

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

IN THE MATTER OF PERMIT NO. 63-33141	)	PRELIMINARY ORDER
IN THE NAME OF MELLIN PROPERTIES	)	REINSTATING A PERMIT
LTD PARTNERSHIP	)	AND APPROVING
	)	EXTENSION REQUEST
_____	)	

This matter having come before the Idaho Department of Water Resources ("Department"), the Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. On March 10, 2010, the Department issued Permit No. 63-33141 ("Permit") in the name of Mellin Properties Ltd. Partnership ("Permit Holder") authorizing the diversion of 1.60 cubic feet per second of ground water for irrigation use in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, Township 01 North, Range 01 East, B.M., Ada County. A condition of permit approval required the Permit Holder to submit proof of beneficial use of water to the Department on or before March 1, 2015.
2. On December 31, 2014, 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").
3. On February 25, 2015, the Permit Holder filed an Extension Request for an additional five years to submit proof of beneficial use for the Permit. The Department approved this Extension Request pursuant to Idaho Code § 42-204(3)(f) based evidence of reasonable diligence and good cause. The approved Extension Request established a new proof of beneficial use due date of March 1, 2020.
4. On December 16, 2019, the Permit holder filed an Extension Request for additional time due to government delay. The Department approved this Extension Request pursuant to Idaho Code § 42-204(3)(a) based on evidence of the Permit Holder's pending right-of-way application with the Bureau of Land Management ("BLM"). The approved Extension Request provided an additional 39 days.
5. Between May 2020 and June 2021 the Department continued to approve Extension Requests for 39 days because the right-of-way application remained pending.
6. On October 26, 2021, the Department issued a *Preliminary Order Reinstating a Permit and Granting an Extension of Time* ("Order") addressing the amendment to Idaho Code § 42-204 that became effective July 1, 2021 (House Bill 268). The Order denied additional time pursuant to the amendments but granted another extension of 39 days due to continued government delay.

7. Between October 2021 and May 2022 the Department continued to approve Extension Requests for 39 days because the right-of-way application remained pending. The last Extension Request approved by the Department extended the time to submit proof of beneficial use to June 17, 2022.
8. On June 27, 2022, 10 days after proof was due, the Permit Holder filed another Extension Request ("June 2022 Extension Request"). At the Department's request, on July 11, 2022, the Permit Holder provided documentation of continued delay related to the lack of federal government approval for Idaho Power Company to install power supply lines across land managed by the United States Bureau of Land Management. The documentation states that the Bureau of Land Management is delaying its decision until the Permit Holder receives an easement to install power lines on private land located between existing power lines and the Bureau of Land Management land. The Permit Holder provided evidence demonstrating ongoing diligence and good faith in pursuing an easement across the private land.
9. On July 25, 2022, the Permit Holder filed another Extension Request ("July 2022 Extension Request") even though IDWR had not acted on the June 2022 Extension Request.
10. On September 1, 2022, the Permit Holder filed another Extension Request ("September 2022 Extension Request"). The September 2022 Extension Request included evidence of the Permit Holder's diligence and good faith in pursuing the authorizations needed to extend power lines to the place of use for the Permit.

CONCLUSIONS OF LAW

Idaho Code § 42-204(3), states in pertinent part:

The department may approve a timely request for an extension of time in the following circumstances:

(a) In cases where the permit holder is prevented from proceeding with ... application of water to full beneficial use by the permit holder's failure to obtain necessary consent or final approval... from the federal government... 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...

Idaho Code § 42-218a(1) states, in pertinent part:

A permit upon which the proof of beneficial use..., has not been submitted, or a request for extension of time has not been received on or before the date set for such proof or incremental statement, shall lapse and be of no further force nor effect.... Notice of said lapsing shall be sent by the department to the permit holder at the address of record by regular mail.

Idaho Code § 42-218a(2) states, in pertinent part:

Within sixty (60) days after such notice of lapsing the department may, upon a showing of reasonable cause, reinstate the permit with the priority date advanced a time equal to the number of days that said showing is subsequent to the date set for proof.

Pursuant to Idaho Code § 42-218a(1), the permit lapsed when proof was not submitted by June 17, 2022. By submitting the June 2022 Extension Request, the Permit Holder has shown reasonable cause why this permit should be reinstated pursuant to Idaho Code § 42-218a(2). Because the Permit Holder filed the June 2022 Extension Request less than sixty days after the permit lapsed, the Department should advance the Permit's priority date ten days to January 20, 2009.

