

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR
PERMIT NOS. 63-32459 AND 63-32460 IN
THE NAME OF G O INVESTMENTS LLC

**ORDER ADDRESSING PETITION
FOR RECONSIDERATION**

This matter having come before the Department of Water Resources (“Department”) as a petition to reconsider a preliminary approval order for the above applications for permit, the Department makes the following findings, conclusions, and order:

On March 26, 2014, the Department issued a *Preliminary Order Approving Applications for Permit Nos. 63-32459 and 63-32460* pursuant to Rule 730 of the Department’s Rules of Procedure (IDAPA 37.01.01.730. On April 9, 2014, the Department received a Petition for Reconsideration from Dana Hofstetter, Attorney for G O Investment LLC (Applicant). The Petition was filed timely.

MATTERS FOR RECONSIDERATION

The Applicant through Dana L. Hofstetter, Attorney requests reconsideration of the following numbered matters:

Permit No. 63-32459

1. Change of the permit holder’s name to G.O. Investments Idaho, LLC
2. The addition of Wildlife Storage and Diversion to Storage as beneficial uses, and the revision of Condition 11. Based on current IDWR policy.
3. Deletion of conditions 7 & 9 or provide installation of such equipment and devices upon request of IDWR.

The right holder shall install or construct a straight length of conduit or ditch suitable for installation of a device for measuring the entire flow of water being diverted in connection with this right. If the right holder uses conduit, the straight length of conduit shall be at least fifteen times the diameter of the conduit and shall be above ground or otherwise easily accessible.

Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.

- 4A. Deletion of condition no. 12.

Any obstruction in the Boise River Channel for diversion of water under this right must provide for watercraft and fish passage. The right holder must bypass sufficient flows in the Boise River at the point of diversion to accommodate watercraft navigation and fisheries values in the Boise River downstream of the diversion. The quantity of the bypass flow may be established in the future by the filing of a petition with the Department to establish the bypass flows and subsequent proceedings as described in the Department's Rules of Procedure.

4B. Deletion of condition 14

This right shall be junior and subordinate to future minimum in-stream flow water rights that may be established for the Boise River and its tributaries.

Permit No. 63-32460

1. Change of the permit holder's name to G.O. Investments Idaho, LLC
2. Revision of period of use for wildlife storage to 1/1 to 12/31 consistent with the application.
3. Deletion of conditions 7 & 8 or revise to provide installation of such equipment and devices upon request of IDWR, see no. 3 under 63-32459.
4. Condition no. 9 should be revised by substituting the "The" with "Any."
5. Deletion of condition 15, see 4B under 63-32459.
6. Condition no. 17 should be revised to reference the "Baldrige and Meadows Drains."

PROCEDURAL HISTORY

On April 5, 2005, Ray Obendorf filed applications for permit nos. 63-32459 (Boise River source) and 63-32460 (Unnamed Drain) with the Department. Amendments were made to the applications on December 13, 2005.

On May 25, 2007, ERO Resources provided a technical information report for both applications as requested by the Department.

On July 31, 2009, Ray Obendorf assigned ownership of the both applications to G O Investments LLC.

On April 9, 2010, the Department received a letter from Michael C Creamer, Attorney representing W&H LLC regarding the Upper Haas Ditch and Baldrige Drain headgate.

Public notice was made for both applications on October 21 & 28, 2010 in the Idaho Press Tribune Newspaper. Timely notices of protest were received from Tree Top Ranches LP and W & H LLC. A letter of concern was received from the Idaho Department of Fish and Game.

On February 27, 2013, a prehearing protest conference was held. Contested applications for permit nos. 63-32458, 63-32459, 63-32460, 63-32462, 63-33507, and 63-33508 were part of the of the consolidated conference. Consecutive hearings were scheduled October 24, 2014 through October 30, 2013.

On October 11, 2013, the Haas Ditch Agreement was facilitated. The agreement reduced the flow rate from 24 cfs to 6 cfs on Application nos. 63-32459 and 63-33507.

Protests were withdrawn for Applications no. 63-32460 (May 2, 2014) and Application 63-32459 (July 12, 2013) by W&H LLC.

On February 14, 2014, Tree Top Ranches LP withdrew protests on Application nos. 63-32459 and 63-32460. No protests remained.

On March 26, 2014, the Department issued a preliminary order approving application nos. 63-32459 and 63-32460.

