

MEMORANDUM

TO: Files

FROM: Steve Lester 

DATE: November 8, 2007

RE: **IDFG COMMENTS ON WILDLIFE PROJECTS IN BASIN 63**

Western Region has coordinated with IDFG Southwest Region office in Nampa since early 2007 regarding multiple applications for permit for surface water wildlife projects in the lower portion of Basin 63. The projects generally propose non-irrigation season uses of water for wildlife ponds/amenities. Sources include the Boise River, Sand Hollow Creek and miscellaneous drains.

IDFG protested one of the four Tree Top Ranches applications but subsequently settled the protest without IDWR involvement (63-32462). It is not clear why IDFG failed to protest other applications proposed by the same applicant and involving the same source as 63-32462 (Sand Hollow Creek).

On March 1, 2007 I met with IDFG staff members Walt Poole (State Office), Jerry Deal and Eric Leitzinger (latter two from SW Region Office). We had a thorough discussion about individual and cumulative aspects of this situation. Additionally, we agreed to continue working together to get useful comments from IDFG for these applications. I followed up by providing IDFG with copies on at least two occasions of all the application information from IDWR files (kept IDFG updated).

I kept in touch with Leitzinger since then, including another visit to his office to deliver copies of some additional information we received for most of the applications.

Last month I made a final attempt to get any IDFG comments about the projects. This proved elusive since Leitzinger had recently relocated to IDFG State Office in Boise. The SW Regional Office had not replaced him by the end of last month. Through phone messages and email, I learned from Deal that IDFG did not have any noteworthy concerns about the projects.

Late last month during this attempt at getting IDFG comments, I received a copy of a letter from Tree Top Ranches manager Bill Mulder to Deal. Mulder also called me twice about this letter. He indicated that the applicant's attorney most likely would propose a condition of approval to IDWR as noted in that letter. Western Region has not received or solicited anything else in that specific regard from IDFG or the applicant.

IDWR made considerable effort to include IDFG in evaluating wildlife project applications. Although we had more than one fruitful discussion, IDFG did not submit any formal comments other than a protest against Tree Top Application 63-32462, now conditionally resolved.

MEMORANDUM

____ Office Visit

☒ Telephone

____ Meeting

TO Appls. for Wildlife Projects, Lower Bc 63
FROM JL
DATE 11/8/07
RE CHRONOLOGY & RECENT IDFG CONTACTS

10/24/07 - left msg. JERRY DEAL SW REGION 465-8465
- since Eric Letzinger changed to Boise job

10/25/07 - email to Jerry DEAL since he'll mostly
be out of office through Nov. 7 - but will
check his messages

10/30/07 (some uncertainty & date due to confusion
during Western Region remodel) - msg from Jerry -
IDFG does not have any concerns & projects

APPEARS IDFG IS OK WITH THESE
WILDLIFE PROJECTS PER MARCH-NOVEMBER
2007 COMMUNICATION

Lester, Steve

From: Lester, Steve
Sent: Thursday, October 25, 2007 8:53 AM
To: 'jdeal@idfg.idaho.gov'
Subject: IDWR contact about wildlife water right applications around Parma

Jerry:

Yesterday I left you a phone message on this topic. I also wanted to give you more information about why I called.

Earlier this year I met with you, Eric and Walt at your office to talk over a number of new water right applications proposing surface water for wildlife projects in the Parma area. You probably recall this involves a lot of water and multiple sources, including the Boise River, Sand Hollow Creek and misc. drains/ditches ("wastewater"). Following that meeting, I provided Eric with copies of all the information that IDWR had in this regard - applications, supporting information, IDWR notes etc.

We discussed looking at individual proposals and also considering cumulative effects since so much water would be involved - over 300 cfs and about 1000 af of storage ponds.

I understand that you recently met with Bill Mulder from Tree Top Ranches - Bill sent me a copy of his 10/22 letter to you. Bill also called me after he meet with you.

The four Tree Top applications already went through the legal notice process, as you know. Most of the other owners' applications are close to be published in legal notices. IDWR is at that point where we hope to receive any comments/concerns that your agency has in this regard. Eric has been our central contact for IDFG comments in your region. It appears he moved to a different job.

That is why I called you instead of Eric.

I hope we can talk this over at your earliest convenience, recognizing this is a busy time of year for you. I will be out of the office October 26 and 29 but will be around the rest of the time for the next few weeks.

Thanks in advance for any help you can provide in evaluating these applications.

Steve Lester
Water Rights Supervisor
IDWR Western Region
tel: 208.334.2190
fax: 208.334.2348
steve.lester@idwr.idaho.gov

*email to IDFG
re comments*



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082

PHONE: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

C.L. "BUTCH" OTTER, Governor
DAVID R. TUTHELL, JR., Director

June 12, 2007

ERIC LEITZINGER
ID DEPT FISH & GAME
3101 S POWERLINE
NAMPA ID 83686

HAND DELIVERED

Re: Permit 63-32067, Condition of Approval for Bypass Flow in Creek

Dear Mr. Leitzinger:

This letter concerns a permit approved by the Idaho Department of Water Resources (IDWR) in September 2005 for winter use of water from Sand Hollow Creek (aka Sand Run Gulch etc.). Permit No. 63-32067 authorizes up to 90 cfs for wildlife habitat as noted in the other information provided to you simultaneous with this letter.

