

**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

**INTERLOCUTORY ORDER
DECIDING QUESTIONS OF LAW**

BACKGROUND

On October 3, 2025, Bowns Creek Properties LLC (“Bowns Creek”) filed a *Request for Extension of Time* with the Idaho Department of Water Resources (“Department”)¹ seeking to extend the time to submit proof of beneficial use for Permit 61-12096. On December 9, 2025, the Department approved the request, in part, extending the deadline for submitting proof of beneficial use for Permit 61-12096 by two years. On December 16, 2025, Juniper Station Farms LLC (“Juniper Station”) filed a *Request for Hearing*, challenging the Department’s approval of Bowns Creek’s proposed extension, and a *Petition to Cancel Permit*, asking the Department to cancel Permit 61-12096 pursuant to Chapter 3, Title 42, Idaho Code.

On December 18, 2025, Mayfield Townsite LLC (“Mayfield Townsite”) filed a *Request for Extension of Time* with the Department seeking to extend the time to submit proof of beneficial use for Permit 63-32499. On March 3, 2026, the Department approved the request, in part, extending the deadline for submitting proof of beneficial use for Permit 63-32499 by approximately three and a half years. On March 17, 2026, Juniper Station filed a *Request for Hearing*, challenging the Department’s approval of Mayfield Townsite’s proposed extension, and a *Petition to Cancel Permit*, asking the Department to cancel Permit 63-32499 pursuant to Chapter 3, Title 42, Idaho Code.

On December 18, 2025, Mayfield Ranch LLC filed a *Request for Extension of Time* with the Department seeking to extend the time to submit proof of beneficial use for Permit 63-35473. On March 3, 2026, the Department approved the request, in part, extending the deadline for submitting proof of beneficial use for Permit 63-35473 by approximately three and a half years. On March 17, 2026, Juniper Station filed a *Request for Hearing*, challenging the Department’s approval of Mayfield Ranch LLC’s proposed extension, and a *Petition to Cancel Permit*, asking the Department to cancel Permit 63-35473 pursuant to Chapter 3, Title 42, Idaho Code. On January 20, 2026, Mayfield Ranch LLC conveyed its interest in Permit 63-35473 and the land identified as the

¹ The term “Department” also includes the Idaho Department of Reclamation, the previous agency name of the Idaho Department of Water Resources.

authorized place of use for the permit to Mayfield Ranch Estates LLC (“Mayfield Ranch”). The Department updated its ownership records for Permit 63-35473 on July 14, 2026. Mayfield Ranch is now the current owner of record for Permit 63-35473.

On April 10, 2026, the hearing officer for the Department issued an order consolidating the three contested cases for the purpose of deciding common questions of law. The Department conducted a prehearing conference on April 28, 2026. During the conference, the parties requested an opportunity to identify and brief questions of law common to all three cases.

On May 12, 2026, pursuant to Rule 562 of the Department’s Rules of Procedure (IDAPA 37.01.01), the hearing officer asked the parties to file argument briefs addressing the following questions of law:

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

The hearing officer established a schedule for simultaneous briefing. On June 26, 2026, Juniper Station filed *Juniper Station Farm's Opening Brief* ("Juniper Station Opening Brief"), Bowns Creek filed *Brief of Bowns Creek Properties LLC in Response to Request for Briefs* ("Bowns Creek Opening Brief"), and Mayfield Ranch filed *Mayfield Ranch's Opening Brief* ("Mayfield Ranch Opening Brief"). On June 26, 2026, Mayfield Townsite sent emails stating that it concurs with and joins in the briefing submitted by Bowns Creek and Mayfield Ranch.

On July 17, 2026, Juniper Station filed *Juniper Station's Response Brief* ("Juniper Station Response"), Bowns Creek filed *Reply Brief of Bowns Creek Properties LLC in Response to Request for Briefs*, and Mayfield Ranch filed *Mayfield Ranch's Response Brief* ("Mayfield Ranch Response"). On July 17, 2026, Mayfield Townsite sent emails stating that it concurs with and joins in the briefing submitted by Bowns Creek and Mayfield Ranch.

Pursuant to Rule 602 of the Department's Rules of Procedure (IDAPA 37.01.01), "[t]he presiding officer may take official notice of . . . records of the [Department]." Consistent with rule 602, on July 21, 2026, the hearing officer took official notice of the permit approvals for Permits 13-2314 (active), 02-2336 (02-2336F active), 33-2131 (closed), and 73-7000 (closed) and two previous orders of the Department: *Proposed Order Modifying and Reaffirming [Permit 36-7834]* (issued March 20, 1986) and *Final Order Modifying and Reaffirming [Permit 36-7834]* (issued April 1, 1986). The hearing officer emailed the parties copies of the official notice documents and allowed the parties to file supplemental briefs "for the narrow purpose of contesting or rebutting the official notice documents or explaining how the official notice documents affect the arguments set forth in [the] opening and response briefs." July 21, 2026, Email from Hearing Officer to Parties.

