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west virginia department of environmental protection

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Jim Justice, Governor  
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September 19, 2017

Hon. Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, D.C. 20426

**Re:** Basis for Modified State 401 Water Quality  
Certification for relicensing, Hawks Nest  
Hydro, LLC, Hawks Nest Hydroelectric  
Project No. P-2512, New River, near  
Ansted, Fayette County, West Virginia;  
WQC 160013

Dear Secretary Bose:

The purpose of this correspondence is to convey background information and insight relative to the WV Department of Environmental Protection's (WVDEP) recent issuance of State 401 Certification for FERC license number P-2512. Procedurally, the 401 Certification was issued on June 02, 2017, within the one-year 401 certification period. Appeals of this 401 were timely received from two entities, American Whitewater and Hawks Nest LLC. WVDEP conducted a series of individual discussions with the appellants, and issued a Modified 401 Certification, within state prescribed timeframes, on August 14, 2017. The Modified 401 Certification includes several minor and administrative revisions and clarifications, as well as material modifications to certain special conditions based on the individual discussions with appellants.

The issuance of the FERC license for hydropower operations by Hawks Nest LLC. will affect the New River, one of WV's most treasured water resources, for years to come. Hence, WVDEP and the WV Division of Natural Resources (WVDNR) have a keen interest in this issue and it is the reason behind our detailed engagement with interested parties prior to issuing the Certification and the final Modified Certification. As you are aware, there are multiple affected parties, each with varied and differing perspectives on water availability, river access, aquatic life, etc.

Promoting a healthy environment.

Before specifics are provided on each of the major 401 Certification points we would like to first acknowledge and complement the FERC staff on their efforts to have quality study information developed, for assembling the draft Environmental Assessment (EA), and for their initial recommendations. This effort significantly contributed to WVDEP's ability to engage the affected parties and have productive discussions in search of ways to balance the competing interests, consistent with designated uses of our state's waters and our local knowledge. It was our intention to build on the work of FERC, not to in any way to discount the information or ideas put forward. We would also like to emphasize the point that our main goal was to have a comprehensive package that would benefit all interests in some way, knowing that everyone cannot be completely satisfied.

Lastly, we did introduce one entirely new concept into the 401 Certification, the concept of connecting the existing trails above and below the Hawks Nest Dam. Significant work by multiple parties to develop and connect trails in the New River Gorge area began after the relicensing studies were scoped out. This trail connection concept, while new, is very important to the greater tourism enhancement efforts at the local and statewide level. West Virginia is continuously seeking to diversify its economy and one aspect is to build on the strength of its natural beauty. Via this new trail feature it will soon be possible to bike/hike all the way from the New River Gorge (NRG) bridge to the Cotton Hill bridge, a distance of approximately six miles. This trail connection also further enhances the appeal for using the existing trail from Ansted to the New River, along Mill Creek.

Below are brief summaries of our rationale on the major points of our 401 Certification:

#### **401 Certification Specifics – Minimum Flow**

We recognize that minimum flow is a significant issue to WVA Manufacturing, LLC (WVAM) and Hawks Nest LLC. We also note that, per FERC's draft EA, up to 300 cfs, there are corresponding incremental gains in aquatic habitat availability as flows increase. While we believe FERC's proposal of 300 cfs has merit, we were also moved by the economic effect on WVAM. In arriving at the 300 cfs for March -June, and 250 for the remaining months, WVDEP's intention was to make ample habitat available during the important fish spawning months, and then balancing the power needs of WVAM with the habitat curves for smallmouth bass (SMB). From the curves, we are at near maximum capacity for SMB at 250 cfs. We also noted that while WVAM did take exception to the 300 cfs minimum flow set forth in the draft EA, Hawks Nest LLC did not.

#### **401 Certification Specifics – Public Access and Whitewater Release Days**

With respect to the number of whitewater release dates, before considering this issue we believe it is important for FERC to understand that provisions for a new put-in and a new take-out somewhat mitigate the number of fixed absolute dates for whitewater releases. By requiring provisions for new put-in and take-out access, all river users can better access the river for fishing/rafting/recreating at the desired flow of their choice. Specific to the whitewater enthusiasts, outside of scheduled recreational release dates there are many times when

whitewater flows exist in the dries. WVDEP believes this point is not widely recognized and that these new permanent access locations are substantive.