The Department should also grant the June 2022 Extension Request for an additional 39 days of government delay pursuant to Idaho Code § 42-204(3)(a). Because the Department needed time to request and review the additional information submitted by the Permit Holder on July 11, 2022, the Department did not act on the June 2022 Extension Request by July 26, 2022, which is 39 days after the prior proof due date of June 17, 2022. The Department also did not act on the July 2022 Extension Request within 39 days of July 26, 2022. To put the Permit back on a timely trajectory, the Department should also grant the July 2022 Extension Request and the September 2022 Extension Request for 39 days each, establishing the new proof due date as October 12, 2022.

ORDER

IT IS HEREBY ORDERED that Permit No. 63-33141 is **REINSTATED** and the Permit's priority date is advanced to January 20, 2009.

IT IS FURTHER ORDERED that the June 2022 Extension Request, the July 2022 Extension Request, and the September 2022 Extension Request are **APPROVED**, and the time within which to submit proof of beneficial use is extended to October 12, 2022.

DATED this 13th day of September, 2022.



Shelley W. Keen, Chief
Water Allocation Bureau

RECEIVED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

\$50 fee
Received by Ku
Recpt No. C113890
Date 9.1.22

SEP 01 2022

DEPARTMENT OF
WATER RESOURCES**REQUEST FOR EXTENSION OF TIME**

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. 63-33141 Date proof is due Expected Sept 3, 2022
Name(s) of permit holder(s) Mellin Properties Limited Partnership
Mailing address 10100 W. Franklin Rd. City Boise State ID Zip 83709-0333
Telephone no. 208-250-2963 Email rmellinla@msn.com

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

If no work has been completed, show "none". An 8 inch guide/test well has been drilled through 64 feet of soil and 306 feet of basalt to gravel at 370 feet with static water at 280 feet. This well is now abandoned and plugged because of difficulty in removing its 64 feet of casing. Well drilling equipment now on site drilling an adjacent 20 inch well. An irrigation pivot with its connecting pipe and electric wiring now installed. Boundary fencing, Costing \$200,000/160 acres. dozer land leveling, and shrub discing completed. An attorney has started eminent domain proceedings for a power line.

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

Delay with eminent proceedings and BLM's response to IPC's request to them. That is renewed preliminary action is being undertaken for an eminent domain filing for a 1/4 mile of powerline right-of-way. One must first undertake non-court efforts. The BLM has indicated this action must have positive results before they will act on the filing to them for the second 1/4 mile. Permit holder(s) request an extension for five year(s) from March 1, 2020.

Also see Additional Information attached.

Ralph Mellin
Signature (If other than permit holder, Power of Attorney must be supplied)

August ³⁰31, 2022
Date RM

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

Request for Extension of Time – Additional Information

Permit No. 63-33141

Date Proof Due: September 3, 2022

I. Work completed – Continuation

Just found current drilling of the 20-inch well is being done with a preliminary 12-inch guide well almost complete to the bottom of the previously noted rock. Now at 300 feet. Driller has indicated he is to immediately follow with a 19 1/2-inch bit.

II. Unable to Complete – Continuation

No response received from Mr. Steve Cherry noted in the August 9, 2022, letter to IDWR. On August 19, 2022, met with Matthew Clements, Farm Operations Manager, J.R. Simplot Co. who works directly under Tom Basabe, President L & L (Land and Livestock) Group, J.R. Simplot Co. This meeting discussed my request for a 1/4 mile of needed powerline right-of-way on a minimal impacted area of their land to BLM land. That is a request to remove the need for publicly viewable eminent domain action that was started with the June 17, 2021, attorney letter to the previous land owner, Ray Montierth.

Mr. Matthews said he would get back to me.

The next step is to schedule a meeting with Mr. Basabe before continuing the June 17, 2021, action with the previous owner.

III. Request for Action

Action is requested on the previous July 22, 2022, dated Request for Extension of Time and on this request because of the wise due diligence, noted above, done and being done for the first 1/4 mile of powerline right-of-way required by the BLM before their commencement of action.

RECEIVED

AUG 11 2022

DEPARTMENT OF
WATER RESOURCES

Mellin Properties Ltd Ptr
10100 W franklin Rd
Boise, ID 83709
Telephone 208-250-2963
Email: rmellin1a@msn.com
Tuesday, August 9, 2022

Idaho Dept of Water Resources
Attention: Debbie Judd
P.O. Box 83720
Boise, ID 83720-0098

Dear Ms. Judd et. al. :

RE: Permit No. 63-33141

This is a confirmation of our telephone conversation on Wednesday, August 3, 2022, relating to my recent and continuing efforts to acquire a 1/2-mile powerline easement to prove up on the above permit and your request for such a written note. I might start with about my beginning efforts.