On August 21, 2026, Juniper Station filed *Juniper Station's Supplemental Brief* ("Juniper Station Suppl. Brief"), Bowns Creek filed *Supplemental Brief of Bowns Creek Properties LLC In Response to Official Notice* ("Bowns Creek Suppl. Brief"), and Mayfield Ranch filed *Mayfield Ranch's Supplemental Brief Regarding Hearing Officer's Official Notice of Documents* ("Mayfield Ranch Suppl. Brief"). Also on August 21, 2026, Mayfield Townsite sent emails stating that it concurs with and joins in the briefing submitted by Bowns Creek and Mayfield Ranch.

RELEVANT STATUTES

Idaho Code § 42-204 states, in pertinent part:

(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. Sixty (60) days before the date set for the completion of the appropriation of water under any permit, the department shall forward a notice to the permit holder by certified mail at the permit holder's address of record of the date for such completion, which said notice shall

advise the permit holder of the necessity of submitting a statement of completion showing proof of beneficial use or a request for an extension of time on or before said date. The department may approve a timely request for an extension of time in the following circumstances:

(a) In cases where the permit holder is prevented from proceeding with construction, work, or application of water to full beneficial use by the permit holder's failure to obtain necessary consent or final approval or rejection from the federal government because of the pendency of an application for right-of-way or other matter within the jurisdiction of the United States, by state, county, city or other local government permitting or administrative action or process related to the permit holder's land or water development, or by litigation related to the permit holder's land or water development, the department of water resources, upon proper showing of the existence of any such condition, and being convinced that said permit holder is proceeding diligently and in good faith, shall extend the time so that the amount of time lost by such delays shall be added to the time given in the original permit, or in any subsequent grant of extension pursuant to paragraph (b), (c), (d), or (f) of this subsection, for each and every action required.

(d) The time for completion of works and application of the water to full beneficial use: (i) under any permit authorizing the diversion of two (2) or more cubic feet per second of water or the development or cultivation of one hundred (100) or more acres of land or (ii) under any permit that, when combined with another permit, authorizes the diversion of two (2) or more cubic feet per second of water or the development or cultivation of one hundred (100) or more acres of land, provided the permits have a common or combined diversion and distribution system, are owned by the same permit holder, and are approved within five (5) years of each other may be extended by the director of the department of water resources upon application by the permit holder for an additional period up to ten (10) years beyond the initial development deadline contained in the permit, or beyond a grant of extension pursuant to the provisions of paragraph (a) of this subsection, provided the permit holder establishes that the permit holder has exercised reasonable diligence and that good cause exists for the requested extension.

(e) In connection with permits held by the United States, or the Idaho water resource board, whether acquired as the original applicant by assignment or otherwise, the director of the department of water resources may extend the time for completion of the works and application of the water to full beneficial use for such additional period or periods of time as the director may deem necessary upon an extension request supported by a showing that

such additional time is required by reason of the status of plans, authorization, construction fund appropriations, construction, or any arrangements that are found to be requisite to completion of the construction of such works.

(f) In all other situations not governed by these provisions, the department may grant one (1) extension of time, not exceeding five (5) years beyond the date originally set for completion of works and application of the water to full beneficial use, or beyond any grant of extension pursuant to the provisions of paragraph (a) of this subsection, upon request for extension received on or before the date set for completion, provided good cause appears therefor.

...

(6) Subject to the provisions for reinstatement as provided in section 42-218a, Idaho Code, 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 or, in the case of a permit held by a municipal provider for reasonably anticipated future needs, the permit holder shall be deemed to have relinquished all rights under any portion of the permit that has not previously been licensed or for which an incremental statement of completion showing proof of beneficial use has not been submitted.

(7) The provisions of this section as it becomes effective on July 1, 2021, shall apply to all existing permits pending before the department of water resources on July 1, 2021. Permits pending before the department on July 1, 2021, are entitled to the maximum qualifying extension available pursuant to the provisions of this section regardless of whether the permittee received a prior extension under subsection (3)(f) of this section.

Idaho Code § 42-301 states:

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.

