



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

Tree Top Ranches L.P.
C/O Scott L. Campbell Attorney
101 S Capitol Blvd 10th Floor
PO Box 829
Boise ID 83701

RE: Permit to Appropriate Water #63-32067

Dear Mr. Campbell:

This letter is in response to your 1/10/06 letter addressing issues related to the Obendorf permit #63-32067. The complaint alleges that diversions from Sand Run Gulch Creek are in excess of 90 cfs flow rate and the creek bed is being dewatered to the detriment of wildlife/fish habitat. The letter requests the Department invoke the conditions of approval #5 and #7 that require the installation of measurement devices and a by-pass channel.

In reviewing the processing records of application #63-32067, the following comes forward:

- The applicant intended to divert water that was available from the creek, as there are no minimum stream flow restrictions. The flow rate was based on historical USGS creek flow records gauged several miles downstream.
- Evaporation losses and consumption are assumed de minimus during the non-irrigation season. Flow is routed back to the creek at the edge of the Obendorf property.
- State wide public notice given on June 2nd and 9th, 2005 yielded no protests.
- Comment letters to Idaho Fish & Game, Idaho Dept. of Environmental Quality, and Bureau of Reclamation produced no comments/concerns.

By your request, our office will continue to investigate the allegations and issues. However, we request the following additional information to compliment our investigation:

1. Your letter acknowledges there is no measurement device/control structure, and that it is impossible to definitely determine flow. How was it determined the diversion rate has frequently exceeded 90 cfs since November 2005?

Scott L. Campbell
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2. Describe injury to your client or parties downstream by the diversion.

3. From review of the records, the dewatered creek distance (the last point of diversion to flow return into the creek) is approx. $\frac{1}{4}$ to $\frac{1}{2}$ mile Please provide our office with specific information on the current injury to fish, wildlife, and riparian habitat from the dewatering.

Once the additional information is received and our investigation/review is completed, our office will provide you notice of our findings.

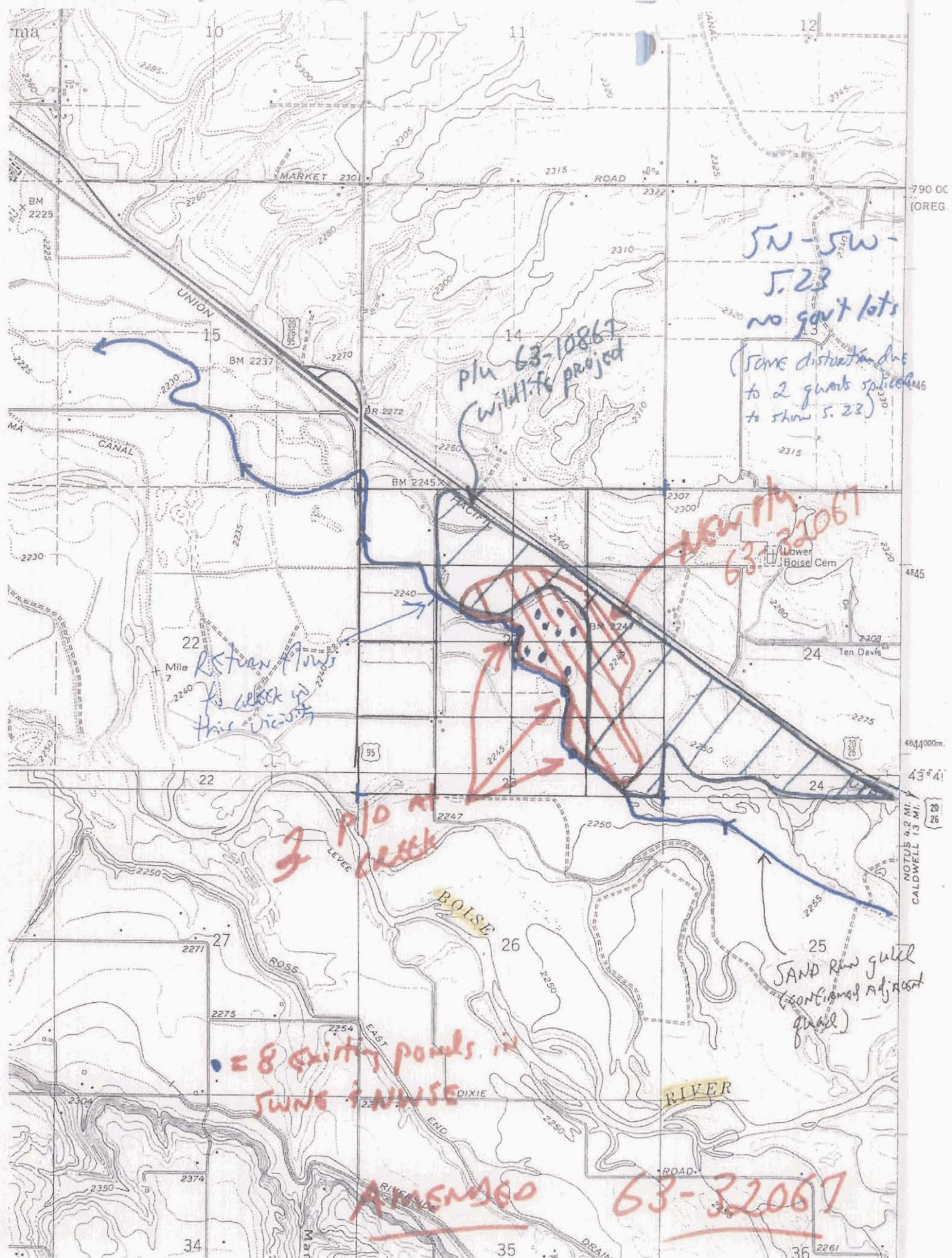
Should you have any questions, please contact me at the Western Regional Office, phone 334-2190.

Sincerely,

A handwritten signature in black ink, appearing to read "John Westra", written in a cursive style.

John Westra
Western Regional Manager

Enclosure-Map
cc: D. Hofstetter



5N-5W-
5.23
no govt lots

(Some disturbance due
to 2 grants applied
to show 5.23)

plu 63-10867
wildlife project

New plu
63-32067

Return flow
to creek in
this vicinity

2 p/o at
creek

8 existing ponds in
SW 1/4 of NW 1/4

AMENSOO

63-32067

SAND River gulch
(contiguous adjacent
gravel)