

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF PERMIT)	PRELIMINARY ORDER DENYING
NO. 63-32061 IN THE NAME OF)	REQUEST FOR EXTENSION
AVIMOR PARTNERS LLC)	OF TIME
_____)	

This matter having come before the Idaho Department of Water Resources (“Department”) as a request for additional time to submit proof of beneficial use, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On October 6, 2008, the Department issued Permit No. 63-32061 (“Permit”) in the name of Avimor LLC (“Original Permit Holder”) authorizing the diversion of 5.00 cubic feet per second from ground water for municipal use within the public water supply system of Avimor LLC. A condition of permit approval required the permit holder to submit proof of beneficial use of water to the Department on or before August 1, 2013.
2. On December 13, 2010, the Department received an Assignment of Permit assigning ownership of the Permit from the Original Permit Holder to Avimor Partners LLC (“Permit Holder”).
3. On May 31, 2013, the Department notified the Permit Holder by certified mail that proof of beneficial use was due and instructed the Permit Holder of the steps to be taken to submit a *Statement of Completion for Submitting Proof of Beneficial Use* (“Proof”), or a *Request for Extension of Time* (“Extension Request”).
4. On July 12, 2013, the Permit Holder filed an Extension Request with the Department requesting an additional 10 years to submit Proof because “(1) the reduced housing market that occurred in 2008 through 2012 lessened the anticipated demand for municipal water supply ... and (2) the on-going studies of in-situ arsenic treatment at the Sandy Hill aquifer recharge site have not yet been completed.” The Department granted the Extension Request for 10 years for good cause and established a new proof of beneficial use due date of August 1, 2023.
5. On May 10, 2022, the Department received an Application for Amendment of Permit proposing to replace the Permit’s points of diversion in the SE¼NW¼ of Section 13, Township 05 North, Range 01 East and the SE¼NW¼ of Section 18, Township 05 North, Range 01 East with points of diversion in the SE¼SW¼, NW¼SE¼, and SW¼SW¼ in Section 8, Township 05 North, Range 01 East and SW¼NW¼ of Section 9, Township 05 North, Range 01 East, B.M.
6. On March 21, 2023, the Department approved the Application for Amendment of Permit. The amended permit retained the proof of beneficial use deadline of August 1, 2023.

7. On May 31, 2023, the Department notified the Permit Holder by certified mail that proof of beneficial use was due and instructed the Permit Holder of the steps to be taken to submit Proof or an Extension Request.
8. On July 21, 2023, the Permit Holder filed an Extension Request (“Second Extension”) with the Department requesting an additional nine years for development. The Second Extension included an Attachment to Request for Extension (“Attachment”) that describes the basis for the nine-year request.
9. The Permit Holder asserts the M3 Eagle LLC (“M3”) administrative proceeding (“M3 Decision”)¹ caused five years of delay because it created uncertainty over whether the Permit Holder could “own and operate a community water system and deliver municipal water.” Attachment at 2. The Permit Holder further asserts the Department’s decision in the proceeding meant that the Permit Holder could not be a municipal provider. Attachment at 2.
10. The Permit Holder asserts the lawsuit between the City of Eagle and Eagle Water Co. filed in 2019 caused a four-year delay because “the lawsuit rendered the service areas for these water utilities in flux”, and the utilities “have different design standards and specifications for their water systems ... which complicated planning and design.” Attachment at 2.
11. The Permit Holder also asserts that pending approval of a right-of-way from the U.S. Bureau of Land Management (“BLM”) caused delays in the construction of a primary production well and that the Permit Holder’s inability to obtain the right-of-way approval was the “genesis for Avimor’s request to add additional points of diversion to the permit east of Willow Creek Road.” Attachment at 3.
12. On February 15, 2024, the Department sent the Permit Holder a letter summarizing the Department’s position on the Second Extension and requesting additional information demonstrating the date the right-of-way application was filed with BLM and information about any subsequent decision by the BLM.
13. On April 4, 2024, Department staff met with representatives for the Permit Holder to discuss the Second Extension and the additional information necessary to support it. On May 9, 2024, the Department sent the Permit Holder notice that the deadline to submit supporting information was extended to July 1, 2024.
14. The Department has not received information demonstrating the specific length of delay caused by a pending application for right-of-way.

¹M3 Eagle LLC (“M3”) filed application no. 63-32573 proposing 23.18 cfs for reasonably anticipated future needs (“RAFN”) municipal use. The application was protested and a primary issue in the contested case was whether M3 qualified as a municipal provider entitled to a RAFN water right. In 2010 the Department decided M3 was not a municipal provider, could not obtain a permit for RAFN, and issued a permit for 3.28 cfs. M3 appealed the decision but later assigned the permit to the City of Eagle for RAFN use in 2012.

APPLICABLE STATUTES

Idaho Code § 42-204(3)(a) states:

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.

Idaho Code § 42-204(3)(d) states:

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.

Idaho Code § 42-204(6) states in relevant part:

[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 .

...

CONCLUSIONS OF LAW

1. The M3 decision found that M3 could not be granted a permit for Reasonably Anticipated Future Needs ("RAFN"). The Permit Holder sought and was granted the Permit for development of municipal use without a RAFN component. Therefore, the M3 decision was

not an impediment to the Permit Holder's ability to develop the Permit without connection to a municipality or other municipal provider.

2. The Permit Holder claims uncertainty regarding the service boundaries of other municipal providers caused delay due to unknown system design requirements. However, the Permit Holder obtained a permit for municipal use to develop a separate distribution system within the subdivision not in connection with the water delivery system of another municipality or municipal provider. The Permit Holder failed to demonstrate the inability to develop the Permit due to the actions of other water providers.
3. The Permit Holder failed to demonstrate the temporal extent of the delay caused by the pending approval of a right-of-way application from the BLM.
4. The Permit Holder failed to demonstrate it was prevented from construction and application of water to beneficial use by pending approval by a governmental or other permitting agency, or by related litigation pursuant to Idaho Code § 42-204(3)(a).
5. The Department has granted the maximum additional time beyond the initial development deadline possible pursuant to Idaho Code § 42-204(3)(d).
6. Pursuant to Idaho Code § 42-204, the Department cannot grant an additional extension request based on reasonable diligence and good cause.
7. The Department should deny the Second Extension.

ORDER

It IS HEREBY ORDERED that the Extension Request filed on July 21, 2023 for Permit No. 63-32061 in the name of Avimor Partners LLC is **DENIED**.

Dated this 21st day of August, 2026.

Shelley W. Keen

Shelley W. Keen
Deputy Director

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

\$50 fee

Received by KTRecpt No. C-116780Date 07/21/2023**RECEIVED****JUL 21 2023****REQUEST FOR EXTENSION OF TIME**

To provide additional time in which to submit proof of beneficial use for a water right permit

DEPARTMENT OF
WATER RESOURCES

The Idaho Department of Water Resources will consider this form a request that the permit holder(s) be granted an additional period of time under the provisions of Section 42-204, Idaho Code, in which to complete development of a water right and file proof of beneficial use of water. There is a **FILING FEE of \$50.00** to be included with this form when filed with IDWR.

Permit no. 63-32061Date proof is due August 1, 2023Name(s) of permit holder(s) Avimor Partners, LLCMailing address 18454 N. Mcleod Way City Boise State ID Zip 83714Telephone no. (208) 939-0343

Email _____

Describe what work has been completed toward the development of this water right:

If no work has been completed, show "none".

See attached.Costing \$ 50.00

The permit holder(s) has been unable to complete the remainder of the work for the following reasons:

See attached.Permit holder(s) request an extension for nine (9) year(s).Signature 
(If other than permit holder, Power of Attorney must be supplied)Date 7/20/23**ACTION OF THE DEPARTMENT OF WATER RESOURCES**

The Department has reviewed the explanation for delay and concludes the reason(s) for delay meets the requirements for approval of the Request for Extension of Time as provided by Section(s) 42-204 and/or 42-218, Idaho Code.

☐ **IT IS HEREBY ORDERED** that the permit is **REINSTATED** with the priority date advanced to _____, 20____.

☐ **IT IS HEREBY ORDERED** that the above request for extension of time is **APPROVED**, and the time within which to submit proof of beneficial use is extended to _____, 20____.

Signed this _____ day of _____, 20____

Shelley W. Keen, Chief
Water Allocation Bureau

ATTACHMENT TO REQUEST FOR EXTENSION

Permit No. 63-32061

Permit No. 63-32061 (“permit”) is for the diversion of 5.00 cfs of groundwater for municipal purposes for use at the Avimor planned community. The permit has a January 25, 2005 priority date and was approved by IDWR on October 6, 2008. Avimor requested an extension to develop the permit which was granted by IDWR on October 8, 2013. The permit was amended on March 21, 2023 to add additional points of diversion. Proof of beneficial use is currently due August 1, 2023.

