

Feb 16, 2023

DEPARTMENT OF
WATER RESOURCES

Norman M. Semanko, ISB #4761
 Garrett M. Kitamura, ISB #11502
 PARSONS BEHLE & LATIMER
 800 West Main Street, Suite 1300
 Boise, Idaho 83702
 Telephone: 208.562.4900
 Facsimile: 208.562.4901
 Email: NSemanko@parsonsbehle.com;
 GKitamura@parsonsbehle.com; ecf@parsonsbehle.com

Attorneys for Nevid, LLC ; Orchard Ranch, LLC; and Ark Properties-Mayfield Townsite, LLC

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 78356 (SHEKINAH INDUSTRIES); APPLICATION FOR TRANSFER NO. 78355 (ORCHARD RANCH); 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)

NEVID, LLC, ORCHARD RANCH, LLC, AND ARK PROPERTIES-MAYFIELD TOWNSITE, LLC'S RESPONSE IN OPPOSITION TO JUNIPER STATION FARMS, LLC'S 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 Nevid, LLC ("Nevid"); Orchard Ranch, LLC ("Orchard Ranch"); and Ark Properties-Mayfield Townsite, LLC ("Mayfield", and collectively "Respondents"), by and through their attorney of record, Parsons Behle & Latimer, to submit this response in opposition to Juniper Station Farms, LLC's ("Juniper's") *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 (“Juniper’s Motion” or the “Motion”).

I. ARGUMENT

Juniper’s Motion is improper because Juniper lacks standing to move the Idaho Department of Water Resources (the “Department”) for designation of the prior approvals for extension of time as preliminary, recommended, or final orders. IDAPA 37.01.01.750 provides the procedure for designating orders. With regard to motions for designation, the rule states:

If a **party** believes that an order not designated as a recommended order, preliminary order or final order according to the terms of these rules should be designated as a recommended order, preliminary order or final order, the **party** may move to designate the order as recommended, preliminary, or final, as appropriate.

Id. (emphasis added). A “party” is defined as “[e]ach person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, including an applicant, petitioner, respondent, protestant or intervenor.” IDAPA 37.01.01.002.12. Juniper is not a party to the extension of time matters within the meaning of IDAPA 37.01.01.002.12. Juniper has not been named or admitted as a party in those matters. Furthermore, Juniper has not sought to be admitted as a party, and Juniper has made no showing that it is entitled as a matter of right to be admitted as a party. Accordingly, Juniper lacks standing to move for designation and its motion should be denied. For these same reasons, Juniper’s request, pursuant to IDAPA 37.01.01.220, that the Department deny further requests for extension of time or provide a forum for challenging extensions is also improper. A plain reading of IDAPA 37.01.01.220, which governs motion practice, shows that making and opposing motions are also limited to parties. There is also no basis for providing such relief. The right to apply for extensions of time, and for those to be considered

by the Department and appealed by the applicant, as deemed necessary by the applicant, is expressly provided for by Idaho Code § 42-204.

Juniper requests in the alternative that the Department Director provide a forum for challenging subsequent requests for extension of time for application of permits. Juniper argues that this request is justified because the Department has granted extensions of time without providing notice or opportunities to be heard. Juniper's request and the stated rationale behind it hold no water. First, Juniper makes no showing to support its contention that it has not been provided notice of past grants for extension for time. The Department's orders regarding requests for extension of time are publicly posted on the Department's website and decisions regarding specific water rights can be found via the Department's Water Right and Adjudication Search page on the Department's website. Second, Idaho Code § 42-1701A(3) already provides an avenue for Juniper to lodge such objections, albeit within a timely fashion:

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person aggrieved by any action of the director, including any decision, determination, order or other action, including action upon any application for a permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the director, who is aggrieved by the action of the director, 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...

Id. Juniper has not explained how the provisions of Idaho Code § 42-1701A(3) are insufficient to facilitate Juniper's objections to future requests for extension. Finally, Idaho Code § 42-1701A(3) lacks any language to support Juniper's blanket request that it be entitled to receive an opportunity to be heard on any and all future requests for extension of time in the I-84 Corridor. The text of Idaho Code § 42-1701A(3) does not provide an aggrieved party such a proactive right.