ANALYSIS

History of Idaho Code §§ 42-204 and 42-301

The opening brief filed by Mayfield Ranch includes a good summary of the history of Idaho Code §§ 42-204 and 42-301 and was supported by citations to and copies of the relevant Idaho session laws.² It states:

In 1903, the Idaho Legislature enacted the predecessor to Idaho's water permitting statute in Idaho Code Section 42-204. 1903 Idaho Sess. Laws, pp. 223-27 (H.B. No. 146, § 2). This statute included the original One-Fifth Work and Completion requirements for permits. 1903 Idaho Sess. Laws, p. 226 (H.B. No. 146, § 2). It also included a precursor to Section 42-301's cancellation provisions, which contained only the One-Fifth Work ground for cancellation. 1903 Idaho Sess. Laws, p. 227 (H.B. No. 146, § 3).

The permitting statute was amended in 1905 to add, among other things, the Commencement and Bonding requirements. 1905 Idaho Sess. Laws, p. 361 (S.B. No. 63, § 2). Thus, when Section 42-301 was enacted in 1909, Idaho's statutory permitting provisions required 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 [i.e., Completion and One-Fifth Work]

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 [i.e., Commencement].

² The *Mayfield Ranch Opening Brief* identifies shorthand references for certain terms used in the quoted section. The term "Commencement" refers to the phrase "the commencement of work" from Idaho Code § 42-301. The term "Bonding" refers to the phrase "the filing of a bond thereunder" from the same section. The term "One-Fifth Work" refers to the phrase "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" from the same section. The term "Completion" refers to the phrase "shall fail to complete the entire construction work within the time specified in his permit" from the same section.

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 [i.e., Bonding].

Id.

The One-Fifth Work and Bonding permit requirements remained substantially the same until the Idaho Legislature removed them in 1967. 1967 Idaho Sess. Laws, ch. 374, § 3, pp. 1089, 1091-92. (H.B. No. 293). Then, in 1982, the Idaho Legislature changed the Commencement requirement to one year from the date of permit issuance. 1982 Idaho Sess. Laws, ch. 62, § 1, p. 124 (S.B. No. 1246). The Legislature completely eliminated the Commencement requirement altogether in 2020. 2020 Idaho Sess. Laws, ch. 164, § 1, p. 479 (S.B. No. 1316). Section 42-204(3) continues to contain a Completion requirement, although as discussed below the Idaho Legislature has substantially changed it over time by allowing extensions. See I.C. § 42-204(3).

Mayfield Ranch Opening Brief at 7-9 (citations included in original).

Interpretation of Idaho Code § 42-301

The questions of law set forth in the *Request for Briefs* ask the parties to interpret Idaho Code § 42-301. The Idaho Supreme Court has established guidelines for statutory interpretation:

The objective of statutory interpretation is to derive the intent of the legislative body that adopted the act. Statutory interpretation begins with the literal language of the statute. Provisions should not be read in isolation, but must be interpreted in the context of the entire document. The statute should be considered as a whole, and words should be given their plain, usual, and ordinary meanings. It should be noted that the Court must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant. When the statutory language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and the Court need not consider rules of statutory construction.

3G AG LLC v. Idaho Dep't of Water Res., 509 P.3d 1180, 1190 (Idaho 2022) (citations omitted).

The opening briefs filed by Bowns Creek and Mayfield Ranch present similar, persuasive constructions of Idaho Code § 42-301. Based on the plain, usual, and ordinary meaning of the text of Idaho Code § 42-301, the statute can be organized as follows:

If the holder of a permit to appropriate the public waters

[A] shall fail to comply with the requirements of his permit as to

[1] the commencing of work or

[2] the filing of bond thereunder, or

[3] 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

[B] shall fail to complete the entire construction work within the time specified in his permit,

said permit may be cancelled and voided by the department of water resources as hereinafter provided at the instance of any person or persons holding any permit for the diversion of water from the same stream, such permit postdating the permit which is sought to be cancelled.

Idaho Code § 42-301 (paragraph enumeration and formatting changes added).

Idaho Code § 42-301 sets forth several reasons that a permit may be cancelled by the Department, upon a petition for cancellation from the holder of a junior permit. “The phrase ‘shall fail’ is used twice and, in both cases, is followed by one or more associated bases by which a permit holder can challenge another’s permit.” *Mayfield Ranch Opening Brief* at 5. “The double use of the phrase ‘shall fail’ creates two separate categories of grounds for cancellation: one for failure to ‘comply with the requirements of his permit,’ and the other for failure to complete construction ‘within the time specified in his permit.’” *Id.*

The critical language for this order is the language referring to the specific requirements of the permit being challenged. The phrases “requirements of his permit” and “time specified in his permit” are not ambiguous. They require the Department to look at the conditions of the permit being challenged to determine if they require commencement of work by a date certain, bonding, completion of part of the work by a date certain, or completion of the entire project by a date certain. If any of these requirements are not specifically addressed in the conditions of a permit, then the associated provision of Idaho Code § 42-301 is not applicable to the permit holder. Failure to commence work by a date certain, failure to file a bond, failure to complete one-fifth of the work in one-half of the time allowed for construction, or failure to complete the entire construction work within the time allowed are grounds for cancellation only if those requirements are set forth on the face of the permit being challenged. Idaho Code § 42-301 does not establish permit requirements independent of and in addition to the conditions listed on a permit.

