



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

March 12, 2010

Dar Crammond
Water Resources Branch Chief
US Fish and Wildlife Service
911 NE 11th Avenue
Portland, OR 97232-4181

Re: Your E-mail Correspondence Dated January 25, 2010 Requesting Exclusion from the Proposed Clayton Area Sub-District and Water District No. 170

Dear Mr. Crammond,

On January 25, 2010, staff from the Idaho Department of Water Resources (Department or IDWR) received an e-mail message from you with attached correspondence addressed to me. A copy of that attached letter is enclosed for your reference. Your e-mail message indicated that you were routing a hard copy of the letter to the Department but we have not yet received that copy. I understand that IDWR staff advised you that we would provide a personal response. As you may know, the *Final Order Creating Sub-District 72-D* that I signed on February 10, 2010 denied your petition to exclude the US Fish and Wildlife Service's (Service) Sawtooth Satellite Facility and related water rights from both Sub-District 72-D (Clayton Sub-District) and Water District 170 (WD170). The purpose of this letter is to provide you some explanation of my decision denying your request. I also wish to address your request for exemption of measurement requirements at the Sawtooth Satellite Facility.

I understand that the Service has an interest in the operation and management of the Sawtooth Satellite Facility, but the official owner of record for the associated water rights is the United States Bureau of Land Management (BLM). I believe the BLM may be listed as the owner because the facility is located on BLM land. I also understand that the Idaho Department of Fish and Game (IDFG) staff operates the facility on a seasonal basis. I do not question the Service's representation as the legal owner of the water rights, but I am interested in the BLM's position regarding your proposal to exclude the water rights from any water district. IDWR records concerning creation of WD170 indicate that neither the Service nor the BLM had previously opposed inclusion of its water rights in the district. It is my further understanding that the Service has not objected to inclusion of the Sawtooth Hatchery near Stanley in WD170 or the local sub-district for either assessment or measurement purposes. Similarly, I am not aware of any opposition to inclusion of Service facilities in other state water districts. Given the Federal Government's participation in the Wild and Scenic Rivers Agreement, and its strong support for creation of a large water district for the Upper Salmon River Basin, I am surprised that any of the Federal agencies would seek to exclude its water rights from the water district and/or fail to see a benefit from such participation.

Regarding your concern about the difficulty “to enumerate any benefits that might accrue to the Service in return for the \$50 dollar water right charge”, I suggest that the Service may realize the following potential benefits through participation in the district:

- Measurement and reporting through the district will provide a means for documenting facility diversions, including the amount of water diverted, and when water is diverted.
- Documentation of diversions may help protect the Service’s water rights over the long term, including potential future challenges regarding non-use of the water rights and/or in the administration of water rights in the event of a water delivery call.
- Participation in the district would provide support for regulation and administration of all water rights in both the sub-district and WD170, a goal that IDWR has always understood to be critical to the Service and other Federal agencies in the Upper Salmon watershed. The districts will, in accordance with Idaho law and the Wild and Scenic Rivers Agreement, administer water rights and uses in the Upper Salmon Basin, including regulation of unauthorized or excessive diversions. The benefits of these administrative and regulatory activities should provide some benefit for both the water and fishery resources of the Upper Salmon that we believe the Service is interested in protecting.
- Participation in the district may promote good relationships with other water users and right holders in the district who have already expressed concerns to IDWR about potential non-participation of Federal agencies in WD170. Participation by the Federal agencies, including payment of appropriate assessments, would demonstrate that the Federal Government does indeed support the objectives of the water district and that all district right holders share costs appropriately. Conversely, providing exclusion to the Service may establish a precedent for excluding other Federal agency water rights from the district. Additionally, local users may see excluding the facility from the district as a sign that IDFG also does not wish to participate in the water district since it is the entity that operates the facility on a day-to-day basis. Any perception created toward the lack of cooperation by IDFG would be contrary to IDFG’s historical practice of participation in water districts throughout the state.