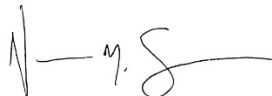
On a final overarching note, to the extent Juniper’s present Motion is based on its objections to the Department’s past grants of extension of time, the provisions of Idaho Code § 42-1701A(3) further reveal that Juniper’s Motion is untimely and must be denied. In support of its Motion, Juniper cites to past extensions of time granted to Mayfield, Nevid, and Intermountain Sewer & Water Corporation. *See* Juniper’s Motion, p. 7. Yet, among these applicants, the latest extension of time was granted back on July 20, 2022,¹ which is well beyond the 15-day period for Juniper to contest the extension. Thus, even assuming *arguendo* Juniper has any standing to make its Motion (it does not) or that Juniper is an aggrieved party within the meaning of Idaho Code § 42-1701A(3), its Motion comes almost 7 months beyond the time to appeal and contest the Department’s past grants of extension of time.

II. CONCLUSION

Based on the foregoing, Respondents ask the Department to deny Juniper’s Motion in its entirety.

DATED this 16th day of February, 2023.

PARSONS BEHLE & LATIMER



Norman M. Semanko; Garrett M. Kitamura
*Attorneys for Nevid, LLC; Orchard Ranch, LLC;
and Mayfield Townsite, LLC*

¹ *See* Intermountain Sewer & Water Corp.’s Request for Extension of Time and Action of the Department of Water Resources, https://research.idwr.idaho.gov/files/relateddocs/_dp301_.pdf.

CERTIFICATE OF SERVICE

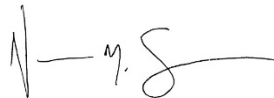
I hereby certify that on this 16th day of February, 2023, I served a true and correct copy of the foregoing document on the parties listed below by their designated method of service.

<p>Chris M. Bromley Candice M. McHugh MCHUGH BROMLEY, PLLC 380 South 4th Street, Suite 103 Boise, ID 83702</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Electronic Mail cbromley@mchughbromley.com cmchugh@mchughbromley.com <input type="checkbox"/> Facsimile (208) 287-0864</p>
<p>Director Spackman IDAHO DEPT. OF WATER RESOURCES P. O. Box 83720 Boise, ID 83720-0098</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>Nick Miller IDWR WESTERN REGION 2735 Airport Way Boise, ID 83705-5082</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>Michael Preston SHEKINAH INDUSTRIES INC. 420 Bitterroot Drive Boise, ID 83709</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>Tim Conrads 75 S. Pronghorn Road Boise, ID 83716</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>SPF WATER ENGINEERING 300 E. Mallard Drive, Ste. 350 Boise, ID 83706</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>

<p>Bruce Smith MOORE SMITH 950 W. Bannock, Ste. 520 Boise, ID 83702</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>Michael Creamer GIVENS PURSLEY P. O. Box 2720 Boise, ID 83701-2720</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>CLEVELAND CORDER LLC 622 Zoe Lane Garden City, ID 83714</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>Tonya D. Bolshaw P. O. Box 16022 Boise, ID 83715</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>Mary Firsch 155 S. Pronghorn Dr. Boise, ID 83716</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>Dana Quinney Scott Quinney 160 S. Pronghorn Boise, ID 83716</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>
<p>Brown Farms LLC Attn. Clifford Brown Esq. HOLZER EDWARDS & HARRISON 1516 W. Hays Street Boise, ID 83702</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile</p>

<p>Erick Powell BROCKWAY ENGINEERING 2016 N. Washington Street, Ste. 4 Twin Falls, ID 83301</p>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile
<p>James Tucker IDAHO POWER COMPANY P. O. Box 70 Boise, ID 83707</p>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile
<p>Darla Bateman 404 E. Indian Circle Road Boise, ID 83716</p>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile
<p>John K. Simpson BARKER ROSHOLT & SIMPSON LLP P. O. Box 2139 Boise, ID 83701-2139</p>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile
<p>Robert Maynard Erika Malmen PERKINS COIE LLP P. O. Box 737 Boise, ID 83701-0737</p>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile
<p>Wendy Tippetts 999 N. Slater Creek Mayfield, ID 83716</p>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile
<p>Ed Van Grouw 5089 S. Debonair Lane Meridian, ID 83642</p>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile

Lori Atkins 602 E. Mike's Place Boise, ID 83716	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile
Wayne Shepherd Director of Public Works CITY OF MOUNTAIN HOME P. O. Box 10 Mountain Home, ID 83647	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile
Darwin Roy 147 E. Indian Circle Road Mayfield, ID 83716	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile
Bryce S. Farris SAWTOOTH LAW OFFICES PLLC 1101 W. River Street, Ste. 110 Boise, ID 83707	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile



Norman M. Semanko; Garrett M. Kitamura