Juniper Station has not provided persuasive arguments to support its assertion that Idaho Code § 42-301 establishes independent permit requirements. Juniper Station highlights two legal doctrines (the prohibition on establishing a water right in trespass and the prior appropriation doctrine) that apply to all permits, even if the underlying constitutional and statutory provisions are not referenced on the face of the permit. *Juniper Station Opening Brief* at 7-9. Juniper Station then asserts that “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.” *Id.* at 9. While it is true that a water right permit is governed by broad legal doctrines and common law principles, even if those doctrines and principles are not cited in the permit, Juniper Station does not address the plain language of Idaho Code § 42-301 that refers to the “requirements of [the] permit” and the “time specified in [the] permit.” In fact, the only times the phrase “requirements of [the] permit” is used in the Juniper Station briefs is when it provides a block quote of Idaho Code § 42-301, in its entirety. Juniper Station does not discuss the meaning or effect of the phrases “requirements of [the] permit” or “time specified in [the] permit.” This is a significant omission in Juniper Station’s proposed interpretation of Idaho Code § 42-301.

Juniper Station agrees that “Idaho Code § 42-301 does not establish an independent requirement for commencement of work” *Juniper Station Opening Brief* at 9. Juniper Station also acknowledges that “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” *Id.* at 10. Juniper Station argues that the phrase “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” from Idaho Code § 42-301 applies to all permits, regardless of whether that phrase is included in a specific condition of a permit. *Id.* at 9-13. If this is true, then all the other phrases from Idaho Code § 42-301 would also apply to all permits issued by the Department. It would mean that every permit holder would need to commence work by a certain date or file a bond. Unfortunately, Idaho Code § 42-301 does not provide any details about when a permit holder must commence work or any formula to calculate the amount of a bond.

Juniper Station asserts that, based on the placement of commas in Idaho Code § 42-301, all permit holders have the option of commencing work (at an unspecified time) or posting a bond (of an unspecified amount) and then must complete one-fifth of the construction work within one-half of the time allowed for construction. *Juniper Station Opening Brief* at 9-13. The problem with Juniper Station’s proposed interpretation of Idaho Code § 42-301 is that it does not explain why the phrases “requirements of [the] permit as to” and “time specified in [the] permit” are included in Idaho Code § 42-301. When interpreting a statute, the hearing officer “must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant.” *State v. Schulz*, 151 Idaho 863, 865, 264 P.3d 970, 972 (Idaho 2011). If Idaho Code § 42-301 establishes permit requirements independent of and in addition to any conditions listed on the permit, then the phrases “requirements of [the] permit as to” and “time specified in [the] permit” become meaningless.³ Such an interpretation must be rejected. There is no ambiguity in the statute. Idaho

³ Bowns Creek identifies another word in Idaho Code § 42-301 that would be meaningless if Juniper Station’s proposed interpretation were adopted. *Bowns Creek Opening Brief* at 3-4. Idaho Code § 42-301 begins: “If the

Code § 42-301 does not establish permit requirements independent of and in addition to the conditions listed on a permit.

The reason that Idaho Code § 42-301 does not contain specific details about commencement dates or bond amounts is because Section 42-301 relied on other code sections to establish those requirements and to provide the details about commencement dates and bonding. Prior to 1967, the specific details about commencement dates, bond amounts and completion of one-fifth of the work within one-half of the allowed time were all contained in Idaho Code § 42-204. The requirements were then applied to individual permits by the Department through water right conditions. Idaho Code § 42-301 simply created a process for challenging and cancelling a permit when a permit holder failed to comply with the conditions listed on their permit.

Juniper Station admits that “Idaho Code § 42-301 does not establish an independent requirement for commencement of work; rather, it works in tandem with I.C. § 42-204.” *Juniper Station Opening Brief* at 9. The same is true for all of the provisions in Idaho Code § 42-301. Sections 42-301 and 42-204 work in tandem. As Idaho Code § 42-204 has been amended and permit requirements have been removed, the utility of Idaho Code § 42-301 has been diminished. The Idaho Supreme Court recognized this connection between Idaho Code §§ 42-204 and 42-301 in the *Shokal v. Dunn* decision, cited several times by Juniper Station, and discussed below.