The current Idaho Power Company line reaches my closest location 35 ft north and 30 feet east of the SW corner of Sec. 18, T. 1 N., R. 2 E., B.M. The most direct route is to cross that section line to the south into the west side adjacent of Sec. 19 and then continue south for the 1/2 mile. The first 1/4 mile would be along the outside of a private land's chain link fence offset 25 feet in from the section line. See enclosed two pictures. The second 1/4 mile would continue south through Bureau of Land Management land to my property.

My first continuing efforts were conversations with the private land owner, Mr. Ray Montierth, probably early in 2019. His response was that he had a potential sale agreement for the impacted property with a clause for six-month extensions if it did not close. He indicated that he did not want to cloud/impact his potential sale with a new right-of-way easement. He did indicate if his sale did not close, he would consider providing me an easement. Yet time went on and he kept getting sale extensions.

My next step was to look at the route just across (west) of the section line of Section 19 in Sec 24, T. 1. N., R 1 E., B.M. then owned by the BLM and continue for the full 1/2 mile to my property. I worked with IPC to apply to the BLM on January 21, 2020, for a right-of-way easement along that route. On May 13, 2020, the BLM sent a rejection letter to IPC because there was a prior land exchange segregation designation (for Mr. Thomas Nicholson) for the land, which letter is enclosed.

My next step was to ask IPC to amend/resubmit their application to the BLM to a route for the south 1/4 mile of the above route to a route just east and across the section line of the rejected Sec 24 route. That is to the west side of Sec 19. IPC resubmitted that application, which

documentation was submitted to you on June 24, 2020, to be attached to my then current request for a permit extension of time and is re-enclosed. Yet this IPC right-of way request only includes the second/south 1/4 mile of the needed route. The first 1/4 mile's route would return to that mentioned in my above second and third paragraphs, through the land of Mr. Montierth's.

Recent Activities

Because of the continuing delay with Mr. Montierth's sale, I had an attorney start an eminent domain process noted in Idaho Code 7-701. (IPC had indicated to me that they do not do eminent domain proceedings for individual distribution lines.) That eminent domain start process letter of June 17, 2021, was submitted to you shortly after that date and again recently. No response to that letter was received; however, I understood from another source a bit thereafter that Mr. Montierth had transferred the large property that included the impacted 1/4 mile to the Gardner Co. from Salt Lake City. I on September 16, 2021, met with their Boise Office Managing Partner, David Wali. He indicated that they could be open to granting me the needed right-of-way easement.

However, late in the year of 2021/early 2022, I understood the needed 1/4 mile of right-of-way and adjacent land had again been transferred, now to CS Property Development LLC.

I continued to feel good about that information, since I had gone to CS Beef's neighborhood meeting for the City of Kuna on January 26, 2015, about the proposed new beef packing plant that included 1121 acres and a pit-run base road ending 1/4 mile north of the above noted Sec 19 corner. I indicated that my only concern was that I continue to have access to my property on the section line pit-run base road (an extension of South Cole Rd). They indicated that would not be a problem.

(CS Property Development LLC also later acquired the adjacent land in Sec 24 – through which the BLM's first transferred it to Mr. Thomas Nicholson all as noted in my fourth paragraph.)

On July 7, 2022, I spoke by telephone with Matthew Clements, Simplot Co's regional farm manager, to request a meeting to discuss my need to purchase a powerline easement. He indicated that he would see who the proper people would be to have at the meeting. On July 15, 2022, I received a call from attorney Vic Conrad of Simplot Co about that powerline request. He indicated that he would continue to review the request. He also indicated that they wanted to get along with the neighbors.

Mr. Conrad also mentioned my previous year's letter to the IDWR about CS Property Development LLC's request for six potential new point of diversion locations for 428 acres of new water rights in an Application for Permit No. 63-35094. A September 30, 2021, IDWR notification letter to me indicated the comment deadline was October 25, 2021. I made two intervening calls to Mr. Conrad's indicated telephone number with a voice message; however,

neither call was returned by the approaching comment deadline. I preferred not to comment to IDWR; however, I was concerned since one of the proposed points of diversion could be within 700 feet of my well with the potential for interference even with the good water bearing rock strata, which my 8-inch exploratory well showed. Still, I believed that the inclusion of that close-by sixth point of diversion was somewhat accidental without a review of the potential impacts and that a nearby point of diversion location would be a better for all concerned including CS Property Development LLC if they were a future buyer of my property. That was my only point in my otherwise neutral letter of October 22, 2021, to the IDWR, and which I preferred not to write.

