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DEPARTMENT OF
WATER RESOURCES

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

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 78356 (SHEKINAH
INDUSTRIES); APPLICATION FOR
TRANSFER NO. 78355 (ORCHARD
RAHCN); APPLICATION FOR PERMIT
NO. 63-32499 (MAYFIELD TOWNSITE);
APPLICATION FOR PERMIT NO. 61-
12095 (NEVID-CORDER); APPLICATION
FOR PERMIT NO. 63-32703 (ORCHARD
RANCH); APPLICATION FOR PERMIT
NO. 61-12256 (INTERMOUNTAIN SEWER
AND WATER); APPLICATION FOR
PERMIT NO. 63-33344 (ARK
PROPERTIES-MAYFIELD TOWNSITE)

**MOTION TO DESIGNATE PRIOR
APPROVALS FOR EXTENSION OF
TIME IN THE I-84 CORRIDOR AS
PRELIMINARY, RECOMMENDED, OR
FINAL ORDERS; TO DENY
SUBSEQUENT REQUESTS FOR
EXTENSIONS OF TIME IN THE I-84
CORRIDOR; OR IN THE
ALTERNATIVE TO PROVIDE A
FORUM FOR CHALLENGING
REQUESTS FOR EXTENSION OF TIME
IN THE I-84 CORRIDOR**

COMES NOW Juniper Station Farms, LLC (“Juniper”) by and through its attorneys of record, McHugh Bromley, PLLC, and pursuant to Rule of Procedure 750, IDAPA 37.01.01.750, hereby moves the Director of the Idaho Department of Water Resources (“Director” or “IDWR”) to designate prior approvals of extension of time for applications pending in the I-84 Corridor as either recommended, preliminary, or final orders of the agency, in order to provide water users in

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the I-84 Corridor with the opportunity to assess and challenge the granting of requests for extensions of time. Because the I-84 Corridor is an area of limited water supply, Juniper further moves IDWR, pursuant to Rule of Procedure 220, IDAPA 37.01.01.220, to deny any subsequent requests for extension of time, or in the alternative, to provide notice and an opportunity to be heard in a forum for challenging subsequent requests for extension of time in the I-84 Corridor.

INTRODUCTION

The I-84 Corridor is an area of limited water supply for planned communities and irrigation projects along the Interstate near the Ada County/Elmore County line, as shown below:

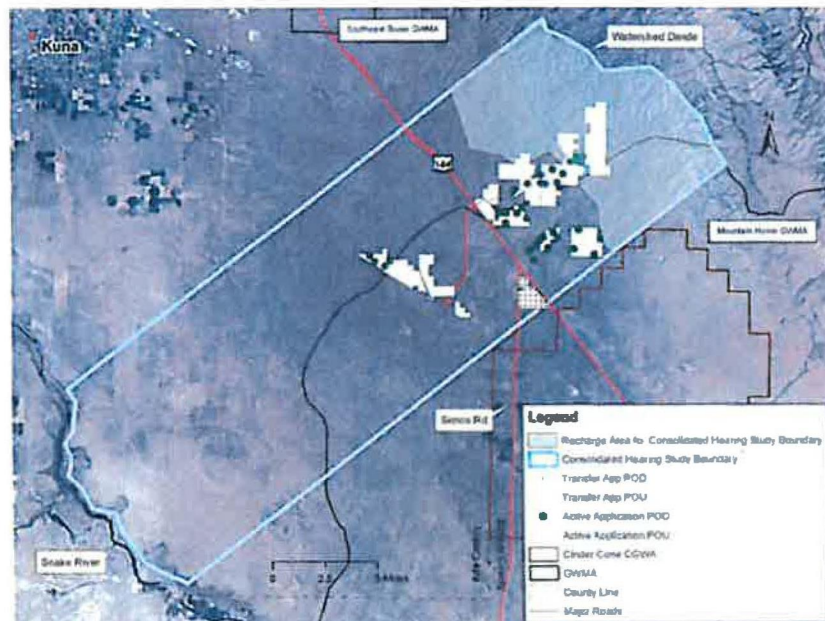


Figure 2. Consolidated hearing study area boundary.