Relevance of *Shokal v. Dunn*

Throughout its briefing, Juniper Station quotes a sentence from *Shokal v. Dunn*, 109 Idaho 330, 707 P.2d 441 (Idaho 1985), to support its proposed interpretation of Idaho Code § 42-301. *See e.g., Juniper Station Opening Brief* at 14 (“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.” 109 Idaho at 336, 707 P.2d at 447). The case before the Idaho Supreme Court in *Shokal v. Dunn* did not involve a petition to cancel a permit under Idaho Code § 42-301. Further, the case was not a challenge to the commencement and completion of a water project. Therefore, the most that can be derived from this single sentence from *Shokal v. Dunn* is that the Idaho Supreme Court recognizes that Idaho Code § 42-301 relies on the permitting requirements set forth in Idaho Code § 42-204.

Juniper Station also cites documents from the record for the *Shokal v. Dunn* case, found in the Department’s records for water right 36-7834, to support its argument that Idaho Code § 42-301 creates an independent requirement that every permit holder must complete one-fifth of the work described in the permit within one-half of the time allowed for the completion of the project. *Juniper Station Response* at 10-11. Application 36-7834 was protested and the Department issued several orders in the contested case. In a *Memorandum Decision and Order*, issued on October 28, 1981, the Department set forth the following Conclusion of Law: “I.C. § 42-204 gives a permit holder up to five years to apply the water to beneficial use. Within the permit period, the permittee

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 . . .” The word “thereunder” only makes sense if the bond requirement is set forth on the face of the permit in question. If Idaho Code § 42-301 creates independent requirements, separate from the conditions listed on the permit, then there would be no purpose for the word “thereunder.”

must complete 1/5 of the work in the first 1/2 of the permit period. I.C. § 42-301.” *Memorandum Decision and Order [Application 36-7834]* at 25 (October 28, 1981) (available in the Department’s digital records for water right 36-7834). The *Memorandum Decision and Order*, which approved Permit 36-7834, also included the following approval condition: “Proof of construction of works and application of water to beneficial use shall be submitted to the department on or before October 27, 1986. The permit holder shall comply with I.C. § 42-301.” *Id.* at 19.

After additional litigation, that is not relevant to this contested case, the protestants to Application 36-7834 eventually appealed the Department’s decision to approve Permit 36-7834 to the Idaho Supreme Court. In its briefing before the Idaho Supreme Court, the Department argued:

It appears that DWR and its predecessor agencies have followed a wise policy in liberally construing the financial resources requirement of I.C. § 42-203 when applied to individuals or entities intending to apply the waters of the state to beneficial use on their own behalf. 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 (supp . 1983) provides in pertinent part:

Every holder of a permit which shall be issued under the terms and conditions of an application filed hereafter appropriating twenty- five (25) cubic feet or less per second must, within one (1) year from the date upon which said permit issues from the office of the department of water resources, 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.

In addition, I.C. § 42-301 provides as follows:

Permits contestable - When and by whom. - If the holder of a permit to appropriate the public waters shall fail to comply with the requirements of his permit as to the commencing of work or the filing of bond thereunder, or the completion of one fifth (1/5) of the construction work within one half (1/2) the time allowed for the entire completion of such construction work, or shall fail to complete the entire construction work within the time specified in his permit, said permit may be canceled 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 canceled.

For those applicants intending to put water to beneficial use on their own behalf, section 42-301 ensures that reasonable diligence will be exercised or else the permit may be canceled.

Respondent and Cross-Appellant Department of Water Resources Brief, Shokal v. Dunn (Idaho Supreme Court Docket No. 15227) (available in the Department's digital records for water right 36-7834 at idwr.idaho.gov).

Juniper Station asserts that these two documents from the *Shokal v. Dunn* case (the 1981 *Memorandum Decision and Order* and the Department's brief to the Idaho Supreme Court) confirm that the Department believed that all permit holders were required to complete one-fifth of the work described in a permit within one-half of the time allowed for construction, as an independent requirement of Idaho Code § 42-301, even after the 1967 amendment to Idaho Code § 42-204.

Pursuant to the Idaho Supreme Court's decision in *Shokal v. Dunn*, the case was remanded to the Department for further proceedings. Eventually, the protests against Application 36-7834 were resolved through a stipulation. The Department issued a *Final Order Modifying and Reaffirming Permit [36-7834]* on April 1, 1986. Of significance for this case, the order removed the reference to Idaho Code § 42-301, that existed in the original permit approval. It seems that the Department reconsidered its position on Idaho Code § 42-301 or realized that the arguments advanced in its briefing in *Shokal v. Dunn* were inconsistent with the plain language of Idaho Code § 42-301. The evidence from the records for water right 36-7834 and the *Shokal v. Dunn* case, heavily relied on by Juniper Station, are ambiguous, at best. Juniper Station has not identified a single permit issued after 1967 where the Department required the permit holder to complete one-fifth of the proposed construction work within one-half of the time allowed for construction, much less a pattern of the Department recognizing such a requirement.

