

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

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Utah Board of Water Resources,)	Project no. P-12966-004
Lake Powell Pipeline Project)	
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MOTION TO INTERVENE BY SAVE THE COLORADO

INTRODUCTION

On December 11, 2017, the Federal Energy Regulatory Commission (“FERC”) issued a NOTICE OF APPLICATION ACCEPTED FOR FILING, SOLICITING MOTIONS TO INTERVENE AND PROTESTS, READY FOR ENVIRONMENTAL ANALYSIS, AND SOLICITING COMMENTS, RECOMMENDATION, TERMS AND CONDITIONS, AND PRESCRIPTIONS (“Notice”) in Project No. P-12966-004, State of Utah, Board of Water Resources’ (“UBWR”) License Application for the Lake Powell Pipeline Project (“LPP”). Pursuant to the Notice and Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214, Save The Colorado moves to intervene in this proceeding and oppose the issuance of the requested license.

INTERESTS OF INTERVENOR

I. Save the Colorado’s Interest

Save the Colorado is a non-profit corporation based in Fort Collins, Colorado. Its mission is to protect and restore the Colorado River and its tributaries from the river’s source to the sea.

Save the Colorado has an interest and concern in fighting irresponsible water projects, such as the LPP, in supporting alternatives to proposed dams and diversions on the Colorado

River System, supporting river and fish species restoration, and fighting for policies that acknowledge and adapt to Climate Change. Save The Colorado has thousands of supporters throughout the Southwest U.S. from Denver to Los Angeles and beyond, including in the states of Utah and Arizona.

Many Save The Colorado supporters live near the Colorado River and rely on the river for recreation opportunities and livelihoods.

Save The Colorado and its supporters oppose the issuance of this license for a number of reasons. This pipeline represents irresponsible water planning in the Colorado River Basin, the project proponents do not have sufficient need for the project and the project is likely to damage ecosystems and species, hamper restoration efforts and exacerbate effects of climate change on the system.

II. Save the Colorado's Intervention is in the Public Interest

Pursuant to 18 C.F.R. § 385.214(b)(2)(iii), intervention by Save The Colorado is in the public interest. Save The Colorado represents supporters of diverse backgrounds throughout the Colorado River Basin. Save The Colorado has a specific interest in protecting, restoring and enjoying the river and the fish, wildlife and plants that depend on it. Many supporters rely on the river for their recreational, scientific, education, conservation and economic interests. The LPP would directly affect these interests. No other party will adequately represent these same interests.

In addition, Save The Colorado has special knowledge regarding water pipeline impacts because it has participated in federal environmental review processes for other pipelines and diversion projects on the Colorado River, including, providing extensive comments to the draft Environmental Impact Statements for the Moffat Collection Systems

Project (Moffat) which includes the Gross Reservoir Hydroelectric Project, FERC Project No. P-2035. Save The Colorado also engaged in extensive public dialogue around the Wyco Power and Water, Inc., Preliminary Permit Application for Regional Water Supply Project, FERC Project No. P-14263, which would have pumped water from Flaming Gorge Reservoir to the Front Range. Like LPP, Moffat involves large water supply pipelines in the Upper Colorado River Basin, hydropower development and involvement of multiple federal agencies. Moreover, these projects have similar adverse effects on fish, wildlife and plants, including endangered species and their habitats, water availability and recreation on the Colorado River and surrounding public lands. Save The Colorado has developed knowledge and relevant experience regarding water pipeline and hydroelectric projects that will benefit the public interest in the LPP proceedings.

Save The Colorado will actively participate in this license application process and in any subsequent proceeding to ensure the protection of the Colorado River, adequate stream flows, and the protection of the fish, wildlife and plant species that depend on these flows. This participation will lead to more informed decision making, development of a more complete record and be in the public interest. Accordingly, Save The Colorado requests intervention on behalf of themselves and their supporters.