On the well, the well driller, Garrett Post of Treasure Valley Drilling Inc, has had several breakdowns with his older equipment; however, he is currently drilling and it appears that he is now getting close to completing his 20-inch well through about 300 feet of basalt rock.

On August 2, 2022, I met with the CS Beef plant manager, Mr. Steve Cherry, who I understood also is a principle or an opinion maker for CS Property Development LLC, the land's current owner of my needed 1/4 mile of powerline right-of-way just outside the chain-link fence along the west side of Sec 19. (Only four power poles are needed to bring power to the BLM land. Mr. Cherry indicated that he would look favorable on my request, but needed to review it further, and that he was working very hard to give CS Beef a most favorable community image. This was the same and even a stronger response than given to me in the above public response to working with the neighbors noted above in the January 26, 2015, neighborhood meeting.

In summary as is seen, I have been working diligently to acquire the first 1/4 mile of right-of-way without public court action, which some success the BLM wants to see before they again begin working on their right-of-way application for which they see no concerning issues.

Sincerely,



Ralph Mellin
General Partner

Enclosures: two pictures, BLM rejection letter, and resubmitted BLM application

Permit 68-33141

Picture 1 of 2

May 31, 2021



Looking South with ^{the} NW $\frac{1}{4}$, Sec 19, T. 1 N., R. 2 E., B. M.
generally on left side of chain link fence. Fence is
offset 25 ft left of section corner, which is behind the
left corner of the steel gate.

Permit 63-33131

Picture 2 of 2

May 31, 2021



Looking North with the south end of the $\frac{1}{4}$ mile long chain link fence offset right (east) of the west boundary of the NW $\frac{1}{4}$ (Lot 1), NW $\frac{1}{4}$, Sec 19, T. 1 N., R. 2 E., B. 1 N.



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Boise District
3948 Development Avenue
Boise, ID 83705
<http://www.blm.gov/id>

In Reply Refer To:
2800 (IDI110)
IDI 39108

MAY 18 2020

CERTIFIED MAIL NUMBER: 7011 2970 0002 6309 3602
RETURN RECEIPT REQUESTED

Decision

Idaho Power Company	:	Right-of-Way (ROW) Application
Felisa Waste	:	IDI 39108
P.O. Box 70	:	
Boise, ID. 83707	:	

Application Denied

On January 21, 2020, the BLM received your application for a ROW to construct an overhead 34.5kV distribution line across public land to serve an irrigation pivot and well belonging to Ralph Mellin. The lands affected by the application are in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of sec. 24, T. 1 N., R. 1 E., Boise Meridian, Ada County, Idaho. Your application is hereby denied because the affected lands are currently unavailable for ROW applications.

The land affected by your application is part of a larger parcel of Federal land proposed for conveyance into private ownership in a land exchange. During the processing of the exchange, the subject lands were segregated from appropriation under the public land laws, except for the exchange provisions of the Federal Land Policy and Management Act of 1976, and as such, BLM cannot accept ROW applications that affect the property. The land exchange is currently in the BLM Washington Office awaiting the Director's approval. If approved, the lands would be conveyed into private ownership, after which you could address your request to the new landowner. If the BLM Director denies the exchange, the lands would remain in Federal ownership, and you would then be able to submit a new ROW application.

Appeal Information

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (request) pursuant to regulation 43 CFR 2801.10 or 43 CFR 2881.10 for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A

petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

You may contact Courtney Busse by e-mail at cbusse@blm.gov or, by telephone at (208) 373-3872 if you have any concerns or comments.

Sincerely,

BRENT RALSTON

Digitally signed by BRENT
RALSTON
Date: 2020.05.13 12:32:45 -06'00'

Brent Ralston
Field Manager
Four Rivers Field Office

Enclosure: BLM Form 1842-1

cc: Ralph Mellin

From: "Waste, Felisa" <FWaste@idahopower.com>
Date: June 23, 2020 at 9:25:52 AM MDT
To: "Busse, Courtney L" <cbusse@blm.gov>
Cc: Ralph Mellin <rmellin1a@msn.com>, "Walker, Zac" <ZWalker@idahopower.com>
Subject: RE: [EXTERNAL] Confirmation of Receipt - Amended Application and Drawing for Mellin Properties Proposed Overhead Line Extension WO [27543362](#) IDI-39108

That is very good news. Thank you Courtney.

