain what occurred on remand following the Court’s decision in *Shokal*, with the parties resolving their differences without further litigation. *Proposed Order* at 1-2; *Final Order* at 1-2. No matter what the parties and the Department did, those documents did not undo the Court’s decision; nor was the Court’s decision subsequently abrogated by the Legislature, *State v. Owens*, 158 Idaho 1, 10, 343 P.3d 30, 39 (2015) (“our Legislature knows how to abrogate decisions from this Court”); nor was Chapter 3, Title 42, Idaho Code subsequently amended with retroactive application, *Guzman v. Piercy*, 155 Idaho 928, 937, 318 P.3d 918, 927 (2014) (“a statute is not applied retroactively unless there is clear legislative intent to that effect”).

III. CONCLUSION

Based on the foregoing, Juniper Station is not opposed to including the documents noticed by the Hearing Officer, so long as the documents that are included as exhibits to the *Second Declaration of Chris M. Bromley* are also included in the record. In summary, forms are helpful for streamlining the Department’s work; however, in the event of conflict between a form and the law, it is the law that controls the outcome. Because of that, Chapter 3, Title 42, Idaho Code continues to apply to these proceedings, regardless of the 1967 amendments to Chapter 2, Title 42, Idaho Code.

RESPECTFULLY SUBMITTED this 21st day of August, 2026.

MCHUGH BROMLEY, PLLC



CHRIS M. BROMLEY

Attorneys for Juniper Station Farm, LLC

CERTIFICATE OF SERVICE

I certify that on this 21st day of August, 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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