Juniper is the holder of Application for Permit No. 61-12319 and Application for Transfer No. 81327 (collectively the “Applications”), which are located within the I-84 Corridor. Based on a May 6, 2019 letter from the Manager of IDWR’s Western Regional Office, Juniper’s Applications are in a processing hold until applications that are ahead of Juniper in the processing queue move forward. Therefore, the granting of requests for extension in the I-84

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Corridor prejudices Juniper, as Juniper is ready, willing, and able to put unappropriated water to beneficial use, now.

On January 24, 2012, the Director issued an *Order Creating Contested Case and Consolidating Protested and Unprotested Applications* for applications within the I-84 Corridor. “The applications were consolidated for the purpose of evaluating the sufficiency of the water supply in the same geographic area of the Western Snake River Plain aquifer along the I-84 corridor.” *Final Order Regarding Water Sufficiency* at 1 (“Final Order”).

The applications that were addressed in the I-84 consolidated proceeding, listed in chronological order of receipt, were as follows:

NAME	NUMBER	RECEIVED	PRIORITY	WATER USE	CFS
Mayfield Townsite, LLC	63-32499	7/28/2006	7/28/2006	Municipal	10.00
Shekinah Industries, Inc.	Tr. 78356	12/4/2006	1963[]	Irrigation	5.56
Nevid, LLC	61-12095	4/3/2007	4/3/2007	Municipal	5.00
Nevid, LLC	61-12096	4/3/2007	4/3/2007	Municipal & Fire Protection	20.48
Orchard Ranch, LLC	Tr. 73855	6/21/2007	1976	Irrigation (was municipal)	11.36
Orchard Ranch, LLC	63-32703	6/21/2007	6/21/2007	Irrigation (was municipal)	9.60
Intmtn. Sewer & Water	61-12256	1/17/2008	1/17/2008	Municipal	13.76
Ark Properties LLC / Mayfield Townsite, LLC	63-33344	3/1/2010	3/1/2010	Irrigation in planned community 63-32499	9.00
TOTAL					84.76

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Id. at 2.

On November 4, 2013, after considering the applications and evidence before him, the Director found, in the *Final Order*: “[T]he estimated net annual recharge volume for the study area to be 7,440 AFA. On a continuous basis, this amount is equivalent to 10.3 cfs, which is significantly less than the total maximum flow rates sought by the consolidated applications.”

Final Order at 10. According to the *Final Order*, there is a maximum, sufficient supply

to satisfy only two applications and part of a third: 63-32499 (Mayfield), 73811 (Shekinah), and part of 61-12066 (Nevid):

NAME	NUMBER	RECEIVED	PRIORITY	WATER USE	Est. Annual Volume (AF)
Mayfield Townsite, LLC	63-32499	7/28/2006	7/28/2006	Municipal	4,320
Shekinah Industries, Inc.	78356	12/4/2006	1963	Irrigation	1,107
Nevid, LLC	61-12096[]	4/3/2007	4/3/2007	Municipal & Fire Protection	2,486
				TOTAL	7,913

Id. Important to the issue at hand, the Director concluded, he “will consider the pending applications in the chronological order the applications were received unless an applicant is not prepared to proceed with its application.” *Final Order* at 14 (emphasis added).

Since issuance of the *Final Order*, and pursuant to Idaho Code § 42-204, IDWR has issued requests for extension of time within the I-84 Corridor to: (1) Mayfield Townsite, permit no. 63-32499; (2) Nevid, LLC, permit no. 61-12096; and (3) to Intermountain Sewer & Water

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Corp., permit no. 63-32225.¹ Juniper is unaware if IDWR has received or granted requests for extension of time to any of the other applications that were identified by the Director on page 2 of the *Final Order*.

As to Shekinah Industries, Inc., and according to IDWR's records, the rights that were at issue in Transfer No. 78356 are now owned by Edward DeGroot Properties, LLC. Transfer No. 78356 was approved by IDWR on January 21, 2016. According to the transfer approval, the changes were to be accomplished within 5 years (Condition of Approval No. 1), otherwise the Director would be authorized to rescind its approval (Condition of Approval No. 2). More than 5 years have passed since Transfer No. 78356 was approved.