As for upstream access, many advocated for vehicular access and a put-in near the dam. Having visited the area on multiple occasions to see the landscape limitations associated with expanding the road width up to the dam, hearing the safety concerns of Hawks Nest LLC., interviewing representatives of the commercial rafters and our own view of the complexities associated with shuttles on scheduled release dates, we believed it best to concentrate efforts instead on developing a put-in access near the Cotton Hill Bridge, either on Hawks Nest LLC lands or lands owned by the WV Division of Natural Resources (WVDNR). This general location was also agreeable to commercial rafters. Nothing precludes private/commercial whitewater enthusiasts from still launching below the dam, be it without vehicular access. Many like the idea of keeping this road closed to public vehicles, keeping in mind the new hiking biking trail connection all the way to the NRG bridge and recognizing the additional safety concerns with public vehicular traffic on what would now be a bike-hike trail. Further, as part of the appeal resolutions, provisions were included to require an above the dam boat portage, allowing paddlers a shorter carry to take advantage of all the rapids below Hawks Nest Dam. With this new portage option, paddlers can access the New River near the Hawks Nest Aerial Tram, paddle to the dam area, use the portage around the dam, and put in utilizing the existing river access trail #3. This new portage option was not possible without opening the hike/bike trail past the dam.

In the DEA, FERC staff recommended development of a year-round whitewater take-out below the Hawks Nest powerhouse and also acknowledged Hawks Nest Hydro's proposed use of the take-out at the New River Campground for the annual whitewater event proposed by Hawks Nest Hydro. WVDEP believes the landscape does not lend itself to a takeout near the powerhouse and is concerned about the longevity of the cooperation with the private campground, hence our interest in using monies to acquire, or long term lease, a parcel in the same vicinity. Monies from Hawks Nest LLC, as required in Condition 10 of the 401, would be used to acquire this access. Since this is an off-project location and requirement, we believe it more appropriate and more straightforward for WVDNR to pursue this access using funding from Hawks Nest, LLC to acquire and maintain the site. Regardless, boaters of all types will benefit from this new access/takeout, with a guarantee of long-term access, in the Gauley Bridge area.

Relative to whitewater, WVDEP reviewed the FERC draft EA and noted that FERC staff recommended a total of 15 annual recreation flow releases of 2,000 to 2,500 cfs. In comments filed on the draft EA, Hawks Nest Hydro proposed a total of seven 6-hour releases, and American Whitewater requested up to 41 days per year when recreation flows would be provided. WVAM had offered they are negatively impacted by all planned whitewater releases. DEP's initial 401 required 7 releases beginning the last week of June thru the 2<sup>nd</sup> weekend of July. WVDEP also notes that based on stream hydrograph, the farther you go into the summer period, less opportunity for whitewater releases exist, while still providing for the 1,600 cfs minimum flow desired by WVAM. WVDEP's 401 Certification was very mindful of WVDNR's position that whitewater releases in the May- June time period are believed seriously detrimental to spawning and recruitment success for Smallmouth Bass (SMB), the primary game fish species in the river. Our initial 401 avoided releases during the spawning/recruitment concern period, and built upon the commercial rafter's desire to be able to offer family friendly rafting trips, once schools were out and water/air temperatures increased.

Ms. Kimberly Bose

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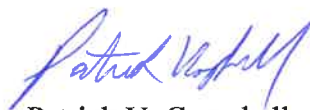
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The number of whitewater release days was challenged by AW in their appeal of the 401 Certification. In the individual negotiations with AW and Hawks Nest LLC we learned that based on historic hydrographs only 3-4 releases may actually happen on the targeted weekend periods ending mid-July. By extending the opportunity for attaining the seven targeted releases through the end of August each year, and by adding two scheduled release dates during the last two weekends in March (prior to the spawning season) WVDEP was able to increase the number of scheduled whitewater opportunities and resolve a significant part of AW's appeal.

In closing, we trust you will understand that we have evaluated input from various parties, considered the science, made our certification decision, and finally modified our Certification in response to appeals filed. In doing this we applied our local knowledge & expertise to the challenge and engaged the principle stakeholders. While our original determination resulted in two appeals, both have been resolved and we believe an even better final 401 has been issued. As noted above, we would also re-emphasize the point that our main goal was to have a comprehensive interest-based package that will guide management of this important resource throughout the next licensing term.

Finally, there were many discussions and fine point decisions made during the 401 Certification and Modification processes. Only the high points were covered in this document. Should FERC staff wish to discuss any of the finer points, or in more detail the items described in this correspondence, we are available at any time to provide information on our process, rationale, and conclusions. Please contact me at 304-926-0499 x 1046 or [Patrick.v.campbell@wv.gov](mailto:Patrick.v.campbell@wv.gov) if you have any questions.

Sincerely,



Patrick V. Campbell  
Deputy Director