Felisa

From: Busse, Courtney L <cbusse@blm.gov>
Sent: Tuesday, June 23, 2020 9:19 AM
To: Waste, Felisa <FWaste@idahopower.com>
Cc: 'Ralph Mellin' <rmellin1a@msn.com>; Walker, Zac <ZWalker@idahopower.com>
Subject: Re: [EXTERNAL] Confirmation of Receipt - Amended Application and Drawing for Mellin Properties Proposed Overhead Line Extension WO [27543362](#) IDI-39108

KEEP IDAHO POWER SECURE! External emails may request information or contain malicious links or attachments. Verify the sender before proceeding, and check for additional warning messages below.

Hi Felisa,

Yes, I received. I don't think the route is a problem.

Thank you.

Courtney Busse
Management and Program Analyst (Acting)
BLM, Idaho State Office
[208.373.3872](tel:208.373.3872)

Thanks, Ralph. I will be taking this up to Shelley tomorrow and will attach it to the file.

Debbi

From: Ralph Mellin [<mailto:rmellin1a@msn.com>]

Sent: Wednesday, June 24, 2020 2:47 PM

To: Judd, Debbi <Debbi.Judd@idwr.idaho.gov>

Subject: Fwd: [EXTERNAL] Confirmation of Receipt - Amended Application and Drawing for Mellin Properties Proposed Overhead Line Extension WO [27543362](#) IDI-39108

Hi Debbie, the below email trail mainly involves IPC, Felica, and the BLM, and is to attach to my recent, of a couple days ago, last Request for an Extension of Time to develop Permit No. [63-33241](#).

I am sorry about the significant duplication of messages, but I am not able to electronically separate them.

The main point, near the bottom of the trail, is that IPC moved the route from one in a Section 24 east just across the north-south section line to a route not to be in a Section 24. Somewhat near the top of the email trail is a BLM confirmation of a couple days ago that they received the IPC route amendment request.

Ralph Mellin,
Mellin Properties Ltd Ptr

From: Waste, Felisa <FWaste@idahopower.com>

Sent: Monday, June 22, 2020 3:39 PM

To: Busse, Courtney L <cbusse@blm.gov>

Cc: 'Ralph Mellin' <rmellin1a@msn.com>; Walker, Zac <ZWalker@idahopower.com>

Subject: [EXTERNAL] Confirmation of Receipt - Amended Application and Drawing for Mellin Properties Proposed Overhead Line Extension WO [27543362](#) IDI-39108

Hi Courtney,

Please let me know that you received this amended application and that it has been submitted for review. We are anxious to know if this amended route is satisfactory to the BLM and can move forward through the permitting process.

Thank you

Felisa

Felisa A. Waste

Permitting Coordinator

Idaho Power | Corporate Real Estate | Land Mgmt. & Permitting

PO Box 70 | Boise, ID | 83707

Ofc: [\(208\) 388-6798](tel:(208)388-6798)

Fax: [\(208\) 433-2842](tel:(208)433-2842)

Email: fwaste@idahopower.com

From: Waste, Felisa

Sent: Thursday, June 4, 2020 10:38 AM

To: 'Busse, Courtney L' <cbusse@blm.gov>

Cc: 'Ralph Mellin' <rmellin1a@msn.com>; Walker, Zac <ZWalker@idahopower.com>

Subject: Amended Application and Drawing for Mellin Properties Proposed Overhead Line Extension WO [27543362](#) IDI-39108

Hi Courtney,

Attached is the final amended application and exhibit map for the proposed overhead line extension. The route has been amended to avoid Section 24 in Township 1 North, Range 1 East.

Please let us know as soon as possible if this is a viable option for the power line. Mr. Mellin would appreciate confirmation of this application being re-submitted.

Thank you for your help with project.

Felisa

Felisa A. Waste

Permitting Coordinator

Idaho Power | Corporate Real Estate | Land Mgmt. & Permitting

PO Box 70 | Boise, ID | 83707

Ofc: [\(208\) 388-6798](tel:(208)388-6798)

Fax: [\(208\) 433-2842](tel:(208)433-2842)

Email: fwaste@idahopower.com

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<mime-attachment>

<mime-attachment>

RECEIVED

JUN 27 2022

DEPARTMENT OF
WATER RESOURCESSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

\$50 fee

Received by KMRecpt No. C113198Date 6.27.22

REQUEST FOR EXTENSION OF TIME

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. 63-33141 Date proof is due June 17, 2022
 Name(s) of permit holder(s) Mellin Properties Limited Partnership
 Mailing address 10100 W. Franklin Rd. City Boise State ID Zip 83709-0333
 Telephone no. 208-250-2963 Email rmellinla@msn.com

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

If no work has been completed, show "none". An 8 inch guide/test well has been drilled through 64 feet of soil and 306 feet of basalt to gravel at 370 feet with static water at 280 feet. This well is now abandoned and plugged because of difficulty in removing its 64 feet of casing. Well drilling equipment now on site drilling an adjacent 20 inch well. An irrigation pivot with its connecting pipe and electric wiring now installed. Boundary fencing, Costing \$200,000/160 acres. dozer land leveling, and shrub discing completed. An attorney has started eminent domain proceedings for a power line.

