



United States
Department of
Agriculture

Forest
Service

Sawtooth National Forest
Sawtooth National Recreation Area

5 North Fork Canyon Road
Ketchum, ID 83340
208-727-5000
Visitor Center: 208-727-5013
Fax: 208-727-5029

File Code: 5400 SV-84

Date: February 18, 2011

RECEIVED
FEB 22 2011
DEPT. OF WATER RESOURCES
SOUTHERN REGION

Patrick W. Lee c/o John T. Brown and John T. Brown
P.O. Box 61
Sun Valley, ID 83353

CERTIFIED LETTER

Dear Pat and Jack:

This letter addresses development associated with your water right application permit #71-10929 for the wildlife storage of 4.2 acre-feet and diversion to storage of 0.5 cfs from Lost Creek. With the goal of finding a way to achieve your development objectives, related to this water rights application, in a way that is consistent with the terms and conditions of the easement, I have reviewed our files and consulted with other agencies and Forest Service staff. Regrettably, I am unable to find the water diversion and storage developments related to this water right application consistent with the easement (Custer County Instrument #143173) held by the United States. Specifically, it is not compliant with 36 CFR 292.16(c)(5):

No structures or other improvements will be constructed in or encroaching upon streambeds, banks, and floodplains of live or intermittent streams. Streambeds, banks, and flood plains will not be disturbed, except as may be necessary to construct operate and maintain irrigation, fisheries, utilities, roads, and similar facilities or improvements. Any such necessary encroachment will avoid impeding water flow, sedimentation of streams, or entrance of deleterious material into streams.

In addition, there are provisions in the easement and regulations for limited development of the property that are described in the easement itself, as well as those attached and incorporated standards for use of private land enumerated in 36 CFR 292.16(c) and those pertaining to agriculturally classified properties in 36 CFR 292.16(g). These provisions are restricted by 36 CFR 292.16(g)(1) to structures which are "...necessary for ranching or dude ranching, such as dwellings, barns, storage buildings, fences, corrals, irrigation facilities, roads, and utilities." As storage ponds for wildlife are not necessary for ranching or dude ranching purposes, I looked into the idea of changing the beneficial use to one consistent with the easement. I learned during my research that you were prevented from diverting for irrigation purposes. So even if you were to find a way to address the non-compliance issues with 36 CFR 292.16(c)(5), the development would also have to be necessary for ranching or dude ranching to be consistent with the terms of the easement.

It was my understanding that a primary goal of the water development was to benefit wildlife. I appreciate the good intentions towards this important value for which the Forest Service



manages within the Sawtooth National Recreation Area (NRA). Intuitively, it may seem that ponds would be beneficial to some wildlife. However, unintended consequences from maintaining, manipulating and modifying the development over time may actually harm wildlife. I believe that restoring the creek to an unimpeded condition, and the landscape closer to its original sagebrush condition, best preserves and protects the scenic, natural, fish and wildlife values of the Sawtooth NRA.

As I have determined the diversion and water storage is not in compliance with the terms of the easement, and therefore demonstrated it is not in the public's interest, any diversion structures should be plugged or removed, as appropriate, and Lost Creek allowed to flow unimpeded. The existing ponds should be dried up and re-contoured to more natural grades with the material available on site and the disturbed areas re-vegetated with native seed to help reduce the invasion of yellow toadflax (and potentially other invasive plants) that is already present in the area. I request these compliance measures be completed by June 30, 2011. I recommend consulting with our Private Lands Administrator Sharon Browder (208-727-5005) on your restoration plans to help prevent costly misunderstandings. She can also recommend a seed mix and vendors that supply weed-free native seed mixes appropriate for our area.

I appreciate your patience while we explored potential options. Our goal is to help landowners achieve their development objectives in a way that does not materially detract from the scenic natural, historic, pastoral, fish and wildlife values of the Sawtooth NRA. This is often challenging in the complex regulatory and legal environment of the Sawtooth NRA, and sometimes we are unable to achieve this goal. Although this is not the hoped for outcome, I encourage you to still work with the Forest Service early and often as you contemplate, plan, design and implement future changes to this property.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sara E. Baldwin".

SARA E. BALDWIN
Sawtooth National Recreation Area Ranger

cc: IDWR