Applicable Law

Avimor is seeking an extension of time to complete development of the permit pursuant to Idaho Code section 42-204(3)(a). Section (3)(a) provides:

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.

Avimor Has Been Working Diligently and in Good Faith to Develop the Permit

Avimor has been working diligently and in good faith to develop beneficial use of water under the permit following IDWR’s approved request for extension. Changes in the legal landscape have resulted in significant delays in Avimor’s ability to complete the planning of its potable water system, because the planning of the system is largely dependent upon the entity that will ultimately own and operate the system. Delays in planning of course have the ripple effect of delays in design, engineering and permitting of the system. Following the M3 proceeding, as discussed below, Avimor believed that Suez would be its water service provider and began working with Suez on design, engineering and planning that would enable Avimor to tie into Suez’s system. This arrangement may have negated the need for Avimor to drill additional wells. Unfortunately, not long after the M3 decision was published, City of Eagle and Suez were engrossed in a lawsuit that called into question Suez’s ability serve Avimor, and it was unclear for some time whether Avimor’s service provider would be City of Eagle, Eagle Water Company, or Suez. Ultimately,

it was determined that City of Eagle would be the water service provider, which necessitated starting from scratch on the design, engineering and permitting of Avimor's potable water system. Once it was determined that City of Eagle would be providing water service, Avimor has worked diligently to plan, design, and permit a system that meets City of Eagle standards. Since City of Eagle does not have an easy tie in like Suez, the planning, design and permitting for this system was much more complex (Avimor being located several miles from existing infrastructure) and requires Avimor to develop additional wells to service the system and obtain land use permitting and approvals that had not been contemplated to date (see discussion about BLM ROW below).

To date, construction of two (2) wells has been completed, seven (7) of the eight and one half (8.5) miles of watermain have been constructed, and over twenty million dollars (\$20,000,000) has been invested in construction of the community water system. Moreover, one hundred seventy-one (171) lots are anticipated to come online this year and Avimor expects to bring on another four hundred fifty (450) lots in the next two (2) years. Currently, the permit for which Avimor seeks an extension is the only authorization to supply water to these homes. Though Avimor has diligently and continuously pursued completion of the watermain and related infrastructure, numerous factors, outside its control, have contributed to delay. Numerous federal, state, and city approvals, pending litigation, the COVID 19 pandemic and related economic factors have caused delay in completing construction of the water system. The various forms of federal, state and city consent were not only necessary for Avimor to continue construction, but many informed the overall design and construction plan, the details of which had to be finalized before additional work could continue.

Delay Caused by State Approvals, Processes and Litigation

The M3 administrative proceeding, appeal, and related guidance cost Avimor more than **5 years of delay** and uncertainty, because it became unclear if Avimor would be able to own and operate a community water system and deliver municipal water. IDWR's decision in the M3 application ultimately found for the first time that M3 (and, by extension, similarly-situated Avimor) could not be a municipal water provider unless it has previously provided municipal water. "The interim director interprets the verb [qualifies] to mean that the applicant must be a municipal provider as defined by Idaho Code 42-202B(5) at the time the application is considered by the Department." *In the Matter of Application to Appropriate Water No. 63-32573 in the Name of M3 Eagle LLC* ("M3 Decision"), at 9-10 (IDWR Amended Final Order, Jan. 25, 2010). This order was appealed, *M3 Eagle LLC v. Idaho Dep't of Water Resources*, Case No. CVOC1003180, but the case was settled, and the appeal was dismissed. The M3 ruling is now memorialized in 2015 guidance issued by the Department. See Application Processing No. 74, Permit Processing No. 20, License Processing No. 13, Transfer Processing No. 29, at 5 (Mar. 16, 2015) (replacing Nov. 15, 2014, and Nov. 13, 2013, versions) ("2015 Weaver Memo").

Once it became clear that Avimor would need to look to an existing municipal provider to operate the community water system and began planning for that contingency, a dispute arose in 2018 between City of Eagle and Eagle Water Co. which delayed the planning of Avimor's water system yet again. In 2019, the City of Eagle filed a lawsuit against Eagle Water Co. over Eagle Water Co.'s planned sale to Suez (now Veolia). This lawsuit rendered the service areas for these water utilities in flux. The City of Eagle and Veolia have different design standards and specifications for their water systems, amongst other differences, which complicated planning and design. The

lawsuit settled in 2021, PUC approval of the settlement agreement which included parsing out service territories for Veolia and City of Eagle was completed in early 2022. In total, this litigation cost Avimor approximately **4 years of delay** and uncertainty.

Once the planning for the water system was complete, Avimor submitted a Water Master Plan to the Idaho Department of Environmental Quality on December 9, 2021. This Plan is required in order to plan and construct a community water system for future Avimor development. It took approximately three (3) months for the IDEQ to review and comment on the Water Master Plan. IDEQ approved the Water Master Plan on April 19, 2022. Approval of this plan is required before Avimor/City of Eagle can provide potable water to homes, and Avimor did not want to get too far the road with construction planning and related expenses until IDEQ had signed off on the Water Master Plan.

Delay Caused by Federal Government Approvals and Processes

One of the primary production wells identified as a point of diversion on the permit and anticipated to be the first production well inline in order to supply the Avimor community water system will be drilled west of Willow Creek Road. However, in order for that well to connect to the watermain, Avimor is required to seek and obtain a right-of-way from the U.S. Bureau of Land Management. A ROW application (SF-299) has been submitted but despite diligent efforts to obtain a ROW, no permanent ROW has been obtained. This delay is the genesis for Avimor's request to add additional points of diversion to the permit east of Willow Creek Road. An application was filed with the Department to add points of diversion on May 10, 2022 (amended to revise applicant name June 28, 2022), and approval was given by the Department on March 21, 2023.

Conclusion

Avimor has shown that it is entitled to a minimum of nine (9) years' extension of the deadline to submit proof of beneficial use based on the M3 application/litigation and the litigation involving City of Eagle, Eagle Water Co. and Suez (Veolia). This does not include the approximate two (2) year delay caused by the global COVID-19 pandemic, which resulted in unprecedented labor and materials shortages, and which further complicated Avimor's planning and development of the community water system. Avimor has been working with the City of Eagle to plan and construct the Avimor community water system and the parties have entered into a Water Service Agreement to memorialize City of Eagle water service to future Avimor development phases. Avimor seeks a 9-year extension to develop Permit No. 63-32061, or until such time as City of Eagle has acquired the water rights it needs to serve Avimor. City of Eagle expects to submit a RAFN application for permit to serve Avimor in the next few weeks.

Julianna Adams

From: Julianna Adams
Sent: Wednesday, September 9, 2026 3:20 PM
To: terry.scanlan@hdrinc.com; emalmen@perkinscoie.com
Cc: Julianna Adams
Subject: Preliminary Order Denying Request for Extension of Time for Water Right Permit 63-32061
Attachments: 63-32061 Preliminary Order Denying Request for Extension of Time.pdf

Hello

The attached Preliminary Order Denying Request for Extension of Time denial letter has been mailed to Avimor Partners LLC for the above referenced permit(s). You are receiving this notice because you are listed as a representative.

Attachment: 63-32061 Preliminary Order Denying Request for Extension of Time

Thank you,



IDAHO DEPARTMENT OF
WATER RESOURCES

Julie Adams | Technical Records Specialist I

322 E Front St, PO Box 83720, Boise, ID 83720

(208) 287-4945 | www.idwr.idaho.gov



IDAHO DEPARTMENT OF
WATER RESOURCES

322 E Front Street, Suite 648, Boise ID 83702 • PO Box 83720, Boise ID 83720-0098
Phone: 208-287-4800 • Fax: 208-287-6700 • Email: idwrinfo@idwr.idaho.gov • Website: idwr.idaho.gov

Governor Brad Little

Director Mathew Weaver

September 08, 2026

AVIMOR PARTNERS LLC
18454 N MCLEOD WAY
BOISE ID 83714

RE: Permit No. 63-32061

Dear Permit Holder(s):

The Department acknowledges receipt of your request for extension of time (extension request) for the permit referenced above. Additional extensions of time to develop beneficial use based on good cause pursuant to Idaho Code § 42-204(3)(f) cannot be approved.

Enclosed is a copy of an Order Denying Request for Extension of Time issued in response to the extension request you filed with the Department for this permit. The accompanying order is a PRELIMINARY ORDER issued by the Department pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01). It can and will become a final order without further action of the Department unless a party (1) petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date of the preliminary order as described in the attached information sheet.

It has also been ordered that the permit referenced above is relinquished and is of no further force nor effect.

Please contact the Northern Region office at (208) 762-2800 if you choose to apply for a new permit. Department forms are available on our website at www.idwr.idaho.gov.

