

RECEIVED

JUN 22 2020

DEPARTMENT OF
WATER RESOURCESSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

\$50 fee

Received by KMRecpt No. C100943Date 6-22-2020

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 May 17, 2020 June 25, 2020
 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".

Purchased the long-side adjoining 80 acres for \$40,000 to make an economic unit with this 80-acre property so as to use a full-circle pivot and a single well. Also constructed an 8-inch guide well to 370 feet, the bottom of the rock with 100 ft of static water for \$32,000 and pivot point buried electric line for \$12,000.
Costing \$84,000 This permit is associated with Permit No, 63-34045.

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

I am not able to soon economically farm the land because of the delay in getting an electric powerline constructed across BLM land until BLM's expected approval in about two years from Jan 22, 2020 - now delayed some - plus two months to construct. Also see my letter of April 2, 2020, to IDWR, again enclosed, for justification for an Extension of Time of five years.

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

Ralph Mellin Ralph Mellin June 22, 2020
 Signature (If other than permit holder, Power of Attorney must be supplied) Date May 14, 2020

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 August 3, 2020.

Signed this 27th day of June, 2020

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

Mellin Properties Limited Partnership
Attn: Reconsideration of Preliminary Order
10100 W Franklin Rd
Boise, Idaho 83709-0333
April 2, 2020

Idaho Department of Water Resources
PO Box 83720
Boise, Idaho 83720-0098

RE: Reconsideration of Permit No. 63-33141 Preliminary Order in letter of March 17, 2020

Dear Sir/Madam:

In response to the above letter giving a PRELIMINARY ORDER for a Request for Extension of Time received on March 20, 2020 (shown on the receipt envelope copy), I am petitioning for Reconsideration of the PRELIMINARY ORDER as suggested was available in that letter.

I am asking for a longer Extension of Time than given of until April 7, 2020. My Request asked for a maximum extension for five years, which is hereby requested.

My first request for an Extension of Time signed on February 24, 2015, noted the single reason that permit was not developed in the first five years was that I needed to first purchase the adjacent 80 acres, now related to Permit No. 63-34046, to combine with this permit's 80 acres to make an economic unit for the use of a single deep well and a full circle irrigation pivot. That first request was granted with the acceptance of that single reason of developing a project of 160 acres as being the good cause for the extension of time request.

I on December 11, 2019, asked for this second extension of 5 years (for a total of 10 years) to be allowed as provided by the passage of Chapter 82 (House Bill 131) of 2013 that added a new Section 4 to I.C. 42-204. This House Bill states the director of the IDWR may extend the time for the application of the water to full beneficial use for up to 10 years for the "cultivation of 100 acres or more...."

In interpreting a law, the principle of reviewing the intent of the legislatures generally is followed. To do that one may go to the testimony given during the passage of the law. The most detailed testimony appears to be in the Idaho House Resource and Environment Committee's meeting of February 21, 2013. There the principal source behind the development of the house bill was Attorney Andrew Waldera of the Moffatt Thomas law firm for his client. In that testimony Mr. Waldera stated this addition to the Idaho Code "involved the cultivation of 100 or more acres." (No specific testimony, other than general words of support, was spoken in the Senate Resources and Environment Committee on its hearing date of March 4, 2013.) That House testimony was accepted without question. And similarly, the

April 2, 2020

relative addition to the Idaho Code uses the related words, "involving...the development or cultivation of one hundred (100) or more acres...."

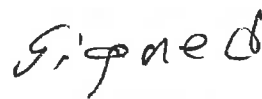
It is noted that a principle of law through the courts generally suggests for a more liberal interpretation of a statute instead of using a most strict interpretation of the statute. (Legal sites left out in the interest of time.)

Certainly the development of the above permit involves the development or cultivation of 100 or more acres since the intent from early on, as noted and accepted in my first request, was for an extension of time to have an 160 acre project. In that extension request, the water was noted to be intended to be applied with a single 135 acre pivot irrigation system and a single well. Through the use of an economic single pivot and a single well, the water covered by the above permit cannot be, or is not required to be, segregated out and applied only on the acres noted in the permit, but must interchange with the water from Permit No. 63-34046 and vice versa. So my project is a single project that involves 100 acres or more.

I also submit an email from Idaho Power Company that indicates the BLM can take up to two years from their initial receipt of a request for power line right-of-way across their land, which was received by them on January 21, 2020 per BLM's email to me. These emails were the basis of my minimum request of an extension of time of two and one-third years.

In summary, related to the above justification for a single 100 acre or larger project, I request a reconsideration of the above noted Preliminary Order to give a full 5 year extension of time for Permit No. 63-33141 as allowed under Idaho Code 42-204 (4).