The granting of requests for extension of time prejudice Juniper, as Juniper is ready, willing, and able to put unappropriated water to beneficial use, now.

ARGUMENT

As concluded by the Director in the *Final Order*, the I-84 Corridor is an area of limited water supply. It is for this reason that Juniper is in a processing hold as to its Applications. As stated previously, Juniper is aware that IDWR staff has been granting requests for extension of time in the I-84 Corridor, without notice and opportunity to be heard. This is troubling given that a contested case exists for this area of limited water supply, with a processing hold, wherein the Director concluded, he "will consider the pending applications in the chronological order the applications were received unless an applicant is not prepared to proceed with its application."

¹ Intermountain Sewer & Water Corp.'s permit, 63-32225, for 10.00 cfs for municipal purposes, with a priority date of 9/16/2005, was not at issue in the *Final Order* and is identified by IDWR as within the I-84 Corridor. See *Order on Exceptions; Final Order Approving Application for Amendment of Permit with Conditions Denying Transfer* (September 2, 2021).

Final Order at 14 (emphasis added). Further troubling is the granting of requests for extension of time in this area without notice and opportunity to be heard runs contrary to the requirement of law that unappropriated water should be put to beneficial use: “The right to divert and appropriate the unappropriated waters . . . shall never be denied” Idaho Const. Art. XV § 3. Moreover, the reason for requiring water be put to beneficial use within five years is to preventing locking up the State’s water for speculative purposes as against subsequent appropriators. *North Snake Ground Water Dist. v. Idaho Dept. of Water Res.*, 160 518, 527, 376 P.3d 722, 731 (2016) citing IDAPA 37.03.08.045.01.c (“Speculation for the purpose of this rule is an intention to obtain a permit to appropriate water without the intention of apply the water to beneficial use with reasonable diligence.”). Because Juniper is ready, willing, and able to put water to beneficial use, now, it is prejudiced by the granting of requests for extension of time within the I-84 Corridor.

1. IDWR Should Designate Whether Its Decisions Granting Requests For Extension Of Time In The I-84 Corridor Are Recommended, Preliminary, Or Final Orders Of The Agency

IDWR Rule of Procedure 11, IDAPA 37.01.01.011, defines an “Order” as “An agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons.” The approvals of requests for extension of time determine legal rights, duties, privileges and other legal interests of specific persons and specifically impact Juniper’s legal rights, duties, privileges and interests. Thus, the approvals fall within the definition of an “Order” under Rule 11.

As stated previously, IDWR has granted at least three requests for extension of time in the I-84 Corridor:

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- **Mayfield Townsite, permit no. 63-32499.** Proof of beneficial use was due on January 1, 2021 and has been extended to January 1, 2026. A stated basis for this request for extension of time was: “Property and project are pending sale.”
- **Nevid, LLC, permit no. 61-12096.** Proof of beneficial use was due on December 1, 2020 and has been extended to December 1, 2025. A stated basis for this request for extension of time was: “Market conditions have not been conducive to planned use developments in this area.”
- **Intermountain Sewer & Water Corp., permit no. 63-32225.** Proof of beneficial use was due on February 1, 2012 and has been extended four times until April 14, 2025. A stated basis for this request for extension of time was: “County and state approval processes have taken longer than expected, prohibiting actual work from beginning on the project.”

As to Mayfield Townsite and Nevid, LLC, market forces are the stated basis for the requests for extension of time. Market forces are not defined by statute as a basis for granting extensions of time. *See* I.C. § 42-204. As to Intermountain Sewer & Water Corp., allowing a permit to be extended four times in an area of limited supply locks up the resource and prevents other users from developing projects that will actually divert and put water to beneficial use.

Also worth noting is each of the permits are for municipal purposes of use, not RAFN municipal purposes of use. With the granting of requests for extensions of time, these permits have taken on the appearance of RAFN permits, with speculative planning horizons that greatly

exceed the 5-year proof of beneficial use requirement for non-RAFN municipal permits, despite the fact that the permits were not filed as RAFN. I.C. § 42-204(4).