Sincerely,

Julie Adams

Julie Adams
Technical Records Specialist 1

Enclosure(s)

c: SPF WATER ENGINEERING LLC – via email
ASHURST PERKINS COIE US LLP – via email

CERTIFICATE OF SERVICE

I hereby certify that on **September 09, 2026** I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (**PRELIMINARY ORDER DENYING REQUEST FOR EXTENSION OF TIME**) to the person(s) listed below:

RE: Preliminary Order in the Matter of Permit No. **63-32061**

**SPF WATER ENGINEERING LLC
C/O TERRY SCANLAN – via email
412 E PARKCENTER BLVD STE 100
BOISE ID 83706-6659**

**AVIMOR PARTNERS LLC
18454 N MCLEOD WAY
BOISE ID 83714**

**ASHURST PERKINS COIE US LLP
C/O ERIKA A MALMEN – via email
1111 W JEFFERSON ST STE 500
BOISE ID 83702-5391**



Julie Adams
Technical Records Specialist 1

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

The accompanying document is a “**Preliminary Order**” issued by the Idaho Department of Water Resources (“Department”) pursuant to Idaho Code § 67-5243. **This preliminary order can and will become a final order without further action of the Department, unless a party petitions for reconsideration, petitions for review, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

(See Idaho Code § 67-5243(3))

Any party may file a petition for reconsideration of this preliminary order with the Department within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The presiding officer will issue a written order disposing of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law.

PETITION FOR REVIEW (EXCEPTIONS)

(See Idaho Code § 67-5245)

Within fourteen (14) days after: (a) the service date of this preliminary order, (b) the service date of a denial of a petition for reconsideration of this preliminary order, or (c) the failure of the presiding officer to dispose of a petition for reconsideration of this preliminary order within twenty-one (21) days, any party may petition the Director in writing to review any part of this preliminary order by filing exceptions, and any supporting brief, with the Department.¹ Any parties opposing the exceptions shall have fourteen (14) days from the service date of the exceptions to file a brief. If the Director determines that oral argument is necessary, the Director will provide reasonable notice to the parties of the place, date, and hour for the argument.

The Director will issue a final order on exceptions within fifty-six (56) days of receipt of the final written brief or oral argument, whichever is later, unless extended for good cause. The Director may remand the matter for or hold an evidentiary hearing if further factual development of the record is necessary before issuing a final order.

REQUEST FOR HEARING

(See Idaho Code § 42-1701A(3))

Unless the right to a hearing before the Director or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order,

¹ The Director may decide to review this preliminary order upon his own motion. Should the Director decide to do so, the Director will provide written notice to the parties within the period the parties are allowed to petition the Director for review of the preliminary order.

or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the Director to contest the action. The person shall file with the Director, within fifteen (15) days after receipt of written notice of the action issued by the Director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the Director and requesting a hearing. **Note: The request must be received by the Department within this fifteen (15) day period.**

CERTIFICATE OF SERVICE

(See IDAPA 37.01.01.053, 37.01.01.202)

All documents filed with the Department in connection with a petition for reconsideration, petition for review, or a request for hearing of this preliminary order shall be served on all other parties to the proceeding in accordance with Rules 53 and 202 of the Department's Rules of Procedure.



IDAHO DEPARTMENT OF
WATER RESOURCES

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Governor Brad Little

Director Mathew Weaver

May 9, 2024

AVIMOR PARTNERS LLC
C/O ERIKA E MALMEN
PERKINS COIE
1111 W JEFFERSON ST SUITE 500
BOISE ID 83702-5391

Re: Water Right Permit No. 63-32061 – 2023 Request for Extension of Time to Submit Proof of Beneficial Use – Additional Time to Respond to IDWR’s February 15, 2024 Letter

Dear Ms. Malmen:

The Idaho Department of Water Resources (“IDWR”) is reviewing Avimor Partners, LLC’s *Request for Extension of Time to Submit Proof of Beneficial Use for Permit No. 63-32061* (“2023 Extension Request”) received July 21, 2023. On February 15, 2024, IDWR requested Avimor Partners, LLC (“Avimor”) provide additional evidence to support its 2023 Extension Request. That request included an April 1, 2024 response deadline. IDWR extended that deadline to May 15, 2024. On April 23, 2024, Avimor submitted *Water Right Permit 63-32061 – Monitoring and Data Submittal Plan* and a request to extend the deadline to submit additional information in response to IDWR’s February 15, 2024 request. Avimor requested IDWR extend the deadline to July 1, 2024.

IDWR has not yet reviewed Avimor’s *Water Right Permit 63-32061 – Monitoring and Data Submittal Plan*. However, per Avimor’s request, IDWR extends the deadline to July 1, 2024 to give Avimor additional time to submit further information in response to IDWR’s February 15, 2024 request. If this is an insufficient amount of time, Avimor may request an alternative deadline before July 1, 2024. If you have any questions or wish to discuss further, please call me at (208) 287-4951 or email at angela.hansen@idwr.idaho.gov.

Sincerely,

Angela M. Hansen
Water Allocation Bureau Chief

Cc: Avimor Partners, LLC
Erika E. Malmen via email emalmen@perkinscoie.com
Sarah Hugues via email shugues@perkinscoie.com

Hansen, Angela

From: Malmen, Erika E. (Perkins Coie) <EMalmen@perkinscoie.com>
Sent: Tuesday, April 23, 2024 1:15 PM
To: Hansen, Angela; Baxter, Garrick
Cc: Kim, Tae (Perkins Coie)
Subject: Avimor/63-32061
Attachments: 2024-04-23 Response Letter Regarding Additional Time to Respond.pdf; 2024-04-23 Letter to IDWR re Well Monitoring Plan.pdf

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Good afternoon, Angela & Garrick-

Thank you both very much for meeting with me and Avimor folks on April 9. Please find attached (1) a request for additional time to respond to IDWR's request for additional evidence to support Avimor's request for extension of time to submit proof of beneficial use and (2) cover letter and well monitoring plan as required by 63-32061, condition no. 14. Please do not hesitate to reach out with any questions. Best, Erika

Erika Malmen | Perkins Coie LLP

PARTNER

1111 West Jefferson Street Suite 500

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E. EMalmen@perkinscoie.com

PERKINScoie

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NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

RECEIVED

APR 23 2024

DEPT. OF WATER RESOURCES

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April 23, 2024

Erika E. Malmen
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Via Email

Angela M. Hansen
Water Allocation Bureau Chief
Idaho Department of Water Resources
322 E. Front Street, Suite 648
Boise, ID 83702
Email: angela.hansen@idwr.idaho.gov

Re: Water Right Permit No. 63-32061 – 2023 Request for Extension of Time to Submit Proof of Beneficial Use – Additional Time to Respond to IDWR’s February 15, 2024 Letter

Dear Ms. Hansen:

Thank you for meeting with us on April 9, 2024, to discuss Avimor’s request for extension of time to submit proof of beneficial use and the Idaho Department of Water Resources (“IDWR”) request for additional evidence. Avimor appreciates your input and found the meeting very helpful in terms of the types of information IDWR may consider when evaluating Avimor’s request for extension.

It may take Avimor some time to gather and distill some of the information in the backfile as well as review its own files in order to provide additional evidence to support an extension. In that vein, I am requesting that IDWR extend the deadline to submit additional information to July 1, 2024. Please let me know if this deadline is acceptable to IDWR. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Erika E. Malmen

Cc: Garrick Baxter, Deputy Attorney General, State of Idaho
Garrick.baxter@idwr.idaho.gov

RECEIVED

APR 23 2024

DEPT. OF WATER RESOURCES

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April 23, 2024

Erika E. Malmen
EMalmen@perkinscoie.com
D. +1.208.343.3434
F. +1.208.343.3232

Via Email

Angela M. Hansen
Water Allocation Bureau Chief
Idaho Department of Water Resources
322 E. Front Street, Suite 648
Boise, ID 83702
Email: angela.hansen@idwr.idaho.gov

**Re: Avimor Partners, LLC
Water Right Permit No. 63-32061**

Dear Ms. Hansen:

Please find enclosed Avimor's Well Monitoring and Data Plan prepared for Permit to Appropriate Water no. 63-32061. This Plan is required by Permit Condition no. 14. Once you have had an opportunity to review, please confirm the Plan is acceptable to the Idaho Department of Water Resources and sufficiently satisfies Condition no. 14.

Should you have any questions, please do not hesitate to contact me.

Sincerely,



Erika E. Malmen

Enclosure
EEM:kh

Cc: Garrick Baxter, Deputy Attorney General, State of Idaho
Garrick.baxter@idwr.idaho.gov



Memorandum

Date: Tuesday, April 23, 2024
Project: Avimor Development
To: Idaho Department of Water Resources
From: Jason Thompson, P.E.
Subject: Water Right Permit 63-32061 – Monitoring and Data Submittal Plan

Introduction

This Memorandum comprises the Monitoring and Data Submittal Plan ("Plan") for Permit to Appropriate Water no. 63-32061 ("permit"), pursuant to permit Condition no. 14. The permit authorizes the diversion of 5 cfs of groundwater from four points of diversion for municipal purposes. Condition no. 14 of the permit states "[p]rior to diversion of water under this right, the permit holder shall prepare and submit an ongoing monitoring and data submittal plan, acceptable to IDWR, to demonstrate that the ground water diverted from authorized points of diversion is tributary to the Payette River drainage."