Sincerely,



Ralph Mellin, General Partner
Mellin Properties Limited Partnership

Enclosures: Email from Felica Waste of Idaho Power Co.
Email from Debbi Judd with email from BLM
Copy of envelope delivering Preliminary order with the date stamp

Judd, Debbi

From: Ralph Mellin <rmellin1a@msn.com>
Sent: Wednesday, June 24, 2020 2:47 PM
To: Judd, Debbi
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

Begin forwarded message:

From: Andy Waldera <andy@sawtoothlaw.com>
Date: June 24, 2020 at 9:43:43 AM MDT
To: Ralph Mellin <rmellin1a@msn.com>
Cc: Debby Long <debby@sawtoothlaw.com>
Subject: RE: [EXTERNAL] Confirmation of Receipt - Amended Application and Drawing for Mellin Properties Proposed Overhead Line Extension WO 27543362 IDI-39108

Good morning, Ralph.

Please see my comments embedded below in red text.

Thanks,
Andy

From: Ralph Mellin [mailto:rmellin1a@msn.com]
Sent: Tuesday, June 23, 2020 11:34 AM
To: Andy Waldera
Subject: Fwd: [EXTERNAL] Confirmation of Receipt - Amended Application and Drawing for Mellin Properties Proposed Overhead Line Extension WO 27543362 IDI-39108

Hi Andy.

1. The below third message is a confirmation that BLM just has received the amended IPC right-of-way route request. (Some how I can not print this trail Of emails as I can most emails.)
2. Your yesterday's email has been read. I can not find a Saturday email as mentioned in the first sentence. Perhaps it could be resent. I've attached Saturday's brief email hereto. It is substantively reiterated in the subsequent email you did read.

3. I still wonder about sending an appeal to the director with the addition of the no. 3 paragraph/a sentence that we removed in our reconsideration request. That is: "It is noted that a principle of law through the courts generally suggests for a more liberal interpretation of a statute instead of using a most strict interpretation of a statute. (Legal sights left out in the interest of space.)" or something to that sort. The deadline for filing with the director is June 30. As I stated in my Monday email to you (copy attached), I continue to find the exercise futile in my opinion. Adding the language you propose above will not help (again, in my opinion) because it is an incorrect principle of law in this matter.

While there are statutory bodies (like the Title 72 Worker's Compensation statutes and the Title 45 Mechanic's Lien statutes) that enjoy "liberal" interpretation and application (and there are ISC case opinions to this effect), it is because there are specific statutes within those titles and chapters expressly stating that they are to be applied liberally in favor of the claimant. Conversely, the statutes we are dealing with here (Title 42, Chapter 2) do not contain any such "liberality" statute.

To the contrary, canons of statutory construction prohibit courts from reading terms into statutes that do not exist. Instead, the plain and ordinary terms/text within the statutes govern, and those statutes are to be strictly construed. Doing otherwise, is appealable (and reversible) error.

Thus, I am not familiar with the statutory "principle" you cite absent citation. To the contrary, a search of case law regarding statutory construction and interpretation quickly turns up the opposite . . . except for cases involving worker's compensation, mechanic's liens, and other statutory chapters expressly providing for "liberal" application (which, again, Title 42, Chapter 2 does not contain).

And perhaps gently hint that our alternative is to return to a second legislative cleanup legislation. And perhaps note very few permits would be impacted by the less strict interpretation. The Director is charged with applying the law as currently written, not what might be written in the future. Thus, referring to the possibility of 2021 legislative amendment is not helpful (and might be viewed as somewhat threatening by the Director anyway). These arguments are best served for trying to convince the Legislature in 2021. They are of no weight with the Director, and he likely will find them off-putting (which is counterproductive for your case).

(It has little bearing, but Gary Spackman is 67 so will be retiring in 2 1/2 yr at 70 yr unless asked earlier.)

Ralph

Begin forwarded message:

From: Ralph Mellin <rmellin1a@msn.com>
Date: June 23, 2020 at 11:09:27 AM MDT
Subject: Fwd: [EXTERNAL] Confirmation of Receipt - Amended Application and Drawing for Mellin Properties Proposed Overhead Line Extension WO 27543362 IDI-39108

Ralph

Begin forwarded message:

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

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

Fax: (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

Fax: (208) 433-2842

Email: fwaste@idahopower.com

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<mime-attachment>

<mime-attachment>

CERTIFICATE OF SERVICE

I hereby certify that on **July 6, 2020** 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. **63-33141**

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



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.



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

July 6, 2020

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 approved request for extension of time submitted in connection with the above referenced permit which extends the proof due date to **August 3, 2020**.

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