



State of Idaho

DEPARTMENT OF WATER RESOURCES

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September 17, 2007

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Interim Director

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DEPARTMENT OF
WATER RESOURCES

**Re: Applications to Appropriate Water nos. 63-32465, 63-32466, and
63-32467 in the name of Tree Top Ranches, LP.**

Dear Mr. Campbell:

This is a response to your letter dated September 5, 2007, and issues raised at our meeting on the same day.

Applications nos. 63-32465, 63-32466, and 63-32467 propose diversion of water from the Boise River for wildlife and wildlife storage uses during the nonirrigation season. Several other applications to appropriate water propose diversion of water from the Boise River and tributaries during the nonirrigation season in the vicinity of the points of diversion proposed by Tree Top Ranches, L.P. (Tree Top). You state in your letter that all of these applications propose a total diversion of 205.43 cfs. In addition, you state in your letter that IDWR has previously approved water rights for diversion of 132.56 cfs for similar uses during the nonirrigation season. The total flow rate of water authorized by existing water rights or sought by the pending applications is significant. The magnitude of the proposed appropriations raises concerns about the sufficiency of water supply to sustain diversion of the cumulative flow rates and the impact of the diversions on public values related to the local public interest.

Several pending applications filed prior to the filing of the Tree Top applications propose diversion of large flow rates. For example, two of the applications propose a combined total diversion of 54 cfs from the Boise River. Two of the three Tree Top applications propose diversion of up to 60 cfs from the Boise River.

IDWR may process applications out of the order of chronological filing. Idaho Code § 42-203A requires that IDWR determine the sufficiency of the water supply and the local public interest. IDWR has duty to factor in the possible depletions to the resource that might be caused by earlier filed applications in making these determinations. IDWR has the discretion to more strictly consider applications in the order of chronologically receiving the applications if IDWR determines that its

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determinations of the criteria of Idaho Code § 42-203A will depend on determinations of the same criteria for earlier filed applications.

After consulting with regional staff, we have agreed that the coordinated review of the Tree Top Ranch applications and earlier filed applications will be completed on approximately November 1, 2007. Regional staff also agreed to expedite the publication of the other applications, but publication may not be complete by November 1, 2007. If not, regional staff will forward the Tree Top applications to the state office for review. Staff will determine at that time what additional terms or limitations might be required for consideration of the applications.

Although at our meeting I suggested retention of jurisdiction as a solution, I am reluctant to approve permits that could force reconsideration of the permit in the future. As a result, I will withhold committing to retained jurisdiction until after November 1, 2007, to determine the progress toward processing completion.

IDWR recognizes that the Boise River gains from ground water and surface water return flows. Changes in water use in the Treasure Valley may also significantly affect return flows. IDWR is concerned about reductions in return flows that might make large, nonconsumptive water rights in the lower Boise River undeliverable, or that could prevent diversion of water for future consumptive uses. As a result, any permits issued to Tree Top will probably be subordinated to future water rights for consumptive uses or for minimum instream flow rights.

Respectfully,


Gary Spackman

cc. Western Region
Jeff Peppersack
Shelley Keen