Background

In a letter dated February 18, 2005, the Idaho Department of Water Resources ("IDWR") requested additional information on the original permit application. A copy of this letter is provided in Attachment A.

In a response letter from SPF Water Engineering ("SPF") dated March 3, 2005, a contour map of groundwater levels was provided based on water levels in wells in the area of the proposed permit points of diversion ("PODs"). At the time of the letter, six PODs were proposed; the four easterly PODs were ultimately approved before the permit was approved. SPF concluded that the four PODs were "clearly tributary to the Payette River". This conclusion is acknowledged in the final order on permit 63-32061 prepared by IDWR, dated August 7, 2008. SPF's response and contour map are included in Attachment A.

Subsequent to the issuance of the original permit, two of the points of diversion originally located in the SENW S13 and SENW S18 were transferred to the SESW S8 and NWSE S8.

Given the proximity of the new points of diversion to two of the original PODs, the conclusions of SPF's March 3 letter remain valid.

To date, two water supply wells have been constructed by Avimor pursuant to the permit, referred to as Well 1 and 2. The water system to deliver water from these wells to customers is currently under construction, with an expected completion date of Spring 2024. Once the water system is completed, it will be owned and operated by the City of Eagle ("City"). However, Avimor has assumed primary responsibility for maintaining the permit and implementing the Plan.

Monitoring Plan

The proposed monitoring plan proposes to collect and analyze data to meet the requirements of permit Condition no. 14. This plan utilizes water-level measurements from the two Avimor water supply wells, three Sandy Hill Aquifer wells, and data already collected by IDWR from 29 existing monitoring wells in the vicinity of the Avimor wells. Given the large number of IDWR-monitored wells in the vicinity of the Avimor wells, it is possible to meet Condition no. 14 and develop groundwater contours maps using these wells in combination with the Avimor and Sandy Hill Aquifer wells. Table 1 includes relevant information about the Avimor and Sandy Hill wells. Table 2 includes relevant information about the IDWR wells. A map of the Avimor, Sandy Hill, and IDWR wells is included as Figure B-1 in Attachment B.

Table 1. Avimor and Sandy Hill Well Information

Well Name	Station Latitude	Station Longitude	Ground Elevation (ft)	Total Depth (ft BGS)
Avimor Well 1	43.77925	-116.37343	2867	640
Avimor Well 2	43.78077	-116.36953	2886	630
Avimor Well 1 (Sandy Hill)	43.79540	-116.27790	3600	270
UWID-2 (Sandy Hill)	43.79556	-116.27818	3602	240
MW-2 (Sandy Hill)	43.79482	-116.28310	3603	293

The IDWR wells are equipped with water-level transducers for continuous measurements. Manual water-level measurements are also collected from these wells. The data from the IDWR wells appears to be regularly downloaded and made available through the IDWR Groundwater Data Portal. If IDWR stops measuring any of these wells, then a replacement well and/or Plan may be needed, depending upon the well location and importance for determining groundwater flow direction.

The Sandy Hill wells are monitored by the Avimor Water Reclamation Company ("AWRC") and equipped with water-level transducers for continuous measurements. Manual water-level measurements are also collected from these wells. The data from these wells are downloaded on a quarterly basis. This data will be requested from AWRC every quarter.

Table 2. IDWR Well Information

Station Name	Station Latitude	Station Longitude	Ground Elevation (ft)	Total Depth (ft BGS)
05N 01E 19ABD1	43.75917	-116.38111	2753	810
05N 01E 26AAB1	43.74805	-116.29694	2800	142
05N 01E 29DCC2	43.73607	-116.36148	2718	410
05N 01E 31CBA1	43.72694	-116.39027	2612	123
05N 01E 34ADD1	43.72833	-116.31778	2670	54
05N 01E 34DBB1	43.72796	-116.32308	2680	175
05N 01W 15CCC4	43.76556	-116.45222	2783	446
05N 01W 16CCC1	43.76602	-116.47078	2726	303
05N 01W 21ACD1	43.75841	-116.46045	2801	450
05N 01W 23ABA1	43.76417	-116.41861	2810	334
05N 01W 23CAD1	43.75528	-116.425	2716	815
05N 01W 27BDA2	43.74694	-116.4375	2662	672
05N 01W 27BDA3	43.74694	-116.4375	2662	672
05N 01W 28DDC1	43.73677	-116.45746	2610	283
05N 01W 28DDC3	43.73677	-116.45746	2610	425
05N 01W 28DDC5	43.73677	-116.45746	2610	144
05N 02E 31ACC1	43.72972	-116.26167	2827	230
06N 01W 18DAA2	43.85663	-116.49299	2371.9	31
06N 01W 21CCC1	43.83611	-116.4725	2919	674
06N 01W 29DCD1	43.82167	-116.47862	2830	---
05N 01W 32CCB2	43.72333	-116.49315	2550	---
05N 01W 32CCB4	43.72333	-116.49315	2550	---
05N 01W 32CCB6	43.72333	-116.49315	2550	---
05N 02W 29BBC2	43.74766	-116.61236	2505	180
05N 02W 35DCB1	43.72424	-116.53995	2525	---
05N 03W 02CCD1	43.79375	-116.66886	2560	386
05N 03W 13DDC1	43.76468	-116.63636	2470	235
06N 03W 36ABA1	43.82092	-116.63896	2592	395
06N 03W 36ABA2	43.82165	-116.63875	2595	786

Once the Avimor water system is completed, it will be owned and operated by the City, including the supply wells. The wells will be equipped with water-level transducers connected to the City Water Department SCADA system. Water-level data from these wells will be requested from the City every quarter.

The monitoring program is proposed for nine (9) years, to coincide with the *Request for Extension of Time to Submit Proof of Beneficial Use for Permit No. 63-32061* (2023 Extension Request), prepared by Avimor and received by IDWR on July 21, 2023. Initiation of the plan is contingent upon approval of the extension. If an extension is approved but for a time shorter than nine (9) years, then the monitoring program will be adjusted.

Data Submittal Plan

Avimor assumes responsibility for compliance with the Plan, including submitting an annual report to IDWR. Water-level data from the IDWR wells will be downloaded on a quarterly basis from the IDWR Groundwater Data Portal. Water-level data from the Avimor and Sandy Hill wells will be requested from the City and AWRC, respectively, on a quarterly basis. All available water-level data will be analyzed to develop water surface elevations, and then a groundwater surface contour map will be created, similar to Figure 1 in Attachment A. Based on this contour map, groundwater flow direction at the Avimor PODs will be determined.

Quarterly water-level data, contour maps, and conclusions regarding groundwater flow direction will be presented to IDWR in an annual report, expected to be delivered by March 1 of the following year.

Attachment A
Correspondence



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

February 18, 2005

TERRY SCANLAN P E
SPF WATER ENGINEERING LLC
600 E RIVER PARK LN STE 105
BOISE ID 83706

Re: Application for Permit No. 63-32061 for SunCor Idaho LLC

Dear Terry:

SunCor's second application is noted above. Processing of the application can continue as outlined in this letter. Two categories of information are discussed for your consideration.

Information needed prior to legal notice

- ✓ *power* • The application lists one of the points of diversion in SENE Section 23. The map locates this point in SWNE Section 23. The application should be amended to correct this discrepancy. Perhaps the easiest way to do that is by making the correction on the original application form.
- ✓ • A "Request to Process" form is needed. The last option on that form is probably the most appropriate for this situation. A blank form is enclosed.

Information needed after legal notice but prior to department decision

Most of the information normally sought for this type of application was already provided in SunCor's previous application (63-31966). The following information is needed before the department can issue a decision on Application 63-32061.

- ✓ • Tributary - Is the source tributary to the Payette River or to the Boise River? Your previous information in Application 63-31966 hinted that the well field proposed for Application 63-32061 might include ground water tributary to the Payette River.
- ✓ • Water Supply - Please provide information that the amount of water proposed in the application is available from the aquifer on a sustainable basis.

Application for Permit No. 63-32061

February 18, 2005

Page 2

- ✓
- Injury - What design and/or operation features will be used to minimize impacts on other water rights with respect to the area selected for drilling new wells?

The application can be advertised once the necessary information under the first topic is provided. Please submit the remaining information under the second topic within ninety (90) days from the date of this letter. Alternately, the applicant can request an interruption of processing for up to six (6) months if more time is needed. The application will be removed from IDWR records without a timely written reply.

Please let me know if you have any questions. Thank you for your attention to this matter.

