



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

March 2, 2007

TREE TOP RANCHES LP
C/O SCOTT CAMPBELL
MOFFAT THOMAS ET AL
PO BOX 829
BOISE ID 83701-0829

Re: Applications for Permit Nos. 63-32462, 63-32465, 63-32466 and 63-32467

Dear Mr. Campbell:

This is the long anticipated "wildlife letter" we discussed on several occasions. It refers to four pending applications for wildlife projects for your client. Additional background information prepared by the Idaho Department of Water Resources (IDWR) is enclosed for your consideration.

IDWR seeks additional information to evaluate the applications for processing to continue. This request is based on Water Appropriation Rule 40.05, copy enclosed. Some of the information listed in Rule 40 is not necessary as noted by omission below. Copies of the applications are enclosed for your convenience.

First, for all four applications, please confirm that they share the same place of use and same storage of 500 acre-feet (AF) of water. Storage details should be included to estimate total acreage to be covered by ponds and average depth (in feet) for ponds. This is needed to verify the proposed 500 AF of storage. Additional specific questions per application follow. Also, please specify if new construction and/or enlargement of existing structures will be included for any Boise River diversions and/or Boise River return flow sites.

Application 63-32462 – Sand Hollow Creek

The application map should be amended to clearly show the point of diversion and place of use locations to confirm the written information in the application.

Rule 40, Item ciii– describe the location(s) for return flows and mark it on the application map, describe how the proposed system will operate to minimize impacts on other water rights from the proposed source (dewatering of the creek since return flows will be to the river, etc.).

Rule 40, Item di– establish a credible link between the amount of water to be diverted and the specific beneficial uses to be developed. For example, why are 20 CFS and 500 AF required for the project? Exactly what beneficial use will be provided for wildlife? Determine why the requested amount of water is not speculative.

Rule 40, Item dii – provide credible information to show that the requested amount of water is available during the proposed period of use. Existing information suggests this portion of the creek is dewatered under Permit 63-32067 during winter months. Your reply should include credible information demonstrating why the by-pass condition of approval in Permit 63-32067 should be implemented, including justification for a specific amount of by-pass flow based on fish, wildlife, riparian and aquatic habitat factors.

Additionally, the applicant proposes to divert water upstream from the creek but to return flows to the river instead of the creek (Application 63-32466). Under that scenario, provide evidence that water will be available from the creek as proposed under Application 63-32462.

Rule 40, Item ei – provide evidence that the applicant has legal access to the proposed point of diversion for the proposed period of use and nature of use.

Rule 40, Item g – Send comment letters to the Canyon County Commissioners, any irrigation district and/or canal company or drainage district in the local area, and the US Army Corps of Engineers. Provide IDWR with copies of your comment letters to these entities and any written responses received from them. Please contact the Army Corps as follows:

Attn. Greg Martinez
US Army Corps of Engineers
304 N. 8th St., Room 140
Boise, ID 83702

Phone: (208) 343-2154
Fax: (208) 343-2968

Application 63-32465 – Boise River and Sand Hollow Creek

The application map should be amended to clearly show the place of use locations to confirm the written information in the application. The creek point of diversion appears to be in the SWSE Section 15 instead of SESW noted in the application attachment. Additionally, that attachment lists a pump in the river under the creek portion of the attachment, which should be corrected.

Rule 40, Item ciii– describe the location(s) for return flows and mark it on the application map, describe how the proposed system will operate to minimize impacts on other water rights from the proposed source (dewatering of the creek since return flows will be to the river, etc.).

Rule 40, Item di– establish a credible link between the amount of water to be diverted and the specific beneficial uses to be developed. For example, why are 40 CFS and 500 AF required for the project? Exactly what beneficial use will be provided for wildlife? Determine why the requested amount of water is not speculative.

Rule 40, Item dii – The applicant proposes to divert water upstream in two locations along the creek but to return flows to the river instead of the creek (Applications 63-32462 and 63-32466). Under that scenario, provide evidence that water will be available from the creek as proposed under Application 63-32465.

Rule 40, Item g – Send comment letters to the Canyon County Commissioners, any irrigation district and/or canal company or drainage district in the local area, and the Army Corps. Provide IDWR with copies of your comment letters to these entities and any written responses received from them. Please contact the Army Corps as previously noted.

Application 63-32466 – Sand Hollow Creek

The application map should be amended to clearly show the place of use locations to confirm the written information in the application.

Rule 40, Item ciii– describe the location(s) for return flows and mark it on the application map, describe how the proposed system will operate to minimize impacts on other water rights from the proposed source (dewatering of the creek etc.).

Rule 40, Item di– establish a credible link between the amount of water to be diverted and the specific beneficial uses to be developed. For example, why are 20 CFS and 500 AF required for the project? Exactly what beneficial use will be provided for wildlife? Determine why the requested amount of water is not speculative.

Rule 40, Item dii – provide credible information to show that the requested amount of water is available during the proposed period of use. Existing information suggests this portion of the creek is dewatered under Permit 63-32067 during winter months. Your reply should include credible information demonstrating why the by-pass condition of approval in Permit 63-32067 should be implemented, including justification for a specific amount of by-pass flow.

Rule 40, Item ei – provide evidence that the applicant has legal access to the proposed point of diversion for the proposed period of use and nature of use.

Rule 40, Item g – Send comment letters to the Canyon County Commissioners, any irrigation district and/or canal company or drainage district in the local area, and the Army Corps. Provide IDWR with copies of your comment letters to these entities and any written responses received from them. Please contact the Army Corps as previously noted.

Application 63-32467 – Boise River

The application map should be amended to clearly show the place of use locations to confirm the written information in the application.

Rule 40, Item ciii– describe the location(s) for return flows and mark it on the application map. Provide credible information that the Andrews Ditch can carry the proposed flow and/or will be modified to carry the flow in excess of 20.50 CFS previously authorized for Permit 63-32066.

Rule 40, Item di– establish a credible link between the amount of water to be diverted and the specific beneficial uses to be developed. For example, why are 20 CFS and 500 AF required for the project? Exactly what beneficial use will be provided for wildlife? Determine why the requested amount of water is not speculative.

Rule 40, Item ei – provide evidence that the applicant has legal access to the proposed point of diversion for the proposed period of use and nature of use.

Rule 40, Item g – Send comment letters to the Canyon County Commissioners, any irrigation district and/or canal company or drainage district in the local area, and the Army Corps. Also seek comments from all other users of the Andrews Ditch. Provide IDWR with copies of your comment letters to these entities and any written responses received from them. Please contact the Army Corps as previously noted.

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Another item is needed for all four applications assuming the same place of use and same 500 AF storage capacity. Provide credible information for the cumulative request for 100 CFS. Why is this total amount justified for the proposed uses? Determine why the total amount is not speculative.

Any credible information that is provided should be attributed to the person or entity supplying the information. This should include verification that the person or entity is qualified to provide that information.

The additional information should be provided within the next ninety (90) days. Alternately, you may request up to six months interruption in processing. The applications will be voided under IC § 42-204 without a timely written response.

After receiving the additional information from you, IDWR will consult with other natural resource agencies to evaluate the information. Processing of the applications will continue after that step is completed.

Thank you for your attention to these matters. Please contact me at your convenience if you need more information.

Sincerely,

Steve Lester

Steve Lester
Water Rights Supervisor

Enclosure: Copies of Applications
IDWR Notes for Wildlife Applications