Without knowledge as to what type of order is approving the requests for extension of time, and without notice as to the issuance of the decisions, Juniper is without a remedy to assess the same. Therefore, pursuant to Rule 750, IDAPA 37.01.01.750, Juniper moves IDWR to designate if the granting of requests for extension of time in the I-84 Corridor are recommended, preliminary, or final orders of the agency.

2. IDWR Should Deny Subsequent Requests For Extension Of Time In The I-84 Corridor

Requests for extension of time are reviewed pursuant to Idaho Code § 42-204, and may be granted if certain factors exist, as enunciated in section 42-204(a) – (e), provided there is good cause. Here, good cause does not exist to grant subsequent requests for extension of time in the I-84 Corridor. As stated in the *Final Order*, the I-84 Corridor is an area of limited water supply with a processing hold on applications that IDWR continues today:

As you know, the Director’s November 4th, 2013 *Final Order Regarding Water Sufficiency* established that the area was nearly fully appropriated, but that some of the applications in the consolidated matter could be approved and others would remain in queue while those and other pre-existing permits are developed. . . . Since that order was issued, Western Region has received an additional application for transfer and three applications for permit. These are being held and will be processed if/when existing permits become licensed and water becomes available or not.

Memorandum from Nick Miller to Shelley Keen, dated December 29, 2020, re: Status of I84 Applications (“Memorandum”).

In the I-84 Corridor, good cause does not exist to grant subsequent requests for extension of time because water should not be locked up for speculative purposes, particularly when there are water users, like Juniper, who are entitled to an opportunity to put water to beneficial use.

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Juniper therefore moves the Director to deny all future requests for extension of time within the I-84 Corridor. This is consistent with the Director's conclusion in the *Final Order* that he "will consider the pending applications in the chronological order the applications were received unless an applicant is not prepared to proceed with its application." *Final Order* at 14 (emphasis added).

3. In The Alternative, IDWR Should Provide A Forum, With Notice And An Opportunity To Be Heard, Of All Subsequent Requests For Extension Of Time In The I-84 Corridor

If the Director will not decide to stop granting subsequent requests for extension of time within the boundaries of the I-84 Corridor, Juniper moves IDWR to provide a forum to evaluate all subsequent requests for extension of time in a way that provides meaningful notice and an opportunity to be heard by those who are in the I-84 contested case and processing queue. As evidenced by the *Final Order*, the parties to the contested case are known, and are identified by Juniper in the certificate of service for this document. Moreover, as evidenced by the *Memorandum*, the water users who are subject to the processing hold consist of Nevid, LLC, Ark Properties, LLC/Mayfield Townsite, LLC, Pars Holding LC,² and Juniper. Providing notice and an opportunity to be heard to those within the I-84 Corridor contested case and queue is therefore neither unreasonable nor unduly burdensome on IDWR, and is substantially similar to IDWR providing actual notice of new water right filings to water users who have been involved in previous contested cases involving the same source.

² On December 23, 2022, IDWR acknowledged the assignment of the Pars Holding, LC applications for permit to Intermountain Sewer & Water Corp. According to the acknowledgment, Intermountain Sewer & Water Corp. is represented by Sawtooth Law Offices. Juniper has included Sawtooth Law Offices in the Certificate of Service for this motion.

CONCLUSION

Based on the foregoing, Juniper respectfully moves the Director to designate all prior approvals of requests for extension of time for applications for permit in the I-84 Corridor as either preliminary, recommended, or final orders. Juniper further moves the Director to deny any subsequent requests for extension of time in the I-84 Corridor, or in the alternative, to provide a forum for challenging subsequent requests for extension of time in the I-84 Corridor.

RESPECTFULLY SUBMITTED this 2nd day of February, 2023.

MCHUGH BROMLEY, PLLC



CHRIS M. BROMLEY

Attorneys for Juniper Station Farms, LLC

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CERTIFICATE OF SERVICE

I certify that on this 2nd day of February, 2023, I caused to be served a true and correct copy of the foregoing upon the following persons by the method(s) indicated:

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