FINDING OF FACTS

1. On April 5, 2005, the Department received application for permit no. 63-32459 from Ray Obendorf, Applicant. The application listed the following beneficial uses, flow rate and volume:

Wildlife - 24 cfs
Wildlife Storage- 20 acre feet
Diversion to storage -24 cfs

2. On December 13, 2005, application no. 63-32459 was amended by the Applicant's Attorney. Wildlife storage and diversion to storage beneficial uses were omitted as the 24 cfs flow rate could fill the 20 acre-foot storage within a 24 hour period.

3. On May 25, 2007, the Department received a letter from ERO Resources providing additional information. It stated:

Ray Obendorf (applicant has filed for two permits):

- 1)63-32459 seeking 24 cfs from the Boise River during the non-irrigation season for wildlife and,
2)63-32460 seeking 6 cfs and 40 ac-ft from an unnamed drain during the non-irrigation season for wildlife and storage. (The unnamed drain listed in 63-32460 may be known as the Meadows Drain.)*

63-32459 (page5.) The diversion rate of 24 cfs can provide 48 ac ft in a 24 -hour period. Therefore, no storage component is necessary with application for permit 63-32459.

4. The Haas ditch is the conveyance from the Boise River to the place of use for permit no. 63-32459. The Lower Haas Ditch agreement states: (2.) *During the non-irrigation season, G O Investments will be responsible for operating the headgate on the Boise River, measuring flows, and delivering water to G O Investment's place of use.....*

5. Permit nos. 63-32459 and 63-32460 points of diversion and places of use are located within the Boise River Water District #63 and are under the regulation of the District Watermaster. The District requires measurement and lockable controlling works.

6. Department records list G O Investments LLC as the current Applicant for both applications per Ray Obendorf assignment July 31, 2009. No other ownership assignments have been filed.

7. G O Investments Idaho LLC applications 63-33507 and 63-33508 cover the period of use 03/01 to 11/15 not covered under permit nos. 63-32459 and 63-324560. The elements of the applications mimic those of the permits with the exception of the period of use.

8. There are currently 6 authorized wildlife use permits in the lower Boise River area. The cumulative flow rate totals 79.5 cfs.

9. During the non-irrigation season a 250 cfs flow is maintained in the Boise River (downstream of Lucky Peak) by dedicated storage water from the Bureau of Reclamation (63-3618). Currently, there are no minimum in-stream flow designations/water rights for the river downstream of Lucky Peak..

10. The Boise River is designated a navigable river in the Notus-Parma area by the Idaho Department of Lands.

11. On October 21 & 28, 2010, Public notice of Application #63-32460 listed “Meadows Drain as the sole water source. Attorney Hofstetter’s 02/09/06 letter to the Department states the planned drain is locally known as “Meadows Drain.”

CONCLUSIONS

Permit No. 63-32459

Matter 2. The addition of Wildlife Storage and Diversion to Storage as beneficial uses and the revision of Condition 11. Based on current IDWR policy.

Originally, the Applicant clearly submitted wildlife storage and diversion to storage use components on the application. However, the storage and diversion to storage components were omitted as the 24 cfs flow rate would exceed the storage volume in a 24 hour period. ERO Resources 05/25/07 letter also confirms this approach. At the time, this was acceptable reasoning/processing by the Department.

Under current Department processing, a permit would include wildlife storage and diversion to storage beneficial use components. This provides clarification and detail for each use to be developed. This permit should include these components as a storage pond was always the intent and part of the application. No new uses have been introduced.

Given the lower 6.0 cfs flow rate, it is reasonable to add a 6.0 cfs diversion to storage and a 12.0 acre-feet of wildlife storage (24 hour fill approach) beneficial use to the permit. The pond surface area will be 10 acres.

The request should be Granted.

Matter 4. Deletion of condition no. 12. regarding obstructions in the Boise River channel.

The Boise River at the permit point of diversion location is designated a navigable river by the State (Department of Lands). High diversion rates associated with the culmination of the area wildlife permits could potentially affect the river channel dynamics/flow during non-irrigation low flows. Obstructions in the river channel for diversion of water must consider fish and watercraft passage. The condition is applicable.

The request should be Denied.

Permit No. 63-32460

Matter 2. Revise the period of use for wildlife storage from 1/1 to 12/31 consistent with the application.

The storage period for permit no. 63-32460 is 11/16 to 02/28 (non-irrigation season). The approval period of use is consistent with other wildlife storage permits previously approved for the non-irrigation season. This provides the Watermaster a uniform period of use for water regulation and delivery. Application no. 63-33508 mimics permit 63-32460, but the period of use for wildlife storage is year-round (01/01 to 11/15) not covered by the permit.