Effect of the 1967 Amendment to Idaho Code § 42-204

Juniper Station's proposed interpretation of Idaho Code § 42-301 and its assertion that the Department agrees with that interpretation are refuted by the permit approvals issued by the Department. Juniper Station asserts that the 1967 amendment to Idaho Code § 42-204, removing the requirement that a permit holder post a bond and complete one-fifth of the proposed work within one-half of the time allowed for construction, had no effect on Idaho Code § 42-301 or permits issued by the Department. According to Juniper Station, even though those requirements were removed from Idaho Code § 42-204, the requirements continued to be applicable to all permits issued by the Department through the general applicability of Title 42, Idaho Code. *Juniper Station Opening Brief* at 7-9.

In the 1960s, the Department approved permits through a standard approval format, with blanks where Department staff could add the relevant dates and other information. For example, the Department used the following standard approval format in December 1966, prior to the 1967 amendment to Idaho Code § 42-204:

Approval of the State Reclamation Engineer

The number of this permit is _____

Recorded in Book _____ Page _____ Approved _____

This is to certify that I have examined the within application for 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 \$_____ to be filed on or before

Work to begin on or before _____ and to continue diligently and uninteruptedly to completion, unless temporarily interrupted by circumstances over which the permit holder has not control.

One-fifth of the work above specified to be completed on or before _____.

The whole of said work to be completed and beneficial use of water appropriated in accordance herewith, to be made and proofs offered on or before _____.

See, e.g., Permit 33-2131 (originally Permit No. G-33364, approved on December 13, 1966, underlines added to show blank spaces for data entry).

One year later, after the 1967 amendment to Idaho Code § 42-204, the Department adopted the following standard approval format:

ACTION OF STATE RECLAMATION ENGINEER

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____, and said application is hereby _____.

1. Approval of said application is subject to the following limitations and conditions:

a. SUBJECT TO ALL PRIOR WATER RIGHTS.

b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19__.

c. Other:

See, e.g., Permit 73-7000 (approved on December 26, 1967).

Consistent with the amendment of Idaho Code § 42-204, which eliminated the requirements that permit holders post a bond and complete one-fifth of the proposed work within one-half of the time allowed for construction, the Department removed the references to bonding and one-fifth progress condition from its standard approval language. If, as Juniper Station asserts, those provisions continued to apply to all permits, regardless of permit conditions, there would be no reason for the Department to remove those elements from its standard permit approval language. If, as Juniper Station asserts, Idaho Code § 42-301 creates an independent requirement that permit holders complete one-fifth of the proposed work within one-half of the time allowed for construction, then there would be no reason for the Department to remove those elements from its standard permit approval language.

While it is true that an agency form cannot modify the law upon which the form is based, the changes made to the Department's permit approval conditions provide some insight into how the Department interpreted and implemented the 1967 amendments to Idaho Code § 42-204. Juniper Station asserts that the Department continued to apply the one-fifth work provision to all permit holders, even after the provision was removed from Idaho Code § 42-204 in 1967. *Juniper Station Response* at 10. The change in the Department's approval conditions refutes that assertion.

In its supplemental brief, Juniper Station quotes an order of the Department which was sent to all permit holders shortly after the 1967 amendment to Idaho Code § 42-204 became effective. *Juniper Station Suppl. Brief* at 6. The order revised the method for providing proof of completion of a project. *Id.* Permit holders were no longer required to file proof of completion of works, because that provision had been removed from Idaho Code § 42-204. *Id.* Instead, permit holders were only required to submit proof of beneficial use. *Id.* The order reminded permit holders 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” *Id.* The Department's order sent to permit holders in 1967 is consistent with amendments to Idaho Code § 42-204 and is consistent with the conclusions of law set forth in this order. Because pre-1967 permits included a condition on the face of the permits requiring permits holders to complete one-fifth of the construction work within one-half of the time allowed for construction, the permits were still bound by those conditions. Because the pre-1967 permits included these work progress requirements on the face of the permits, the permits were subject to cancellation under Idaho Code § 42-301 if the permit requirements were not satisfied.

