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DEPARTMENT OF
WATER RESOURCES

Mellin Properties Limited Partnership
10100 W Franklin Rd
Boise, ID 83720

Wednesday, June 3, 2020

Tuesday, June 2, 2020

Shelley Keen, Chief; Water Allocation Bureau
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

RE: Petition for Reconsideration of Permit No. 63-33141, Preliminary Order of May 20, 2020

Dear Mr. Keen:

In response to the above Preliminary Order responding to my request for an Extension of Time, I am herein filling a Petition for Reconsideration of the short time limit of 39 days given. That is I request an extension of time of five years, from March 1, 2020 as requested on my May 14, 2020, request instead of the limited 39 days given.

1: My first Extension of Time request, submitted on February 24, 2015, noted the single reason that the permit was not developed in the first five years was that I needed time to first purchase the adjacent long/lateral-side 80 acres. That is to combine that second 80 acres with this permit's 80 acres to make an economic unit for the use of a single deep well and a most economic full-circle irrigation pivot. That adjacent purchase was done and is related to Permit No. 63-34046. That first extension request was granted with, what appears as, the acceptance of that single reason of a need to develop an economic project of 160 acres as being the single "good cause" for the extension of time granted and thus the IDWR accepted my project as being a 160 acre project. That is even though reference to I.C. 42-204(6) was used in the extension approval. Which I.C. section that earlier was used would seem to have little bearing on the current request.

Certainly the development of the above permit involves the conjoined/common development or cultivation of 100 or more acres via development and use of a single deep well. That is since from my first Request for Extension of Time was shown to be a 160 acre project. To repeat that was the only "good cause" given and accepted by the IDWR for the granting of that February 24, 2015, extension request. Also it is noted that the Point of Diversion was moved to the adjacent newly purchased 80 acres in an accepted Application for Amendment of a Permit, also signed on February 24, 2015.

That first Request for an Extension of Time clearly shows the project changed from one being irrigated with wheel lines in the original Application for a Water Right provided on December 17, 2008, to one intended to be irrigated with the more economic center pivot system with a single well located on the adjacent 80 acres for entire 160 acres.

I also note that 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, thus one project.

2: I 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 subsection (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 legislature 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 Resources and Conservation Committee’s meeting of February 21, 2013. There the principal source behind the development of the House bill was Attorney Andrew Waldera of the Moffitt 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” (underling added). That House testimony was accepted without question. No specific testimony, other than general words of support, was given in the Senate Resources and Environment Committee on its hearing date of March 4, 2013. Now similarly, the pertinent Idaho Code 42-204(4) now uses the words, “involving ... the development or cultivation of one hundred (100) or more acres” (Underlining added).

3: It has been stated the lead in words of I.C. 42-204(4) uses the words “under any permit.” Yet how else could one refer to a broad interpretation of 100 acres? Certainly the I.C. language does not state: under any “single” permit as this past extension request denial language states. Interpretation and application of a statute begins with the statute’s plain language. *See, e.g., State v. Smalley*, 164 Idaho 780, 784 (2019). As noted below, the Department appears to read the statute too narrowly, inserting words into the statute that are not there—words like “the permit”; “single permit”; or “permit on its face.” However, these readings are inconsistent with the plain language of the terms “any permit,” particularly when read with the term “involving.” Paraphrasing in pertinent part, I.C. 42-204 provides:

*“The time for completion of works and application of the water to full beneficial use **under any permit involving . . . the development or cultivation of one hundred (100) or more acres of land** may be extended . . . for an additional period of up to ten (10) years . . . provided the permittee . . . has exercised reasonable diligence and that good cause exists . . .”*

The plain and ordinary definition of the term “any” includes: “one, some or all”; “one or more—used to indicate an undetermined number”; “ALL—used to indicate a maximum or whole”; and “unlimited in amount, number or extent.” Webster’s Collegiate Dictionary, 10th Ed. (1995). The term is open-ended, not singular.


The plain and ordinary definition of the term “involving” includes: “to relate closely: CONNECT”; “to require as a necessary accompaniment”; and “to have an effect on.” Webster’s Collegiate Dictionary, 10th Ed. (1995).

Clearly, Permit No. 63-33141 is a necessary component part of a common plan of development of a center pivot irrigation system exceeding 100 acres of land in combination with companion Permit No. 63-34046. Permit No. 63-33141 is **connected to; accompanies; and effects** the uniform center pivot-based cultivation project. It is, therefore, by its plain terms "any permit involving . . . the development or cultivation of one hundred (100) or more acres of land."

In the IDWR attorney's review of the legislation's proposed language, the words "single" permit would have been used if a single permit was the intent. In addition the director of the IDWR was in attendance at both pertinent House and Senate committee hearings on the 2013 addition of 42-204(4) to the Idaho Code. No clarification was offered that a "single" permit was the proposed legislation's intent.

In summary, related to the above justification for a single 100 acre or larger project, I Petition for Reconsideration of the above Preliminary Order to give a full five year extension of time for this permit as allowed under Idaho Code 42-204(4). Respectfully, the statute reads "any permit," not *the* (i.e. singular) permit involving the cultivation of one hundred or more acres.

Sincerely,

A handwritten signature in black ink that reads "Ralph Mellin". The signature is written in a cursive, flowing style.

Ralph Mellin, General Partner
Mellin Properties Ltd. Partnership