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State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Water Rights

JERRY D. OLDS
State Engineer/Division Director

February 25, 2008

James P. McMahon
375 Cedar Tree Drive
Brookside, UT 84782

Dear Mr. McMahon:

The State Engineer asked that I respond to your letter dated January 22, 2008. I will address your questions as numbered in your letter.

- 1) Your proposed change would need to be applied for and considered through the division's standard change application process in concert with current water right holders. Since the division has not received an application, the merits of this proposed change cannot be evaluated. The division is willing to accept any application for change in the beneficial use of water as provided by state law. The Division of Water Rights cannot be a holder of a water right. Additionally the division cannot forecast the approval of a change application, until the application is submitted and evaluated.
- 2) The priority of a non-consumptive right is evaluated on the priority system that provides earlier applications with priority over later applications. As per Utah annotated code (73-3-3 (11a) individuals cannot own an in-stream flow right. However, certain state agencies can hold an in-stream flow. You should inquire with Baker Reservoir Association to determine if you can use their facilities prior to any proposed change. The existing conditions would need to be fully quantified by the applicant and contained within the change application. The Division will then evaluate the application on the basis of no enlargement of the original water right.
- 3) Pacific Corp is under no obligation to dismantle pipe and ditch components other than possibly their own concerns from a corporate liability standpoint. Once the right is transferred, the dismantling or removal of a diversion structure would need completed to the point of allowing the flow of the river to return normally to the natural stream channel while minimizing ground disturbance. The Stream Alteration Group in the Dam Safety Section handles such applications.
- 4) A diversion for an orchard exists along the canal that runs through Brookside. A pressure tap exists on the Veyo Penstock. The Veyo irrigation company removes water from Pacific Corp's ditch at five locations, one before the siphon and four after. There are no known diversions along the canal run from the last Veyo diversion to the Gunlock power plant.



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Subject: **James P. McMahon Response Letter**

- 5) The Division will not speculate about an application that has not been submitted. Furthermore the division does not provide research services or professional advice. Please address your concerns to appropriate professionals that are duly qualified to quantify, prepare and submit a credible change application. For your convenience, procedural guidance and scanned copies of water rights files are accessible from our website at www.waterrights.utah.gov
- 6) The Department of Natural Resources along with the Division of Water Rights has no position or bias on this matter and cannot endorse or condone any proposed actions. We will remain neutral as required by state law.
- 7) The Division does not materially participate in the acquisition of water rights.
- 8) See Response 5 & 6 above.
- 9) See Response 5 & 6 above.

Thank you for your inquiry. We look forward to evaluating your change application once it has been prepared and submitted.

Sincerely,



Mike Silva
Distribution Engineer

Cc: Jerry Olds, State Engineer
Kurt Vest, Regional Engineer
Rod Leavitt, Water Commissioner
Connely Baldwin, Pacific Corp
File: Santa Clara, Pacific Corp Canals