

AUG 16 2021

DEPARTMENT OF
WATER RESOURCESSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES\$50 fee
Received by KM
Recpt No. C110755
Date 8-16-21**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. 63-34046 Date proof is due August 14, 2021
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 eight inch guide well to be enlarged to 20 inches has been drilled to 370 feet with static water at 280 feet.

Except for the top 64 feet, this was through rock ending with the beginning of gravel and 90 feet of water. Also the pipe and electric line to the pivot pad, elementary boundary fencing, and offset disking has been completed. And also a request has been made for an IPC 1/2 mile power line Costing \$38,000/160 acres. through private property and BLM land.

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

BLM delay in getting a power line easement and a connecting private easement through eminent domain proceedings. My amended BLM application is to get adjacent (kitty-corner) to my property. The first 1/4 mile going south from the closest power in the very SE corner of Sec. 18, T. 1 N., R. 2 W. is owned by a party that is not negotiating. (over)

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

Ralph Mellin August 12, 2021
Signature (If other than permit holder, Power of Attorney must be supplied) 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 February 27, 2015.

☒ **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 May 26, 2022.

Signed this 31st day of October, 2021

Shelley W. Keen
Shelley W. Keen, Chief
Water Allocation Bureau

I have engaged an attorney, See *see enclosed letter* *for*

The BLM has indicated their first step is to see that I have an easement for the first $\frac{1}{4}$ mile.

ITC correspondence with BLM on amended application with slightly altered line route enclosed.

BTJ

letter starting eminent domain proceedings

PARSONS
BEHLE &
LATIMER

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

A Professional
Law Corporation

Ralph Mellin
Aug 12, 2021
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 foot 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.

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.

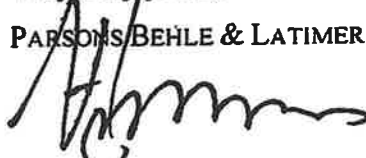
Mellin Properties has been negotiating in good faith to purchase the pedestrian and vehicular access rights and I am authorized to again offer \$10,000 upon securing your written agreement for a pedestrian and vehicular easement 25 feet in width, for the distance of about 8,200 feet described above. 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

LAST IFC correspondence to BLM on need powerline.
by Ralph Mellin

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)

Aug 17, 2021

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,

cover

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

Fax: (208) 433-2842

Email: fwaste@idahopower.com

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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

BRAD LITTLE
Governor

GARY SPACKMAN
Director

November 4, 2021

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

REQUEST FOR EXTENSION OF TIME LETTER

RE: Permit No. 63-34046

Dear Permit Holder:

Enclosed is a copy of the approved request for extension of time submitted in connection with the above referenced permit which extends the proof due date to **May 26, 2022**.

The Department granted this extension based on evidence of good cause. It is important that you work diligently toward the completion of the project during the development period allowed according to Idaho Code § 42-204(3)(a).

This approved extension also reinstates the permit and advances the priority date since the request and the filing fee was submitted after the permit proof due date. The priority date of this permit is advanced to **February 27, 2015**, pursuant to Idaho Code § 42-218a(2).

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 **November 4, 2021** I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (**PRELIMINARY ORDER APPROVING REQUEST FOR EXTENSION OF TIME**) to the person listed below:

RE: Preliminary Order in the Matter of Permit No. **63-34046**

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

A handwritten signature in cursive script, appearing to read "Debbi Judd", is written above a horizontal line.

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.