Sincerely,



Steve Lester
Water Rights Supervisor

Enclosure



RECEIVED

MAR 07 2005

WATER RESOURCES
WESTERN REGION

March 3, 2005

Steve Lester
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

Subject: Application for Permit No. 63-32061- SunCor Idaho, LLC

Dear Steve:

This letter is a response to the five bullet points listed in your letter of February 18, 2005.

1. Thanks for catching our error on the point of diversion description. You are correct. The point of diversion should be described as the SWNE of Section 23 rather than the SENE of Section 23. I'll come in to the office and make the change.
2. I have enclosed a signed "Request to Process" form.
3. With regard to groundwater flow direction, I have enclosed a contour map of groundwater levels that we prepared based on water levels in wells in the area between Eagle and Pearl (Figure 1). Of our six proposed diversion points shown on the contour map, the four northernmost points are clearly tributary to the Payette River. The two southernmost points of diversion (in Section 23) are more likely tributary to the Payette River than the Boise River, but the data are not adequate to say with absolute certainty.
4. We anticipate that the water proposed for appropriation will be available from the aquifer on a sustainable basis. Under a highest use scenario (continuous pumping of 5 cfs, 24 hours per day, 365 days per year), the total volume pumped under the permit could be 3,620 acre feet per year. The basin area tributary to the aquifers proposed for appropriation appears to be the Willow Creek drainage above Highway 16, and the Big Gulch and Little Gulch drainages north of the boundary between townships 4 North and 5 North. Total annual precipitation in this area is approximately 70,000 acre feet (Figure 2). If we assume that 5 percent of the annual precipitation within this area is available for groundwater recharge, the precipitation will supply 3,500 acre feet to the aquifer annually. Recharge will occur as direct infiltration of precipitation on lands above the aquifer, leakage from the stream beds of Willow Creek, Big Gulch, and Little Gulch, leakage from the reservoir on Willow Creek, and ground water inflow from the tributary basin to the north.

SCANNED

Other potential sources of recharge to the aquifer are leakage from the Farmers Union Canal to the south and the Black Canyon Canal to the northeast. Both canals are perched above the water table, so we assume that they leak and provide significant recharge to this area. The bottoms of both canals are 50 to 100 feet above the water table, so additional groundwater pumping will not induce additional losses.

The groundwater contours demonstrate that recharge that reaches the aquifer cannot flow south toward the Boise Valley. As a result, recharge from the upland areas in the Willow Creek drainage is captured by the aquifer beneath Willow Creek and Big Gulch, with discharge northwesterly toward the Payette River Valley.

Additional information that indicates that groundwater is available for appropriation in this area is water-level monitoring at the Lynn Ranch along Willow Creek between Highway 16 and the confluence of the North Fork and South Fork Willow Creek. Water levels have been monitored at the Lynn Ranch (T5N, R1W, Section 3) since 1993 with no evidence of water level decline (Table 1).

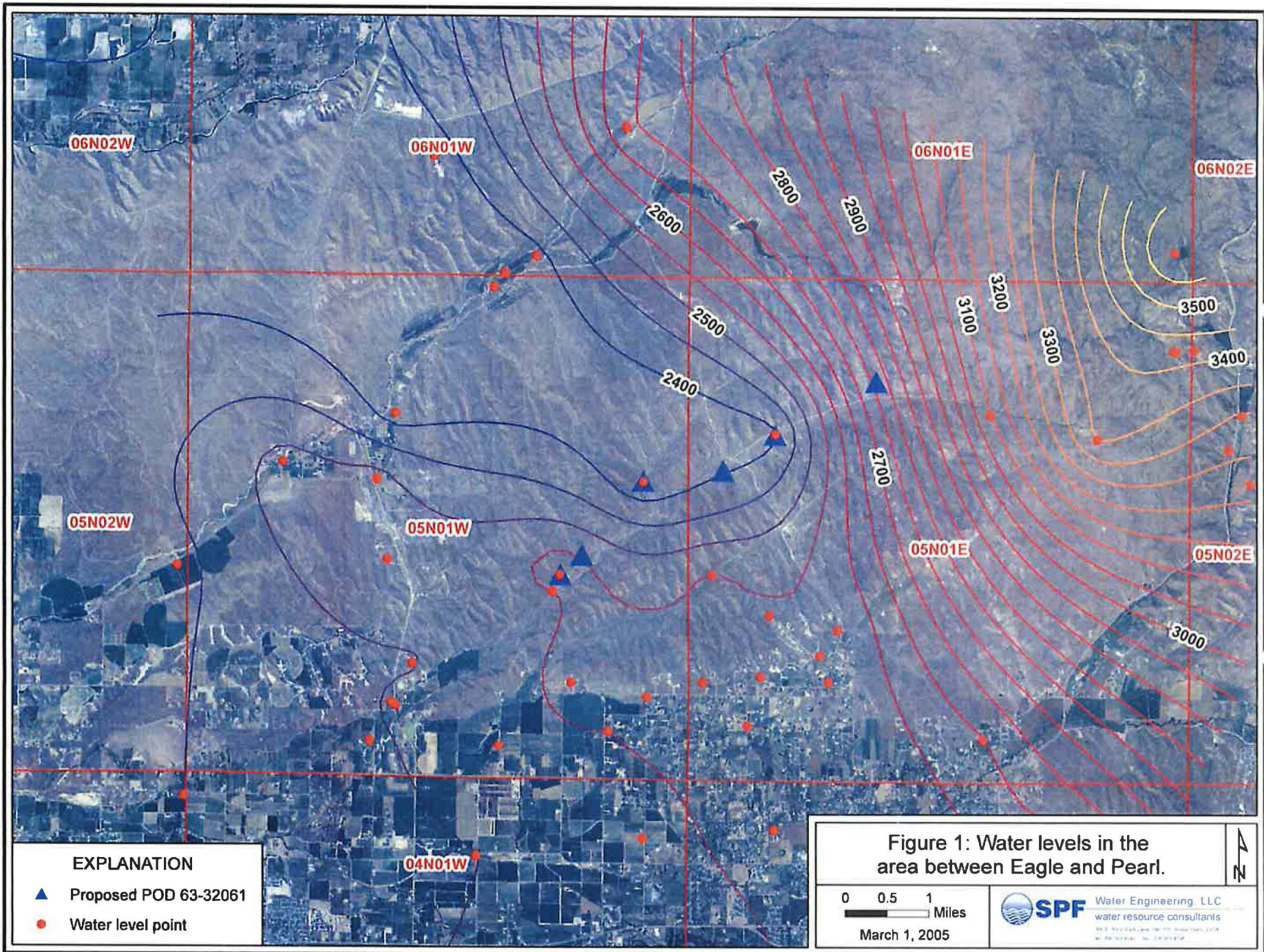
5. With regard to methods to avoid injury to other water rights, we believe that water-level monitoring is the most appropriate action. SunCor has existing test wells in the area that can be utilized for monitoring purposes. Note that there are essentially no existing wells or groundwater rights in the near vicinity of the proposed points of diversion, except for stockwater wells associated with Spring Valley Ranch. As a result, direct well interference should not be an issue. However, water-level monitoring is appropriate to ensure that long-term water-level decline is not occurring under the proposed permit or future permits.

Sincerely,



Terry M. Scanlan, P.E.

Cc: Bob Taunton – SunCor Idaho, LLC
Al Barker – Barker Rosholt Simpson



Attachment B
Map of Proposed Monitoring Wells



IDAHO DEPARTMENT OF
WATER RESOURCES

322 E Front Street, Suite 648, Boise ID 83702 • PO Box 83720, Boise ID 83720-0098
Phone: 208-287-4800 • Fax: 208-287-6700 • Email: idwrinfo@idwr.idaho.gov • Website: idwr.idaho.gov

Governor Brad Little

Director Mathew Weaver

March 29, 2024

AVIMOR PARTNERS LLC
C/O ERIKA E MALMEN
PERKINS COIE
1111 W JEFFERSON ST SUITE 500
BOISE ID 83702-5391

Re: Water Right Permit No. 63-32061 – 2023 Request for Extension of Time to Submit Proof of Beneficial Use – Additional Time to Respond to IDWR's February 15, 2024 Letter

Dear Ms. Malmen:

The Idaho Department of Water Resources ("IDWR") is reviewing Avimor Partners, LLC's *Request for Extension of Time to Submit Proof of Beneficial Use for Permit No. 63-32061* ("2023 Extension Request") received July 21, 2023. On February 15, 2024, IDWR requested Avimor Partners, LLC ("Avimor") provide additional evidence to support its 2023 Extension Request. That request included an April 1, 2024 response deadline.

