



STATE OF IDAHO
WATER DISTRICT 130
C/O IDAHO DEPARTMENT OF WATER RESOURCES
1341 FILLMORE ST, STE 200
TWIN FALLS, ID 83301-3380
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IDWR INTERIM DIRECTOR
GARY SPACKMAN

WATERMASTER
CINDY YENTER
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October 18, 2010

CHARLES G BROCKWAY
BROCKWAY ENGINEERING PLLC
2016 WASHINGTON ST NORTH STE 4
TWIN FALLS ID 83301

RE: Lava Lake Land and Livestock Proposed Ponds

Dear Chuck:

I have received for Watermaster review and comment, two applications for permit in the name of Lava Lake Land and Livestock (Lava Lake). These applications have been numbered 37-22543 and 37-22544. Each application proposes a small impoundment for wildlife enhancement purposes (Pond Sites #2 and #3). The applications have been advertised without protest and will move forward for approval.

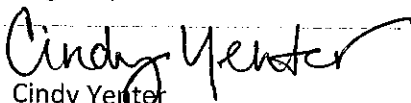
The narrative accompanying the applications goes on to describe a third impoundment site (Pond Site #1) to be situated on Payne Creek within the NWNW Section 21, T01N R23E. Your narrative characterizes the facility as "an irrigation buffering storage facility" to be constructed under the IDWR "24-hour rule" without a separate water right obtained. IDWR and Water District 130 have determined that Pond #1 does not meet the criteria for 24-hour irrigation regulation or distribution ponds as described in IDWR Administrative guidelines, and that a water right will be required.

IDWR Application Processing Memo No. 67 describes 24-hour exempt ponds as being "*part of a system used to distribute and use water in accordance with a valid water right*". The right to divert water must preclude the distribution and beneficial use of the water. Lava Lake's recommended irrigation rights from Payne Creek describe a single point of diversion which is approximately ½ mile downstream from the site proposed for Pond #1. There is no instream component to the irrigation rights. Consequently, an impoundment at the proposed location cannot be a part of the irrigation distribution system under Lava Lake's rights from Payne Creek because there is not a point of diversion for irrigation at that location.

Please advise your client that the construction of Pond #1 is not authorized at this time. A pond or reservoir at this site could be authorized in the future with appropriate water right filings.

Feel free to contact me or staff at IDWR if you have any questions.

Regards,


Cindy Yenter
Watermaster, Water District 130

cc: Allen Merritt, Southern Region Manager