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

Delay with eminent proceedings and BLM's response to IPC's request to them.

The current drilling level is past one-third of the 300 feet of basalt. Drilling equipment breakdowns have slowed progress; however, the crew is actively working to complete the well.

Permit holder(s) request an extension for five year(s) from March 1, 2020.

Ralph Mellin
 Signature (If other than permit holder, Power of Attorney must be supplied)

June 25, 2022
 Date

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

Mellin Properties Ltd Ptr
10100 W Franklin Rd
Boise, ID 83709
Telephone (208) 250-29634
July 7, 2022

Idaho Dept of Water Resources
Attn: Debbie Judd
P.O. Box 83720
Boise, ID 83720-0098

Dear Ms. Judd:

RE: Permit No. 63-33141

RECEIVED

JUL 11 2022

DEPARTMENT OF
WATER RESOURCES

This is a confirmation and follow up to our telephone yesterday on the status of my acquiring right-of-way for a ½ mile of power line easement to my permitted property from the corner of Idaho Power's power line.

The first 1/4 mile of such power line easement was owned by Ray Montierth and is referenced in the enclosed attorney letter of June 21, 2021 (See page 2, Electrical Service). Mr. Montierth's verbal response was that he did not want to act on the letter since he had a sale agreement to sell the impacted property, and he preferred not to cloud that agreement. That property very recently has been sold and transferred to Simplot Company. Yesterday I requested a meeting with Simplot's "regional field manager," Matthew Clements, to discuss my need for a power line easement for a power line pasts its corner for about four power poles along the east side of the section line past the end of South Cole Rd [NW ¼ NW ¼ (Lot 1) Sec 19, T. 1 N., R. 1. E., B. M.]. He indicated he would get back to me on a time for a meeting at his field office when he could arrange for the proper people to be available.

Now as indicated to your office in previous correspondence, I have a written request to the Bureau of Land Management for an easement for the second ¼ mile of powerline easement to my property. Their verbal response is that they preferred not to act upon that request until I had an agreement for the first ¼ mile of the needed easement – of which as indicated above I am actively pursuing. They further indicated it appeared that a favorable decision might be made within their general criteria.

I will keep you informed on my progress as it transpires, and please call if you have further intervening needs for information.

Sincerely.



Ralph Mellin, General Partner

Enclosure

800 West Main Street, Suite 1300
Boise, Idaho 83702
Main 208.562.4900
Fax 208.562.4901

**PARSONS
BEHLE &
LATIMER**

A Professional
Law Corporation

Fredric V. Shoemaker
Attorney at Law
Direct 208.562.4900
FShoemaker@parsonsbehle.com

June 17, 2021

VIA US MAIL

Ray Montierth
825 Heartland Drive
Nampa, Idaho 83686

THIS LETTER SUPERCEDES AND REPLACES MY LETTER OF JUNE 15, 2021

Re: **Notice of Intent to File Suit**
PB&L File No. 30207.001

Dear Mr. Montierth:

I represent and write on behalf of Mellin Properties Limited Partnership ("Mellin Properties"). As you know from prior communications with Ralph Mellin, the Principal and General Partner of Mellin Properties, my client owns 160 acres located approximately one-quarter mile south of property you own, on the west side of and adjoining the future right-of-way for Cole Road, when extended.

Mellin Properties requires both electrical service, to fully and fairly develop its property, and needs to document its existing vehicular and pedestrian access along the section line that will become the center line of Cole Road when extended. Relatedly it needs to widen that right-of-way and formally document that access to formally correspond with the prescriptive and historic easement's long recognized along section lines in Ada County.

While I understand Mr. Mellin has explained this to you, let me again document by letter, the purpose of and basis for the request for electrical service is to irrigate the property. Mr. Mellin has already drilled a test well in the northeast corner of the property near the Cole Road right-of-way, extended. There is no feasible way to provide irrigation water to this property by gravity flow so an electric pump is necessary to draw the water from the aquifer below this ground. Idaho law, specifically Idaho Code Section 7-701, authorizes the use of eminent domain for roads accessing farms and for electrical distribution and transmission lines for farming and other purposes.