The above permit potentially allows the creek to be totally dewatered for about $\frac{1}{4}$ to $\frac{1}{2}$ mile on the permit holder's property. IDWR assumes return flows to the creek would continue whenever water is diverted from the creek for the project. Dewatering of the creek would therefore be limited to an area just south of Highway 20/26 and just east of Highway 95.

Condition of Approval No. 5 in the permit states the following:

The Director retains jurisdiction to require a bypass flow on Sand Run Gulch Creek for maintenance of fish, wildlife, riparian and aquatic habitat.

IDWR received a petition asking the Director to invoke Condition No. 5 for this permit. The petitioner did not provide technical information to support the petition. I hope your agency can advise IDWR in this matter as noted by the following questions:

1. Should IDWR require some water to remain in the creek when Permit 63-32067 is being used?
2. If so, for what reasons should this be required? What habitat benefits would be realized by invoking this condition of approval?
3. What is the minimum rate of flow needed in the creek to protect those habitat benefits?

Permit 63-32067, Condition of Approval for Bypass Flow in Creek

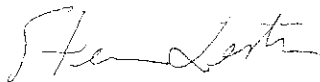
June 12, 2007

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Any information you can provide in this matter would be helpful as IDWR considers other applications for more wildlife projects also proposing to use the same source of water. However, the other applications do not propose to divert the entire flow of the creek.

Please let me know if you have any questions. Thank you for your help in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steve Lester".

Steve Lester
Water Rights Supervisor



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082

PHONE: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

C.L. "BUTCH" OTTER, Governor
DAVID R. TUTHILL, JR., Director

June 11, 2007

ERIC LEITZINGER
ID DEPT FISH & GAME
3101 S POWERLINE
NAMPA ID 83686

HAND DELIVERED

Re: Water Right Applications for Wildlife Projects

Dear Mr. Leitzinger:

Enclosed is information regarding numerous applications for new water rights proposing surface water for wildlife projects in the lower portion of the Boise River system. Several months ago we discussed the need for the Idaho Department of Water Resources (IDWR) to seek comments from your agency, among others, regarding the proposals.

Ideally, IDWR would process all the applications simultaneously for comprehensive and efficient efforts in this regard. However, other constraints require IDWR to act at this time on the first group of the pending applications.

Four applications for Tree Top Ranches LP are being processed at this time. The applications are identified as numbers 63-32462, 63-32465, 63-32466 and 63-32467. If your agency desires to file a protest against any of the four applications, please note the June 25, 2007 protest deadline in the enclosed copy of the legal notice for the applications. If your agency does not want to protest the applications but has concerns about any of them, please provide written comments at your earliest convenience. Please see the enclosed information regarding the Tree Top Ranches applications for more details.

Copies of other applications filed by different owners are also enclosed. Most of the applications include complete information while some await further details from the applicant. IDWR will provide you with any additional information received for this group as the applications are ready to process. IDWR will seek your comments on those applications when they are processed.

In our previous discussion, you asked for information summarizing non-irrigation water rights for the sources in question. I hope I provided that information via new notes added to Figures 2 and 3 in the set of information labeled "Wildlife Projects in Boise River Drainage, IDWR Notes, February 2007." For example, from Figure 2:

- Zone 2 of the Boise River includes about 192 cfs for existing river water rights of all types. About 26 cfs of that total covers non-irrigation rights. Another 60 cfs is proposed for new wildlife projects in Zone 2.
- Tree Top Ranches Applications 63-32465 and 63-32467 propose 40 of that 60 cfs.

SCANNER

JUN 21 2007

Figure 3 in the February 2007 notes covers similar details for Sand Hollow Creek.

Other applications propose water from various drains. Although I did not provide a summary of existing rights from those drains, the total amount of additional water proposed from drains is a category connected to Boise River Zone 3 since the drain water is tributary to the river in that zone (Figure 2, see note about 11.63 cfs proposed from drains).

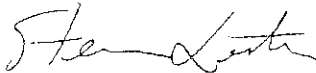
Specific Questions for Tree Top Ranches Applications

In addition to any other comments you wish to make, any information for the following questions regarding Applications 63-32462, 63-32465, 63-32466 and 63-32467 would be appreciated:

1. In each case, is the amount of water justified for achieving the proposed wildlife beneficial use? The applicant makes the basic point that the amounts are needed to prevent diverted water from freezing.
2. In each case, will the project benefit wildlife habitat as proposed?
3. In each case, will the proposed diversion cause adverse habitat conditions for the source in question? In other words, is there a "wildlife cost/benefit" to consider for each project?
4. Does your agency have any concerns regarding the cumulative effect of the four applications or any combination of the applications?
5. Does your agency have any concerns regarding possible effects on senior water rights from Sand Hollow Creek for land administered by your agency?

I hope we can consider individual impacts for any given project in addition to cumulative impacts for all the applications by this process. Please let me know if you have any questions about any of the enclosed information. Thank you for your help with this unprecedented situation in the Boise River area.

Sincerely,



Steve Lester
Water Rights Supervisor

Enclosure

5/20/07
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