

May 24, 2001

Ms. Sarah McNary
Manager, Fish and Wildlife
Bonneville Power Administration
P. O. Box 3621
Portland, OR 97208-3621

VIA FACSIMILE TO (503) 230-4563 AND FIRST CLASS MAIL

Re: Additional Clarification for High Priority Project Proposal No. 23010

Dear Ms. McNary:

Thank you for the opportunity to further clarify the water right administration process that would be implemented in association with project proposal no. 23010 – Restoration of Anadromous Fish Access to Hawley Creek. The following information is provided to supplement and confirm the water right administration process that I described during our telephone discussion yesterday.

Most of the water rights involved are held by Blair Kauer doing business as McFarland Livestock. McFarland Livestock has eight water rights totaling 22.2 cfs as follows:

<u>Water Right Number</u>	<u>Priority Date</u>	<u>Quantity</u>
74-0027	04/01/1879	0.7 cfs
74-0029	04/01/1881	0.7
74-0030	08/01/1883	5.0
74-0028	08/15/1883	3.3
74-0012	10/16/1908	2.0
74-0011	03/27/1911	1.6
74-0016	04/13/1911	6.4
74-0025	04/01/1939	2.5

There are six other water rights totaling 5.5 cfs with priority dates ranging from 04/15/1883 to 04/02/1939 held by Karl Tyler that are proposed to be diverted into a pipe

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system in common with a portion of the water rights held by McFarland Livestock (74-0027, 74-0028, and 74-0025) as part of project proposal no. 23010. The remaining water rights held by McFarland Livestock would be diverted into a separate pipe system, also part of project proposal no. 23010. There are eight other water rights, or claims in the Snake River Basin Adjudication, on Hawley Creek; one is upstream from the McFarland-Tyler water rights and the remaining 7 are downstream. The upstream water right is for 2 cfs and has a priority date of 04/1/1914. The downstream water rights, or claims in the adjudication, are for stock watering (very small flow rates of 0.01 to 0.02 cfs) or are for instream flows claimed by the United States or tribes. The exception is one water right for 1.36 cfs with a junior priority date of 04/11/1960.

Typically, water rights from Hawley Creek with priorities later than about 1915 are subject to curtailment to maintain diversions under more senior water rights. Under the Lemhi River water rights decree, water rights from Hawley Creek are to be administered separately from water rights to divert water from the Lemhi River. Therefore, none of the Hawley Creek water rights are subject to curtailment because of a priority call for delivery to a water right from the Lemhi River.

When the water rights held by McFarland Livestock and Karl Tyler are in priority, that is when the flow in Hawley Creek is sufficient to supply any other water rights from Hawley Creek having more senior priorities, if any, then under project proposal no. 23010 "conserved water" would be available. The "conserved water" would not be subject to diversion by holders of senior priority water rights because those water rights would already be filled, otherwise the McFarland and Tyler rights would not be in priority. When any of the McFarland and Tyler water rights are not in priority, senior priority water rights would be diverting the available water and there may be less "conserved water" for restoring stream flows, depending on which of the McFarland and Tyler water rights remained in priority.

In any event, shepherding the "conserved water" past any downstream water rights that would otherwise be entitled to divert the "conserved water" will require that legally enforceable agreements be executed with those water right holders, as I described in my previous letter to Robert Austin dated May 21, 2001. We are developing a form that can be used as a template for these agreements, and will forward a copy of the form to you separately. Subject to these agreements, the watermaster or his deputy will shepherd or ensure passage of the "conserved water" past the diversions of water right holders that otherwise could have diverted the water. As we discussed yesterday, this will require the installation of additional measuring devices and/or manual stream flow measurements by the watermaster or his deputy to both determine the quantity of "conserved water" at various locations, after proportionate reductions for conveyance through losing stream reaches, and to document that the appropriate amount of "conserved water" passes downstream diversions.

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If you or your staff have any further questions or concerns regarding how restored or improved flows will be protected, please contact me at (208) 327-7910.

Sincerely,

Karl J. Dreher
Director

c: Karen Hunt – Bonneville Power Authority (via facsimile to 503-230-4018)
Brian Brown – National Marine Fisheries Service
John Palensky – National Marine Fisheries Service
Dr. Brian Allee – Columbia Basin Fish and Wildlife Authority

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