IDWR is scheduled to meet with you on April 9, 2024 at 10:00 am to discuss IDWR's February 15, 2024 letter. Therefore, IDWR extends the response deadline to May 15, 2024. If this is an insufficient amount of time, we can discuss the possibility of an alternative deadline at our April 9, 2024 meeting. If you have any questions or wish to discuss before then, please call me at (208) 287-4951 or email at angela.hansen@idwr.idaho.gov.

Sincerely,

Angela M. Hansen
Water Allocation Bureau Chief

Cc: Avimor Partners, LLC
Erika E. Malmen via email emalmen@perkinscoie.com
Sarah Hugues via email shugues@perkinscoie.com



IDAHO DEPARTMENT OF
WATER RESOURCES

322 E Front Street, Suite 648, Boise ID 83702 • PO Box 83720, Boise ID 83720-0098
Phone: 208-287-4800 • Fax: 208-287-6700 • Email: idwrinfo@idwr.idaho.gov • Website: idwr.idaho.gov

Governor Brad Little

Director Mathew Weaver

February 15, 2024

AVIMOR PARTNERS LLC
C/O ERIKA E MALMEN
PERKINS COIE
1111 W JEFFERSON ST SUITE 500
BOISE ID 83702-5391

Re: Water Right Permit No. 63-32061 – 2023 Request for Extension of Time to Submit Proof of Beneficial Use

Dear Ms. Malmén:

The Idaho Department of Water Resources (“IDWR”) is reviewing Avimor Partners, LLC’s *Request for Extension of Time to Submit Proof of Beneficial Use for Permit No. 63-32061* (“2023 Extension Request”) received July 21, 2023. IDWR requests Avimor Partners, LLC (“Avimor”) provide additional evidence to support its 2023 Extension Request. The evidence requested is outlined below. If IDWR does not receive a response to this request by April 1, 2024, IDWR intends to issue an order denying the 2023 Extension Request.

In its 2023 Extension Request, Avimor states the basis for the request is Idaho Code § 42-204(3)(a). Idaho Code § 42-204(3)(a) authorizes IDWR to issue an extension of time to submit proof of beneficial use (“extension”) if the permit holder’s permit development is delayed by: (1) failure to obtain a right-of-way or other approval under federal jurisdiction, (2) state, city, or other local government decisions related to the permit holder’s water development or land, or (3) litigation related to the permit holder’s water development or land. IDWR is authorized to approve an extension based “upon proper showing of the existence of any such condition, and being convinced that said permit holder is proceeding diligently and in good faith...” *Idaho Code § 42-204(3)(a)*.

Avimor requests a nine-year extension based on the following two causes:

1. The administrative proceeding, appeal, and related guidance for application for permit no. 63-32573 (“M3 Matter”), a 5-year delay, and
2. The 2019 City of Eagle and Eagle Water Co. lawsuit, an additional 4-year delay.

Avimor asserts it was delayed in developing its water right permit no. 63-32061 (“Avimor’s Permit”), because the M3 Matter caused Avimor to believe it was unclear if “Avimor would be able to own and operate a community water system and deliver municipal water.” 2023 *Extension Request* at 2. Avimor further asserts that “[o]nce it [became] clear that Avimor would need to look to an existing municipal provider to operate the community water system and began planning for that contingency, a dispute arose in 2018 between City of Eagle and Eagle Water Co. which delayed the planning of Avimor’s water system yet again.” *Id.* at 2.

The M3 Matter concluded that an applicant requesting a water right for reasonably anticipated future needs (“RAFN”) municipal use must qualify as a municipal provider at the time of water right permit application filing. Avimor’s Permit is for non-RAFN municipal use for a different development than proposed in the M3 Matter. It appears Avimor misunderstood the M3 Matter and associated decisions. The M3 Matter did not call into question Avimor’s Permit nor Avimor’s authority to develop its permitted water use. Therefore, the M3 Matter and the lawsuit between the City of Eagle and Eagle Water Co. are not conditions that specifically caused a delay in Avimor’s ability to develop Avimor’s Permit. Enclosed is former IDWR Director Gary Spackman’s *Memorandum Re: Permit 63-32061 – Avimor Partners, LLC – Request for Extension of Time* (“Spackman Memo”) concluding “Avimor was free to develop and beneficially use water under permit no. 63-32061 with no connection to a municipal provider.” *Spackman Memo* at 3. See the *Spackman Memo* for further explanation of this conclusion.

However, in addition to these two causes, the 2023 Extension Request also references other potential reasons for Avimor’s Permit development delays. These reasons are:

1. A Bureau of Land Management (“BLM”) right-of-way request,
2. IDWR review of an amendment of permit application for Avimor’s Permit, and
3. Idaho Department of Environmental Quality (“IDEQ”) review of Avimor’s Water Master Plan.

Avimor stated it requested a BLM right-of-way that it was ultimately unable to obtain. However, Avimor did not provide evidence supporting the length of the delay caused by the BLM right-of-way application process. If Avimor desires IDWR to consider this a basis for permit development delay, IDWR requests Avimor submit supporting evidence demonstrating the length of the delay, such as the application for BLM right-of-way filing date and date of any subsequent formal decision regarding the BLM right-of-way application.

As a result of Avimor’s inability to secure a right-of-way from the BLM, Avimor filed to amend two of the four points of diversion authorized by Avimor’s Permit. Considering the permit amendment application only affected two of the four authorized points of diversion, IDWR does not believe the processing time for the permit amendment caused a delay in Avimor’s Permit development. Avimor could have pursued construction at one of the unamended points of diversion while the amendment application was pending before IDWR.

The 2023 Extension Request includes evidence supporting that Avimor's Water Master Plan was pending IDEQ approval for 131 days. At this point, if Avimor were to confirm it seeks a delay for this reason and IDWR were to extend the proof due date 131 days for this reason, the new proof due date would have been November 30, 2023. Perhaps this is the reason Avimor did not expressly identify this as a cause for permit development delay in its 2023 Extension Request to begin with.

While the *Spackman Memo* recommends IDWR deny Avimor's 2023 Extension Request, IDWR is willing to consider the delay caused while Avimor sought a BLM right-of-way. If Avimor seeks an extension for this reason, IDWR requests Avimor submit additional evidence to substantiate the length of the delay caused by the right-of-way process.

However, Avimor will also need to submit additional evidence to support that Avimor's Permit is being developed in good faith. Avimor has had 15 years to develop water right permit no. 63-32061. Avimor asserts that it constructed two wells, seven miles of watermain, and invested over \$20 million in construction of the community water system. *2023 Extension Request* at 2. Avimor further asserts that 171 lots are anticipated to come online this year with another 450 lots in the next two years. *Id.* at 2. That said, Avimor did not definitively state whether any water is being diverted from the community system for the municipal use authorized by Avimor's Permit. IDWR requests Avimor submit additional information concluding whether the constructed community system is being used to provide water for municipal use authorized by Avimor's Permit or not.

Additionally, Avimor's Permit condition no. 14 states:

Prior to diversion of water under this right, the permit holder shall prepare and submit an ongoing monitoring and data submittal plan, acceptable to IDWR, to demonstrate that the ground water diverted from authorized points of diversion is tributary to the Payette River drainage.

To date, IDWR has not received a report responsive to Avimor's Permit condition no. 14. While Avimor did not definitively say in its 2023 Extension Request that water is being diverted and used currently, IDWR requests Avimor submit additional information to explain how Avimor is proceeding in good faith to comply with Avimor's Permit condition no. 14.

In summary, IDWR is inclined to deny Avimor's 2023 Extension Request, because the M3 Matter and subsequent 2019 City of Eagle and Eagle Water Co. lawsuit did not prevent Avimor from developing Avimor's Permit. Furthermore, Avimor did not submit evidence of the length of delay caused by the BLM right-of-way nor sufficient evidence it is developing its permit in good faith in terms of complying with Avimor's Permit condition no. 14.

If Avimor submits the additional evidence requested by April 1, 2024, IDWR will consider that evidence before issuing a decision on the 2023 Extension Request. If Avimor informs IDWR it does not wish to submit additional evidence or does not respond by April 1, 2024, IDWR will proceed with the denial based on the rationale stated above.

Avimor Partners, LLC

February 15, 2024

Page 4 of 4

If you have any questions or wish to discuss, please call me at (208) 287-4951 or email at angela.hansen@idwr.idaho.gov.

Sincerely,



Angela M. Hansen

Water Allocation Bureau Chief

Enclosure: Memorandum Re: Permit 63-32061 – Avimor Partners, LLC – Request for Extension of Time

Cc: Avimor Partners, LLC

Erika E. Malmen via email emalmen@perkinscoie.com

Sarah Hugues via email shugues@perkinscoie.com

RECEIVED

Aug 16, 2023

DEPARTMENT OF
WATER RESOURCES

PERKINScoie

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PerkinsCoie.com

Erika E. Malmen
EMalmen@perkinscoie.com

August 16, 2023

VIA U.S. MAIL & EMAIL – file@idwr.idaho.gov

Idaho Department of Water Resources
322 E. Front Street
Boise, Idaho 83702

Re: Request for Extension of Time – Permit No. 63-32061

To Whom It May Concern:

In Avimor's July 21, 2023 Request for Extension of Time, it noted that the requested extension would only be necessary until the City of Eagle was able to acquire the water rights necessary to serve the Avimor development.

