



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

January 26, 2006

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

Greg Obendorf
C/O Dana L Hofstetter
608 W Franklin St
Boise ID 83702

RE: Permit #63-32067-Greg Obendorf

Dear Ms. Hofstetter:

Attached is a complaint letter received from Scott L. Campbell on behalf of his client Mr. Williams. Mr. Williams is alleging that diversions under permit #63-32067 have frequently exceeded the 90 cfs diversion rate. Also, the dewatering of the creek bed has injured fish and wildlife/riparian habitat. The letter requests the Department exercise the retained jurisdiction in the permit conditions of approval #5 & #7.

Our office is requesting the following information to compliment our investigation/review of the alleged complaint and request:

- A general response to the alleged complaint and request relating to conditions of approval #5 & #7 in permit #63-32067.

- Please provide information/documentation/photos that diversion flow under permit #63-32067 has not exceeded the 90 cfs flow rate.

- Please provide information/documentation/photos related to the condition of the creek channel segment between the last point of diversion and where flows re-enter the channel.

Once the information has been received and reviewed, the Department will notify you of the investigation results.

Should you have any questions, please contact me at the Western Regional Office, phone 334-2190.

Sincerely,

John Westra
Western Regional Manager

Enclosure—Letter, S. L. Campbell
Proof report #63-32067

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January 10, 2006

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John Westra
Manager Western Region Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Re: Permit to Appropriate Water No. 63-32067
MTBR&F File No. 22567.0

Dear John:

I am writing on behalf of my client, Tree Top Ranches, L.P. Tree Top owns property adjacent to Sand Run Gulch Creek in Canyon County. The diversion of water this winter under water permit number 63-32067 has completely dewatered Sand Run Gulch Creek for a considerable distance before the water returns to the creek from the Obendorf property. Additionally, it appears that the diversion of water under permit number 63-32067 frequently has exceeded the authorized flow rate of 90 cubic feet per second. It is impossible to definitely determine this because there is no measuring device or adjustable control structure on the diversion from Sand Run Gulch Creek.

In reviewing the conditions of approval for water permit number 63-32067, it appears to my client that the Idaho Department of Water Resources should exercise its retained jurisdiction "to require a bypass flow on Sand Run Gulch Creek for maintenance of fish, wildlife, riparian and aquatic habitat." Condition of Approval 5.

A bypass flow would eliminate the dewatering of the creek which has existed since the permit holder began diversions in November 2005.

Additionally, my client believes the Department should require the permit holder to install a suitable measuring device with an adjustable control structure. Condition of Approval 7. Because this is a gravity flow diversion instead of a pump system, it does not appear that diversions can be regulated by means of an agreement with the Department, where power records are utilized.

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John Westra
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If the permit holder has exceeded the diversion rate authorized under the permit, my client believes the Department should issue a notice of violation under Idaho Code Section 42-1701B and proceed to impose monetary penalties and obtain injunctive relief.

My client believes the Department should proceed to investigate this matter as soon as possible and impose conditions of approval 5 and 7 after you have confirmed the veracity of my clients' contentions. Additionally, a notice of violation should be issued if the investigation produces sufficient information to proceed with an enforcement action. In this regard, please provide me with notice of the actions the Department has taken in this matter at your earliest convenience.

Thank you for your anticipated cooperation.

Very truly yours,


Scott L. Campbell

SLC/dll

cc: Client
Shelley Keen
Gary Spackman

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