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Electrical Service.

An existing electrical distribution line extends south along and on the east side of the section line that will become the centerline of South Cole Road to a point at the southwest corner of Section 18, T. 1 N., R. 2 E., B.M., Ada County, Idaho. The required new electrical power distribution line would then extend 1,320 feet further south along the west boundary of Lot 1, (NW $\frac{1}{4}$ of the NW $\frac{1}{4}$) of Section 19, T. 1 N., R. 2 E., B.M., Ada County, Idaho, on your property to the north boundary of land owned by the BLM. Idaho Power advises a 30 feet wide easement for the new distribution line, the west side of which would be the section line and east side of which would be 30 feet east of the section line, parallel to the section line. The poles would be outside of your 25-foot offset chain link fence with 5 feet of wire overhanging. Mellin Properties is separately securing rights across the BLM ground to enable the extension of the distribution line across the BLM ground to its property.

The 30-foot wide powerline easement across your property for the amount 1,320 feet is a total of 39,600 square feet or approximately 0.91 acres.

Vehicular and Pedestrian Easement.

In addition, to adequately develop my client's property, it is necessary to acquire a vehicular and pedestrian easement, for 25 feet in width on your property, the same distance of 1,320 feet, all within the 30-foot wide electrical line easement. Plus the same 25 foot easement width is needed for the adjoining north approximately 1,320 feet along the west boundary of what could be known as the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 18, T. 1 N., R. 2 E., B.M. for an additional about 0.76 acres or a total of about 1.67 acres for vehicle access.

Also there is a question of 25 feet of vehicle and pedestrian easement right-of-way access rights on the next adjoining north existing pit run graded road base of approximately one half mile (2,640 feet) up to a cattle guard. Such pit run base was placed outside your boundary fence line evidently approximately 50 years ago by the existing Ada County Road Department, but without an easement release. That location would be on the western boundary of what could be known as the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 18, T. 1 N., R., 2 E., B.M. To purchase such at full value would add an additional approximately 1.52 acres. It is likely that the easement has already been given for public use because of its grading and the fact that pit run has been brought in.

Now further adjoining north of such cattle guard and your farm access point on what could be known as an extended South Cole Road there is a gravel road previously maintained by Ada County Highway District for an additional approximate one-half mile north to the main line Union Pacific Railroad right-of way, which roadway clearly is used by the public, but for which no roadway easement is of record. It is our desire to clarify the public's right of use for your 25 feet of that approximate one-half mile or slightly more than 1.52 acres. Dave Serdar of the Ada County Highway District's right-of-way department indicated they generally do not pay for transfer of title for such roadway currently used by the public.

Ray Montierth
June 17, 2021
Page Three

Although not everyone is aware of this, the power of condemnation is not limited to regulated utilities but instead, condemnation, under Idaho law, is generously available to individuals and corporations when it is reasonably necessary to provide access to farms and for electrical distribution lines for power facilities and other purposes like those required by my client to provide irrigation water for its lands. I.C. § 7-701.

In addition to the rights and powers available to Mellin Properties under Idaho's eminent domain laws, Mellin Properties has rights to access its property both for pedestrian, vehicular, and electrical power purposes based upon an easement by necessity.

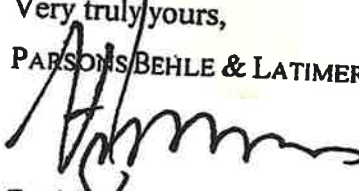
Thirdly, and finally, at least with respect to pedestrian and vehicular access, Mellin Properties has a prescriptive easement that, although not precisely defined, exists at least for its historic purpose of access to these 160 acres. and my client has the right to file a lawsuit to clarify and specify exact limits and dimensions of that prescriptive easement.

Mellin Properties has been negotiating in good faith to purchase the pedestrian and vehicular access rights and I am authorized to again offer \$10,000 upon securing your written agreement for a pedestrian and vehicular easement 25 feet in width, for the distance of about 8,200 feet described above. The written easement would be suitable for public access and transferable to a public entity, like the Ada County Highway District. Likewise, the 30-foot wide easement for electrical distribution lines needs to expressly provide that it is transferable to and for the benefit of an electric utility company.

Obviously, the dimensions of both the pedestrian and vehicular easement and the electrical distribution line easement will need to be more precisely defined in any agreement reached, as they would be in the lawsuit I am prepared to file on behalf of my client if negotiations are not successful.