As previously mentioned, Avimor has been working with the City of Eagle to plan and construct the Avimor community water system. As part of that effort, and as anticipated in Avimor's referenced Request for Extension, the City of Eagle filed its Reasonably Anticipated Future Needs ("RAFN") application on August 4th, 2023. A copy of that application (which does not include any referenced attachments) is attached for your review.

Please do not hesitate to reach out should you have any questions.

Sincerely,



Erika E. Malmen

EEM:lkb
Enclosures

SCANNED

AUG 23 2023

RECEIVED

AUG 04 2023

Print Single Sided Only

FORM 202 Rev. 09/18 WATER RESOURCES
WESTERN REGIONSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Ident. No. _____

*Scott King, Engineering Consultant
HDR Inc, 412 Parkcenter Blvd, Ste 100
Boise, ID 83706, 208-387-7000
scott.king@hdrinc.com

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant(s) City of Eagle Phone 208-939-6813
 Name connector (check one): ☐ and ☐ or ☐ and/or
 Mailing address PO Box 1520 City Eagle
 State ID ZIP 83616 Email _____
2. Name of representative, if any Norman Semanko, City Attorney (*see above) Phone 208-562-4900
 Mailing address Parsons, Behle and Latimer, 800 W Main St, Ste 1300 City Boise
 State ID ZIP 83702 Email nsemanko@parsonsbehle.com
- a. ☐ Send all correspondence for this application to the representative and not to the applicant OR
☒ Send original correspondence to the applicant and copies to the representative.
- b. ☒ The representative may submit information for the applicant but is not authorized to sign for the applicant OR
☐ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation.
3. Source of water supply Ground Water which is a tributary of _____
4. Location of point(s) of diversion: See Attached

Twp	Rge	Sec	Govt Lot	1/4	1/4	1/4	County	Source	Local name or tag #

5. Water will be used for the following purposes:
 Amount 17.4 cfs for Municipal purposes from 1/1 to 12/31 (both dates inclusive)
 (cfs or acre-feet per year)
 Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
 (cfs or acre-feet per year)
 Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
 (cfs or acre-feet per year)
 Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
 (cfs or acre-feet per year)
6. Total quantity to be appropriated is (a) 17.4 cubic feet per second (cfs) and/or (b) _____ acre-feet per year (af).
7. Proposed diverting works:
 a. Describe type and size of devices used to divert water from the source. Existing and proposed municipal wells
- b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet. If the reservoir will be filled more than once each year, describe the refill plan in item 12. For dams 10 feet or more in height AND having a storage capacity of 50 acre-feet or more, submit a separate Application for Construction or Enlargement of a New or Existing Dam. Application required? ☐ Yes ☐ No
- c. Proposed well diameter is 16 inches; proposed depth of well is 700 feet.
- d. Is ground water with a temperature of greater than 85°F being sought? ☐ Yes ☒ No
- e. If well is already drilled, when? _____; drilling firm _____;
 well was drilled for (well owner) _____; Drilling Permit No. _____.

For Department Use

Received by _____ Date _____ Time _____ Preliminary check by _____
 Fee \$ _____ Received by _____ Receipt No. _____ Date _____

SCANNED

AUG 23 2023

RECEIVED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

JUL 21 2023

REQUEST FOR EXTENSION OF TIME

DEPARTMENT OF
WATER RESOURCES

To provide additional time in which to submit proof of beneficial use for a water right permit

The Idaho Department of Water Resources will consider this form a request that the permit holder(s) be granted an additional period of time under the provisions of Section 42-204, Idaho Code, in which to complete development of a water right and file proof of beneficial use of water. There is a **FILING FEE of \$50.00** to be included with this form when filed with IDWR.

Permit no. 63-32061Date proof is due August 1, 2023Name(s) of permit holder(s) Avimor Partners, LLCMailing address 18454 N. Mcleod Way City Boise State ID Zip 83714Telephone no. (208) 939-0343

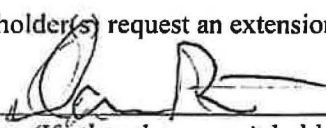
Email _____

Describe what work has been completed toward the development of this water right:

If no work has been completed, show "none".

See attached.Costing \$ 50.00

The permit holder(s) has been unable to complete the remainder of the work for the following reasons:

See attached.Permit holder(s) request an extension for nine (9) year(s).Signature 
(If other than permit holder, Power of Attorney must be supplied)Date 7/20/23

ACTION OF THE DEPARTMENT OF WATER RESOURCES

The Department has reviewed the explanation for delay and concludes the reason(s) for delay meets the requirements for approval of the Request for Extension of Time as provided by Section(s) 42-204 and/or 42-218, Idaho Code.

☐ **IT IS HEREBY ORDERED** that the permit is **REINSTATED** with the priority date advanced to _____, 20____.

☐ **IT IS HEREBY ORDERED** that the above request for extension of time is **APPROVED**, and the time within which to submit proof of beneficial use is extended to _____, 20____.

Signed this _____ day of _____, 20____

Shelley W. Keen, Chief
Water Allocation Bureau**COPY**
AUG 23 2023

ATTACHMENT TO REQUEST FOR EXTENSION

Permit No. 63-32061

Permit No. 63-32061 ("permit") is for the diversion of 5.00 cfs of groundwater for municipal purposes for use at the Avimor planned community. The permit has a January 25, 2005 priority date and was approved by IDWR on October 6, 2008. Avimor requested an extension to develop the permit which was granted by IDWR on October 8, 2013. The permit was amended on March 21, 2023 to add additional points of diversion. Proof of beneficial use is currently due August 1, 2023.

Applicable Law

Avimor is seeking an extension of time to complete development of the permit pursuant to Idaho Code section 42-204(3)(a). Section (3)(a) provides:

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.

Avimor Has Been Working Diligently and in Good Faith to Develop the Permit

Avimor has been working diligently and in good faith to develop beneficial use of water under the permit following IDWR's approved request for extension. Changes in the legal landscape have resulted in significant delays in Avimor's ability to complete the planning of its potable water system, because the planning of the system is largely dependent upon the entity that will ultimately own and operate the system. Delays in planning of course have the ripple effect of delays in design, engineering and permitting of the system. Following the M3 proceeding, as discussed below, Avimor believed that Suez would be its water service provider and began working with Suez on design, engineering and planning that would enable Avimor to tie into Suez's system. This arrangement may have negated the need for Avimor to drill additional wells. Unfortunately, not long after the M3 decision was published, City of Eagle and Suez were engrossed in a lawsuit that called into question Suez's ability serve Avimor, and it was unclear for some time whether Avimor's service provider would be City of Eagle, Eagle Water Company, or Suez. Ultimately,

it was determined that City of Eagle would be the water service provider, which necessitated starting from scratch on the design, engineering and permitting of Avimor's potable water system. Once it was determined that City of Eagle would be providing water service, Avimor has worked diligently to plan, design, and permit a system that meets City of Eagle standards. Since City of Eagle does not have an easy tie in like Suez, the planning, design and permitting for this system was much more complex (Avimor being located several miles from existing infrastructure) and requires Avimor to develop additional wells to service the system and obtain land use permitting and approvals that had not been contemplated to date (see discussion about BLM ROW below).

To date, construction of two (2) wells has been completed, seven (7) of the eight and one half (8.5) miles of watermain have been constructed, and over twenty million dollars (\$20,000,000) has been invested in construction of the community water system. Moreover, one hundred seventy-one (171) lots are anticipated to come online this year and Avimor expects to bring on another four hundred fifty (450) lots in the next two (2) years. Currently, the permit for which Avimor seeks an extension is the only authorization to supply water to these homes. Though Avimor has diligently and continuously pursued completion of the watermain and related infrastructure, numerous factors, outside its control, have contributed to delay. Numerous federal, state, and city approvals, pending litigation, the COVID 19 pandemic and related economic factors have caused delay in completing construction of the water system. The various forms of federal, state and city consent were not only necessary for Avimor to continue construction, but many informed the overall design and construction plan, the details of which had to be finalized before additional work could continue.

