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DEPARTMENT OF
WATER RESOURCES

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January 10, 2006

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John Westra
Manager Western Region Office
Idaho Department of Water Resources
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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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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