IDWR is well aware of the Service’s long held policy “to comply with state water resources law as a matter of comity.” Although IDWR does not challenge this policy, it is important to note that there is no provision in Idaho law to formally exclude non-consumptive water rights from a water district. Rather, Idaho Code Section 42-605A provides for a rather flexible approach for assessment of non-consumptive rights in a water district, including potentially a minimum charge of up to fifty dollars (\$50) or no charge at all. Even if IDWR adopted the Service’s position to exclude the facility but require the Service to measure and report diversions directly to IDWR, we would still require a minimum reporting fee of twenty-five dollars (\$25).

As per this letter, I am also denying the Service’s prior petition for an exemption of measurement requirements. I believe that staff from the Service, IDWR and IDFG can work together to find a cost effective and relatively accurate method of measurement for the facility. Towards that end, Nick Miller, WD170 watermaster and IDWR staff engineer, has contacted Brent Snider of IDFG to discuss a plan for simple and cost effective measurement at the facility.

Dar Crammond
March 12, 2010
Page 3

IDWR does not oppose a plan in which IDFG or the Service measures and reports diversions directly to the WD170 or sub-district watermaster as long as the watermasters can verify the measurement and reporting.

Please understand that previous IDWR Directors and the Idaho Attorney General worked long and hard on the Wild and Scenic Rivers Agreement that established the framework and organizational structure for WD170. The State successfully defended the creation of the Upper Salmon Water District from a legal challenge before the Idaho Supreme Court over the past year. I believe it would be in the best interest of all parties if the Service supported the districts through active participation.

Thank you for your comments concerning this matter.

Sincerely,



Gary Spackman,
Interim Director

encl: Copy of Correspondence from Dar Crammond, USFWS

cc: Nick Miller, IDWR & WD170 Watermaster ✓
Tim Luke, IDWR

cc to Brent
Snyder, IDFG
Stanley (J)
Hc 64 Box 9905
STANLEY
83278

Interim Director
Department of Water Resources
PO Box 83720
Boise, Idaho 83720-0098

Dear Sir:

The U.S. Fish and Wildlife Service (Service) supports the proposed expansions of Water District 170. Effective water right regulation through measurement, reporting and the services of a water master should yield tangible benefits to water users within the District. However, the Service requests that the Sawtooth Satellite Facility and its related water rights be excluded from the Clayton Sub-district.

The policy of the U.S. Fish and Wildlife Service is to comply with state water resources law as a matter of comity. The Service is willing to pay assessments to the extent that they are fees that result in products or services rendered and not taxes or levies unrelated to benefits. In the case of the Sawtooth Satellite facility, the Service believes that there will be no discernable benefit. Therefore, the Service asks that this facility be excluded from the Clayton Subdistrict and from Water District 170.

The Sawtooth Satellite Facility of the Sawtooth Fish Hatchery is located on the East Fork Salmon River within the proposed Clayton Sub-district. There are two water rights associated with the facility, 72-7185 and 72-10516. Currently, the U.S. Fish and Wildlife Service has a petition before IDWR to exempt this facility from measuring diversions under these water rights. The difficulty of accurate measurement, coupled with the non-consumptive nature of the diversions, argue strongly for an exemption. At this point, IDWR has not acted on the Service's request for an exemption. If there is no measuring requirement, and if the facility is completely non-consumptive, it is difficult to enumerate any benefits that might accrue to the Service in return for the \$50 dollar per capita water right charge that has been proposed.

If IDWR finds that the East Fork Sawtooth Satellite facility must measure its diversions, the Service will measure diversions and report directly to IDWR. If IDWR finds that the facility is subject to regulation, the Service would, as a matter of comity, support a fair share of a watermaster's salary, either through the proposed fees or payment in kind. However, the burden is on the District to enumerate the benefits and services that this assessment will deliver to this facility.

The Fish and Wildlife Service supports Idaho's efforts to develop a long-term sustainable water management system in Water District 170 and is willing to participate in the State's effort as appropriate.

Sincerely,

Dar Crammond
Water Resources Branch Chief