If you are interested in negotiating a resolution of my client's need to acquire these easements across your property without the necessity of filing suit, please contact me or have your attorney do so, within twenty (20) days of the date of this letter, failing which, I have been authorized to file suit. Thank you.

Very truly yours,
PARSONS BEHLE & LATIMER


Fredric V. Shoemaker
Attorney at Law

FVS:kea

From: Judd, Debbi Debbi.Judd@idwr.idaho.gov
Subject: Permit 63-33141
Date: Jun 24, 2022 at 10:49:32 AM
To: Ralph Mellin rmellin1a@msn.com

RECEIVED

JUN 27 2022

DEPARTMENT OF
WATER RESOURCES

Good morning Ralph,

Proof was due last Friday, June 17, for permit [63-33141](#) and has now lapsed. Are you planning to file another extension? A lapse notice is scheduled to be sent on Monday, June 27. Please let me know the status.

Thanks,
Debbi

Debbi Judd
Technical Records Specialist
debbi.judd@idwr.idaho.gov

Idaho Department of Water Resources
322 E Front St
PO Box 83720
Boise, ID 83720-0098
[208-287-4920](tel:208-287-4920)
www.idwr.idaho.gov

Saturday, June 25, 2022

Dear Debby:

Thank you a lot for the above email!
I sure overlooked the important date
The needed extension request is
enclosed.
Thank you again for your work.

Sincerely,
Ralph
Mellin

RECEIVED

JUL 25 2022

DEPARTMENT OF
WATER RESOURCESSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

\$50 fee

Receipted by KURecpt No. 0113514Date 7.25.22

REQUEST FOR EXTENSION OF TIME

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. 63-33141 Date proof is due Expected: July 26, 2022
 Name(s) of permit holder(s) Mellin Properties Limited Partnership
 Mailing address 10100 W. Franklin Rd. City Boise State ID Zip 83709-0333
 Telephone no. 208-250-2963 Email rmellinla@msn.com

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

If no work has been completed, show "none". An 8 inch guide/test well has been drilled through 64 feet of soil and 306 feet of basalt to gravel at 370 feet with static water at 280 feet. This well is now abandoned and plugged because of difficulty in removing its 64 feet of casing. Well drilling equipment now on site drilling an adjacent 20 inch well. An irrigation pivot with its connecting pipe and electric wiring now installed. Boundary fencing, Costing \$200,000/160 acres. dozer land leveling, and shrub discing completed. An attorney has started eminent domain proceedings for a power line. The permit holder(s) has been unable to complete the remainder of the work for the following reasons:

Delay with eminent proceedings and BLM's response to IPC's request to them.

Now back drilling again after another breakdown with the drilling level at about one-third through 300 feet of basalt

Permit holder(s) request an extension for five year(s) from March 1, 2020.

Ralph Mellin
 Signature (If other than permit holder, Power of Attorney must be supplied)

July 22, 2022

Date

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



BRAD LITTLE
Governor

State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

GARY SPACKMAN
Director

September 16, 2022

MELLIN PROPERTIES LTD PARTNERSHIP
10100 W FRANKLIN RD
BOISE ID 83709-0333

REQUEST FOR EXTENSION OF TIME LETTER

RE: Permit No. 63-33141

Dear Permit Holder:

Enclosed is a copy of the Order Reinstating a Permit and Approving Extension Request for the request for extension of time submitted in connection with the above referenced permit which extends the proof due date to **October 12, 2022**.

The extension 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 by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

Please be advised that Idaho Code § 42-248, requires you or the owner of this water right to maintain current ownership and address records on file with the Department. Forms to file a change of ownership of a water right and/or a change in the address of the water right owner are available from any Department office or at the Department's website at www.idwr.idaho.gov.

If you have any questions concerning this permit, please contact the State Office of the Department located in Boise at (208) 287-4800.

Sincerely,

Debbi Judd
Technical Records Specialist

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on **September 16, 2022** I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (**PRELIMINARY ORDER REINSTATING A PERMIT AND APPROVING EXTENSION REQUEST**) to the person listed below:

RE: Preliminary Order in the Matter of Permit No. **63-33141**

**MELLIN PROPERTIES LTD PARTNERSHIP
10100 W FRANKLIN RD
BOISE ID 83709-0333**

**VIC CONRAD – *via email*
J R SIMPLOT CO
PO BOX 27
BOISE ID 83707-0027
vic.conrad@simplot.com**



**Debbi Judd
Technical Records Specialist**

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

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

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.