Delay Caused by State Approvals, Processes and Litigation

The M3 administrative proceeding, appeal, and related guidance cost Avimor more than 5 years of delay and uncertainty, because it became unclear if Avimor would be able to own and operate a community water system and deliver municipal water. IDWR's decision in the M3 application ultimately found for the first time that M3 (and, by extension, similarly-situated Avimor) could not be a municipal water provider unless it has previously provided municipal water. "The interim director interprets the verb [qualifies] to mean that the applicant must be a municipal provider as defined by Idaho Code 42-202B(5) at the time the application is considered by the Department." *In the Matter of Application to Appropriate Water No. 63-32573 in the Name of M3 Eagle LLC* ("M3 Decision"), at 9-10 (IDWR Amended Final Order, Jan. 25, 2010). This order was appealed, *M3 Eagle LLC v. Idaho Dep't of Water Resources*, Case No. CVOC1003180, but the case was settled, and the appeal was dismissed. The M3 ruling is now memorialized in 2015 guidance issued by the Department. See Application Processing No. 74, Permit Processing No. 20, License Processing No. 13, Transfer Processing No. 29, at 5 (Mar. 16, 2015) (replacing Nov. 15, 2014, and Nov. 13, 2013, versions) ("2015 Weaver Memo").

Once it became clear that Avimor would need to look to an existing municipal provider to operate the community water system and began planning for that contingency, a dispute arose in 2018 between City of Eagle and Eagle Water Co. which delayed the planning of Avimor's water system yet again. In 2019, the City of Eagle filed a lawsuit against Eagle Water Co. over Eagle Water Co.'s planned sale to Suez (now Veolia). This lawsuit rendered the service areas for these water utilities in flux. The City of Eagle and Veolia have different design standards and specifications for their water systems, amongst other differences, which complicated planning and design. The

lawsuit settled in 2021, PUC approval of the settlement agreement which included parsing out service territories for Veolia and City of Eagle was completed in early 2022. In total, this litigation cost Avimor approximately **4 years of delay** and uncertainty.

Once the planning for the water system was complete, Avimor submitted a Water Master Plan to the Idaho Department of Environmental Quality on December 9, 2021. This Plan is required in order to plan and construct a community water system for future Avimor development. It took approximately three (3) months for the IDEQ to review and comment on the Water Master Plan. IDEQ approved the Water Master Plan on April 19, 2022. Approval of this plan is required before Avimor/City of Eagle can provide potable water to homes, and Avimor did not want to get too far the road with construction planning and related expenses until IDEQ had signed off on the Water Master Plan.

Delay Caused by Federal Government Approvals and Processes

One of the primary production wells identified as a point of diversion on the permit and anticipated to be the first production well inline in order to supply the Avimor community water system will be drilled west of Willow Creek Road. However, in order for that well to connect to the watermain, Avimor is required to seek and obtain a right-of-way from the U.S. Bureau of Land Management. A ROW application (SF-299) has been submitted but despite diligent efforts to obtain a ROW, no permanent ROW has been obtained. This delay is the genesis for Avimor's request to add additional points of diversion to the permit east of Willow Creek Road. An application was filed with the Department to add points of diversion on May 10, 2022 (amended to revise applicant name June 28, 2022), and approval was given by the Department on March 21, 2023.

Conclusion

Avimor has shown that it is entitled to a minimum of nine (9) years' extension of the deadline to submit proof of beneficial use based on the M3 application/litigation and the litigation involving City of Eagle, Eagle Water Co. and Suez (Veolia). This does not include the approximate two (2) year delay caused by the global COVID-19 pandemic, which resulted in unprecedented labor and materials shortages, and which further complicated Avimor's planning and development of the community water system. Avimor has been working with the City of Eagle to plan and construct the Avimor community water system and the parties have entered into a Water Service Agreement to memorialize City of Eagle water service to future Avimor development phases. Avimor seeks a 9-year extension to develop Permit No. 63-32061, or until such time as City of Eagle has acquired the water rights it needs to serve Avimor. City of Eagle expects to submit a RAFN application for permit to serve Avimor in the next few weeks.

Veibell, Amanda

From: Bush, Lisa K. (BOI) <LBush@perkinscoie.com>
Sent: Wednesday, August 16, 2023 4:38 PM
To: IDWR File
Cc: Malmen, Erika E. (BOI); Hugues, Sarah (BOI)
Subject: Letter regarding Permit No. 63-32061
Attachments: 2023-08-16 E. Malmen ltr to IDWR re City of Eagle RAFN.pdf

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Please see the attached letter from Erika Malmen regarding Permit No. 63-32061.

Thank you.

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MEMORANDUM

To: Shelley Keen, Angie Hansen
From: Gary Spackman *Gary*
Date: August 3, 2023

Re: Permit 63-32061 – Avimor Partners, LLC – Request for Extension of Time

On January 25, 2005, SunCor Idaho, LLC filed application to appropriate water no. 63-32061. The application sought to appropriate 5.00 cfs of ground water for municipal purposes for use at the Avimor planned community. The Avimor planned community is located in Spring Valley, bounding both sides of Highway 55 a few miles north of Boise/Eagle, Idaho.

IDWR approved permit no. 63-32061 on October 8, 2013. The permit document was issued to Avimor LLC and required submittal of proof of beneficial use on or before August 1, 2013. The permit authorized the development and beneficial use of 5.00 cfs of ground water for municipal use.

In 2010, permit 63-32061 was assigned to Avimor Partners, LLC (hereafter referred to as “Avimor”).

In July 2013, Avimor requested an extension of time for filing proof of beneficial use. IDWR extended the time for filing proof of beneficial use to August 1, 2023.

On July 21, 2023, Avimor requested another extension of time for filing proof of beneficial use. The basis for the request for extension time is that 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] 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 . . .” See Idaho Code § 42-204(3)(a).

Alleged Delay Caused by Federal Government

Avimor asserts that one of the points of diversion identified by permit 63-32061 must deliver water through a pipeline across federal land managed by the Bureau of Land Management. Avimor states: “A ROW application SF-299 has been submitted by despite diligent efforts to obtain a ROW, no permanent ROW has been obtained.” The narrative does not identify when the application for ROW was filed and the period of delay after filing the application for right-of-way.

Alleged Delay Caused by State

Avimor argues that an IDWR administrative contested case for application to appropriate water no. 63-32573, filed by M3 Eagle LLC (“M3”), delayed development of Avimor’s permit 63-32061.

Both Avimor and M3 are developing large, detached communities in the foothills north of Eagle, ID. The western boundary of the Avimor development and the eastern boundary of the M3 development may abut at discrete locations.

M3’s application no. 63-32573 proposed the appropriation of 23.18 cfs for municipal purposes. M3’s application no. 63-43573 sought to appropriate water for reasonably anticipated future needs (“RAFN”), spanning a planning horizon of 30 years. The primary issue in the contested case for application no. 63-32573 was whether M3 qualified as a municipal provider and whether M3 was entitled to appropriate water for reasonably anticipated future needs. In 2010, IDWR determined M3 was not a municipal provider and, consequently, M3 was not entitled to appropriate water for reasonably anticipated future needs. The 2010 decision granted M3 a permit for 3.28 cfs. M3 appealed IDWR’s decision, and the permit approval was not finalized. Ultimately, M3 assigned application 63-32573 to the City of Eagle, and IDWR reconsidered the application. In 2012, IDWR issued permit no. 63-32573 to the City of Eagle approving the appropriation of 23.18 cfs for reasonably anticipated future needs.

The only similarity between M3’s application no. 63-32573 (now permit 63-32573 held by the City of Eagle) and Avimor’s permit 63-32061 is that both applications sought to appropriate ground water underlying the foothills north of Eagle, Idaho. Both developments have struggled with questions about the adequacy of the ground water supply underlying the developments. The following is a comparison of important differences between the M3/City of Eagle and Avimor permits.

M3 (City of Eagle)	Avimor
• Sought RAFN water right	• No RAFN component to the application
• Assigned application to a municipality	• No assignment to a municipality
• Permit ultimately issued to the City of Eagle. Dependent on City of Eagle for future water development	• Permit issued solely to Avimor. No dependency on a municipality

Avimor argues that the M3 decision determined that Avimor “would need to look to an existing municipal provider to operate the community water system.” This misstates the holding in the M3 contested case. M3 could have accepted the initial permit described in the 2010 decision without the RAFN component. Instead of accepting the permit that limited the quantity of water and the development period, M3 assigned its application to the City of Eagle. Avimor

did none of the above. Avimor never sought a RAFN water right and accepted a permit without a RAFN component. Avimor was free to develop and beneficially use water under permit no. 63-32061 with no connection to a municipal provider.

The M3 contested case was not an impediment to Avimor's beneficial use of water and perfection of a water right. **There was no process connection, either directly or indirectly, between Avimor's permit no. 63-32061 and the M3/City of Eagle permit no. 63-32573.** As a result, Avimor was not "prevented from proceeding with construction, work, or application of water to full beneficial use 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 . . ."

Recommendation

I recommend that IDWR deny the application for extension of time because Avimor has not been prevented from applying water to beneficial use by any state or local permitting, administrative action, or process related to the permit holder's land or water development.

I also recommend that IDWR deny the application for extension of time because Avimor has not submitted evidence of an application for right-of-way with the federal government or any delay in consideration of the application by the federal government.