Ongoing Utility of Idaho Code § 42-301

Prior to 1967, the Department included conditions on permits requiring some permit holders to hold bonds and requiring permit holders to complete one-fifth of the construction work within one-half of the time allowed for completion of the project. *See, e.g.,* Permit Approval 33-2131. As noted above, Idaho Code § 42-204 was amended in 1967 to remove the bonding requirement and the construction progress requirement. Therefore, as of 1967 the Department ceased adding those requirements to permits through conditions. *See, e.g.,* Permit Approval 73-7000.

Consistent with the requirements of Idaho Code § 42-204, as the statute existed prior to 2020, the Department included the following condition (“Condition 26A”) on many permits issued prior to 2020:

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.

As noted above, Idaho Code § 42-204 was amended in 2020 to remove the requirement that permit holders commence construction within one year of the permit being issued and proceed diligently to completion of the project. Therefore, as of 2020, the Department stopped using Condition 26A on new permits.

The various amendments to Idaho Code § 42-204, eliminating several of the requirements referenced in Idaho Code § 42-301 has not yet rendered Section 42-301 obsolete. As of the date of this order, there are two active permits⁴ in the records of the Department that required the permit holders to post bonds or to complete one-fifth of the work specified in their permits by a date certain.⁵ Similarly, as of the date of this order, there are still several active permits in the records of the Department, issued prior to July 1, 2020, that bear Condition 26A quoted above. In fact, all three permits at issue in this contested case bear Condition 26A. As long as there is at least one permit that bears a condition requiring a permit holder to post a bond, complete one-fifth of the work within one-half of the time allowed for the total construction, or to commence work by a date certain, Idaho Code § 42-301 will continue to have utility.

Juniper Station’s arguments related to post-1967 amendments to Chapter 3, Title 42 are irrelevant. Because there are still active permits in the state that require the permit holders to post bonds and complete one-fifth of the proposed work within one-half of the time allowed for construction, Idaho Code § 42-301 is not obsolete, or even partially obsolete. The Idaho Legislature had no reason eliminate Idaho Code § 42-301, in whole or in part, in 1986. Therefore, the fact that the Idaho Legislature did not eliminate or amend Idaho Code § 42-301 in 1986, when it amended other provisions of Chapter 3, Title 42, is of no significance to the questions presented in this case.

⁴ The reasons that these permits are still active are varied and complex and have no bearing on this case. For purposes of this order, it is sufficient to note that there are still active permits in the Department’s water right records that bear conditions requiring the permit holders to post bonds or to complete one-fifth of the work specified in the respective permits by a date certain.

⁵ Permit 13-2314 (originally Permit No. R-1162) is currently held by the Idaho Water Resource Board and was approved by the State Reclamation Engineer on September 17, 1963. By condition, Permit 13-2314 required the permit holder to post a \$1000 bond on or before November 17, 1963, to commence work on or before November 17, 1963, to complete one-fifth of the work specified in the permit on or before September 17, 1964, and to complete the entire project on or before September 17, 1965. Permit 02-2336F, a split portion of Permit 02-2336 (originally Permit No. 32129), is currently held by Cold Springs Project and bears the same conditions as the original permit. Permit 02-2336 was approved by the State Reclamation Engineer on November 13, 1964. By condition, Permit 02-2336 required the permit holder to post a \$1,000 bond on or before January 13, 1965, to complete one-fifth of the work specified in the permit on or before May 13, 1967, and to complete the entire project on or before November 13, 1969.

Bowns Creek asserts that “I.C. § 42-301 is no longer operative or applicable and has been superseded and replaced by the amended I.C. § 42-204.” *Bowns Creek Opening Brief* at 10-11. According to Bowns Creek, Idaho Code § 42-301 “may have remained applicable as to any permits issued prior to 1967 but is otherwise no longer applicable or relevant to permits issued subsequent to 1967.” *Id.* (underline in original). “Idaho Code § 42-301 has no applicability or utility to applications applied for and approved after the amendments in 1967.” *Bowns Creek Suppl. Brief* at 6. Bowns Creek acknowledges, however, that “[a]s to commencement of construction, I.C. § 42-204 has removed any specific requirements and thus only applicable requirements for commencement would be in the permit conditions themselves.” *Bowns Creek Opening Brief* at 13.

Mayfield Ranch takes a different position on the question of ongoing utility of Idaho Code § 42-301. Mayfield Ranch acknowledges: “[T]he Commencement provision in Section 42-301 presumably continues to have life since the requirement to commence work by a certain deadline remained in Section 42-204 until 2020 and some existing permits may have a work commencement date expressly stated.” *Mayfield Ranch Opening Brief* at 11. Mayfield Ranch also notes:

[T]he “ongoing application” of Section 42-301 is that its grounds for cancellation remain potentially applicable to permits that have Commencement, Bonding, One-Fifth Work, or Completion requirements. While today it is unlikely that many (if any) permits remain with Bonding or One-Fifth Work requirements (since those were eliminated from the permitting statutes back in 1967), it is not impossible that such permits exist. And there remain many permits with a Commencement requirement since that was only eliminated from the permitting statutes in 2020.

