



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 E Front Street, Suite 648 • PO Box 83720 • Boise ID 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700

Website: idwr.idaho.gov • Email: idwrinfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

April 16, 2020

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

Re: Permit No. 63-33141 – Petition for Reconsideration

Dear Permit Holder:

The Idaho Department of Water Resources (IDWR) received a petition for reconsideration from you in connection with a request for an extension of time to submit proof of beneficial use (extension request) for permit no. 63-33141. Under Rule 730.02.a. of IDWR's Rules of Procedure, a petition for reconsideration of a preliminary order must be filed within fourteen days of the service date of the order. IDWR issued a preliminary order approving the extension request on March 16, 2020. IDWR served a true and correct copy of that preliminary order on March 17, 2020. IDWR received your petition for reconsideration on April 3, 2020, 17 days after the service date of the preliminary order. Since the petition was not received within 14 days, it is not timely and cannot be accepted. The preliminary order approving your extension request has become a final order pursuant to Rule 730.02.b.iii of IDWR's Rules of Procedure. Final orders of the agency may be appealed to district court pursuant to Rule 730.02.f-g of IDWR's Rules of Procedure.

While the Department cannot take action on your petition, I do want to respond to the concerns raised in the petition. In your petition you write, "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." While this may be what your project has become, the application for permit you filed on December 17, 2008 shows you wanted to irrigate a total of 80 acres using wheel lines. The approved permit authorizes a diversion rate of 1.60 cfs for the irrigation of 80 acres. This rate and acre number do not meet the criteria to qualify for an extension of time to submit proof of beneficial use under §42-204(4), Idaho Code, which says:

The time for completion of works and application of the water to full beneficial use under any **permit** involving the diversion of two (2) or more cubic feet per second or the development or cultivation of one hundred (100) or more acres of land...[emphasis added]

As additional evidence to support an extension of time to submit proof of beneficial use pursuant to §42-204(4), Idaho Code you wrote that your initial extension request was approved because the Department recognized your project involved the irrigation of 160 acres. However, evidence in the record does not support this claim. The March 27, 2015 letter sent with the first approved

extension request indicates the request was granted according to the criteria of §42-204(6), Idaho Code.

Since permit no. 63-33141 does not meet the criteria of an extension under §42-204(4), Idaho Code and IDWR cannot approve more than one extension for due diligence under the provisions of §42-204(6), Idaho Code, only extensions under the provisions of §42-204(1), Idaho Code can be approved for this permit at this time. Although you requested an extension for five years, additional time for pending government action can only be for a period equal to the delay. The information you provided to support a claim of pending government action showed the delay began the day the BLM received the right-of-way application and had continued up to the proof due date, which was a delay of 39 days. Therefore your extension request can only be granted for 39 days.

Sincerely,

A handwritten signature in black ink, appearing to read "PH" followed by a series of wavy lines.

Phill Hummer
Water Rights Supervisor, State Office
Idaho Department of Water Resources
Email: phill.hummer@idwr.idaho.gov