The request should be Denied.

Matter 4. Condition no. 9 should be revised by substituting the “The” with “Any.”

This is a Department standard condition utilized with all new appropriations associated with a waste water source. Replacing “The” with “Any” has no relative meaning impact.

The request should be Denied.

Matter 6. Condition no. 17 should be revised to reference the “Baldrige and Meadows Drain.”

There is no reference found in the application submitted to the Department or correspondence received from the Applicant/Consultant that names “Baldrige Drain as a source of water. The 05/25/07 ERO Resources and 02/09/06 Hofstetter letters list the sole source as “Meadows Drain.” Public notice of the application listed “Meadows Drain.”

The request should be Denied.

Permit Nos. 63-32459 & 63-32460

Matter 1. Change of the permit holder’s name to G.O. Investments Idaho, LLC on both permits.

The process for changing the ownership of a permit is by submitting a completed “Assignment of Permit” form along with the \$25 statutory fee to the Department. Our records indicate there has not been an assignment processed for G O Investments of Idaho, LLC.

The request should be Denied

Permit Nos. 63-32459 & 63-32460

Matter 3. Deletion of conditions 7 & 9 on 63-32459 and conditions 7 & 8 on 63-32460 or revise to provide installation of such equipment and devices upon request of IDWR.

Idaho Code (IC)§42-607 outlines the duties of a water district watermaster. Measurement devices and controlling works requirements are provided under IC 42§701. The permit diversions are located in the Boise River Water District #63. Measurement and lockable controlling works are required for watermaster regulation. The Lower Haas Ditch Agreement also requires the permit holder to measure and control diversions.

The request should be Denied

Permit Nos. 632459 & 63-32460

Matters 4. & 5. Deletion of condition 14 on 63-32459 and 15 on 63-32460 regarding subordination to future minimum in-stream flow rights.

Currently there are no minimum in-stream flow rights applicable to the lower reach of the Boise River (near Notus and Parma). The culmination of the wildlife diversion rate referenced in Fact No.6 is a high percentage of the current stream maintenance flow (250 cfs) during the non-irrigation season. In the future, the wildlife diversions may have to yield to possible minimum in-stream water rights in certain reaches of the river to provide protection to other interests such as other water uses, water quality, channel stability, fishery, or other public interests.

The request should be Denied

ORDER

With regard to Permit No. 63-32459 and reconsideration of matter #2 regarding the addition of Wildlife Storage and Diversion to Storage as beneficial uses, **IT IS HEREBY ORDERED** that Permit No. 63-32459 shall be amended to include the following changes and additions:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>VOLUME</u>
WILDLIFE	11/16 to 02/28	6.00 CFS	
DIVERSION TO STORAGE	11/16 to 02/28	6.00 CFS	
WILDLIFE STORAGE	11/16 to 02/28		12.0 AF

IT IS FURTHER ORDERED The following conditions of approval shall be added or modified to Permit No. 63-32459:

Condition #11 shall be modified to read:

Wildlife and wildlife storage uses are for habitat improvement during the non-irrigation season.

Additional Conditions:

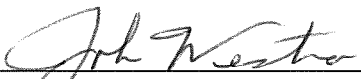
The pond established by the storage of water under this right shall not exceed a total capacity of 12.0 acre-feet and a total surface area of 10.0 acres.

Wildlife use is for flow through, and return flow water associated with wildlife storage under this right during the non-irrigation season.

IT IS FURTHER ORDERED reconsideration of matters #1, #3, and #4 of permit no. 63-32459 are respectfully **DENIED**.

IT IS FURTHER ORDERED reconsideration of matters #1,#2, #3, and #4 of permit no. 63-32460 are respectfully **DENIED**.

DATED this 30th day of April, 2014.



John Westra, Manager, Western Region

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of April, 2014, the above and foregoing, was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Documents Sent: Petition for Reconsideration
Order Addressing Petition for Reconsideration
Amended Permit No. 63-32459
Explanatory Information Sheet.

Michael Creamer
Givens Pursley LLP
P.O. Box 2720
Boise, Idaho 83701-2720

Dana L. Hofstetter
Hofstetter Law Office, LLC
608 West Franklin Street
Boise, Idaho 83702

Andrew J. Waldera
Moffatt Thomas
P.O. Box 829
Boise, Idaho 83701-0829

Albert P. Barker
Barker Rosholt & Simpson
PO Box 2139
Boise ID 83701


_____ for

Rachel Sommer, Administrative Assistant I.