In sum, Section 42-301’s practical utility has diminished—and will continue to diminish over time—as the Idaho Legislature has eliminated permit requirements that are grounds for cancellation in the statute.

Mayfield Ranch Response at 12.

As these existing permits [13-2314 and 02-2336] 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.

Mayfield Ranch Suppl. Brief at 9

Because Mayfield Townsite concurred with and joined the briefing from both Bowns Creek and Mayfield Ranch, Mayfield Townsite’s position on this issue is unclear.

Contrary to the assertions from Bowns Creek, Idaho Code § 42-301 has not been rendered entirely obsolete, or even partially obsolete. Rather, the general applicability of the statute has been greatly diminished because of the changes to the Department’s permit conditions, which changes were adopted to comply with the amendments to Idaho Code § 42-204. As shown in the official

notice documents (Permits 13-2314 and 02-2336F), there are a few remaining permits that carry conditions requiring bonding and completion of one-fifth of the construction work within one-half of the time allowed for construction. Further, Idaho Code § 42-301 states that the holder of a junior water right can petition the Department to cancel a permit “[i]f 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.” All the permits at issue in this contested case bear conditions related to the “commencing of work.” Therefore, consistent with the plain language of Idaho Code § 42-301, Juniper Station may pursue a petition to cancel the permits under Idaho Code § 42-301 for failure to commence work within the respective time periods specified in the permit conditions. Whether a permit holder commenced work by the required date or whether there are delays “due to circumstances over which the permit holder had no control” are questions of fact that cannot be addressed in this order.

Completion of Entire Construction Work

Idaho Code § 42-301 authorizes the Department to cancel a permit if the permit holder “shall fail to complete the entire construction work within the time specified in his permit.” Prior to 1967, the Department included a condition on permits setting a date for the completion of the project construction. *See, e.g.* Permits 13-2314 and 02-2336 (permits include the phrase “The whole of said work to be completed on or before ____.”). Consistent with the amendments to Idaho Code § 42-204, the Department no longer includes conditions on permits to require the entire construction work to be completed by a certain date. Rather, the Department now requires a permit holder to submit proof of application of water to beneficial use by a specific date. If proof of beneficial use or a request for an extension of time to submit proof is not filed by the date specified in the permit, the permit lapses. Like the bonding, commencement, and work progress provisions of Idaho Code § 42-301, the work completion provision of Idaho Code § 42-301 still has some utility because there are still active permits in the Department’s water right records that include conditions requiring construction work to be completed by a certain date. Like the bonding, commencement, and work progress provisions of Idaho Code § 42-301, the construction work completion provision of Idaho Code § 42-301 only applies to permits that bear a condition requiring the entire construction work to be completed by a specific date. None of the permits at issue in this contested case bear such a condition. They only bear conditions about submitting proof of beneficial use.

CONCLUSIONS OF LAW

Idaho Code § 42-301 does not create independent duties or requirements for a permit holder separate from those listed on the face of a permit. A permit holder is only required to commence their project by a certain date, file a bond, complete one-fifth of their construction work within one-half of the time allowed for construction, or complete the entire construction work by a certain date if those requirements are specifically set forth in conditions of the permit. In this case, the permits in question do not include any conditions about bonding, completing one-fifth of the work within one-half of the time allowed for construction, or completing the entire construction work by a certain date. Therefore, the permits are not subject to challenge under Idaho Code § 42-301 for those provisions. The permits do, however, include conditions about the commencement of project construction. Therefore, the permits may be challenged under the “commencing of work” provision of Idaho Code § 42-301.

ORDER

The conclusions of law set forth above are hereby adopted in this contested case. The parties are restricted from providing additional evidence or argument to the hearing officer related to these conclusions of law.

Dated this 4th day of September 2026

A handwritten signature in black ink, appearing to read 'J. Cefalo', written over a horizontal line.

James Cefalo
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of September 2026, true and correct copies of the documents described below were served by the method indicated upon the following:

Document: Interlocutory Order Deciding Questions of Law

JUNIPER STATION FARM LLC MCHUGH BROMLEY PLLC CHRIS M BROMLEY: cbromley@mchughbromley.com CANDICE M MCHUGH: cmchugh@mchughbromley.com	☒ Email
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Courtesy copy to: Ada County Development Services (askinner@adacounty.id.gov)



Christina Henman
Administrative Assistant