

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF LICENSE	)	ORDER DENYING PETITION
NO. 67-7899 IN THE NAME OF	)	FOR RECONSIDERATION
TREE TOP RANCHES LP	)	AND GRANTING A HEARING
_____	)	

This matter having come before the Department of Water Resources (Department) as a petition to reconsider the issuance of an amended water right license, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On November 29, 2005, the Department issued Water Right License 67-7899 (license) confirming that Tree Top Ranches, LP (right holder) had established a right to divert and store 66.0 AF of water from Sage Creek, a tributary of the Weiser River, for the irrigation of 800 acres in Washington County. The license contains seven conditions of approval.

2. The Department issued the license as a preliminary order (order) pursuant to Idaho Code § 67-5243 and Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730).

3. Idaho Code § Section 67-5243(3) provides in pertinent part as follows:

Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of a recommended order or a preliminary order within fourteen (14) days of the issuance of that order. The presiding officer shall render a written order disposing of the petition.

4. Idaho Code § 42-1701A(3) provides as follows:

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person aggrieved by any action of the director, including any decision, determination, order or other action, including action upon any application for a permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the director, who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director,

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or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. The director shall give such notice of the petition as is necessary to provide other affected persons an opportunity to participate in the proceeding. The hearing shall be held and conducted in accordance with the provisions of subsections (1) and (2) of this section. Judicial review of any final order of the director issued following the hearing shall be had pursuant to subsection (4) of this section.

5. On December 12, 2005, the Department received a petition for reconsideration (petition) of the preliminary order issuing Water Right License 67-7899 and a request for a hearing pursuant to Idaho Code § 42-1701A(3) and Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730) from Scott L. Campbell (petitioner), attorney for the right holder.

6. In his petition, the petitioner stated:

This petition is made on the grounds and for the reasons that the Department's determinations concerning Conditions of Approval 1, 3, 4, and 7, and the determinations under the Quantity and Period of Use elements, are unreasonably restrictive to a relatively small irrigation system and the imposition of such conditions are unnecessary and without foundation or basis and may ultimately hinder the proper workings of such system.

7. The petitioner did not submit a brief or additional documentation or evidence in connection with the petition.

8. On December 16, 2005, the Department sent the petitioner a notice granting him 30 days to provide information or documentation in support of the assertions made in the petition.

9. The Department did not receive a response to the December 16, 2005, notice.

CONCLUSIONS OF LAW

1. The petitioner has not provided adequate information to show that the license is in error.

2. The Department should deny the petition for reconsideration of the order pursuant to Idaho Code § 67-5243(3).

3. Idaho Code § 42-1701A(3) entitles the right holder to a hearing before the Department.

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration of the preliminary order issuing Water Right License 67-7899 is **DENIED** pursuant to Idaho Code § 67-5243(3).

IT IS FURTHER HEREBY ORDERED that the petitioner's request for a hearing is **GRANTED** pursuant to Idaho Code § 42-1701A(3).

Dated this 1st day of February, 2006.


GARY SPACKMAN
Chief, Water Allocation Bureau