STATEMENT OF POSITION

I. Utah's License Application should be denied because it is not in the public interest.

The purpose of the Federal Power Act (FPA) is to promote balanced and responsible hydropower development on federally regulated waterways. 16 U.S.C. § 797(e). It directs the commission "to give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife . . . , the

protection of recreational opportunities, and the preservation of other aspects of environmental quality.” *Id.*

In *Udall v. Federal Power Commission*, the U.S. Supreme Court emphasized that because “[a] license under the [FPA] empowers the licensee . . . to appropriate water resources from the public domain,” the Commission’s authority “to alienate federal water resources” turns on “whether the project will be in the public interest,” 387 U.S. 428, 450 (1967). Public interest considerations include “future power demand and supply, alternate sources of power, the public interest in preserving reaches of wild rivers and wilderness areas, the preservation of anadromous fish for commercial and recreational purposes, and the protection of wildlife.” *Id.*

A. Not in public interest because not a good use of water resources.

The only apparent benefit of the LPP is that it will provide water to two counties in Utah that have the highest per capita water use in the country. *See* Supplemental Comments on the Preliminary License Proposal for the Lake Powell Pipeline filed by the Utah Board of Water Resources, Docket # P-1966-001, Utah Rivers Council Cmt. Ltr., p. 4 (March 1, 2016); Comments on Preliminary Licensing Proposal for the Lake Powell Pipeline Project No. P-12966-001, W. Resource Advocates Cmt. Ltr., p. 11 (February 29, 2016). Other commenters have discussed that the water conservation goals in these counties are unreasonably low. W. Resource Advocates Cmt. Ltr. at p. 5-8. And, a report to the Utah State Legislature by the Office of the Legislative Auditor General supports this conclusion, noting that “other western states appear to use less water than Utah, indicating Utah residents may be able to further reduce their water use.” Office of the Legislative Auditor General, State of Utah, A Performance Audit of Projection of Utah’s Water Needs, Report to the Utah

Legislature No. 2015-01, 25 (May 2015) (*hereinafter* Performance Audit) (*in record as* W. Resource Advocates Cmt. Ltr., Exhibit 2).

Other commenters have noted that the LLP project “is out of step with efforts throughout the Colorado River Basin to reduce consumptive uses of water so as to defend against potential shortage, meet future demand, and adapt to Climate Change.” American Rivers’ Comments on the Preliminary Licensing Proposal, Am. Rivers Cmt. Ltr., p. 1 (February 29, 2016). While there is not yet a true comprehensive plan for the Colorado River Basin, the basin states have moved in that direction, commissioning a study by the Bureau of Reclamation to establish a common technical foundation for discussing the imbalances in the Colorado River Basin. In the Colorado River Basin Water Supply and Demand Study, Reclamation notes:

[T]he median of the mean natural flow at Lees Ferry over the next 50 years is projected to decrease by approximately nine percent, along with a projected increase in both drought frequency and duration as compared to the observed historical and paleo-based scenarios. . . . Droughts lasting 5 or more years are projected to occur 50 percent of the time over the next 50 years. Projected changes in climate and hydrologic processes include continued warming across the Basin, a trend towards drying . . . increased evapotranspiration, and decreased snowpack as a higher percentage of precipitation falls as rain, rather than snow and warmer temperatures, causes earlier melt.

Department of the Interior, Bureau of Reclamation, Colorado River Basin Water Supply and Demand Study, Executive Summary, 7 (December 2012) *available at* http://www.usbr.gov/watersmart/bsp/docs/finalreport/ColoradoRiver/CRBS_Executive_Summary_FINAL.pdf.

Reclamation goes on to declare the study a “call to action” to implement “an approach that applies a wide variety of ideas at local, state, regional, and Basin-wide levels,”

including water conservation and reuse. *Id.* at 26. While Reclamation does not necessarily advocate conservation and reuse in place of all water projects, they make it clear that they are important components of any approach to meet future water needs. *Id.*

Similarly, the Governor of the State of Utah has made it clear “that sub-standard water conservation targets are not acceptable in arid areas of Utah where billion-dollar water supply projects are planned.” W. Resource Advocates Cmt. Ltr. at 8 (*citing* Governor Gary R. Herbert, Investing in the Future of Utah: Budget Recommendations, Fiscal Year 2017—Fiscal Year 2016 Supplementals (Updated December 10, 2015) (*in record as* W. Resource Advocates Cmt. Ltr., Exhibit 3)).

Washington and Kane Counties have not made the required conservation commitments that should accompany a project of this scope in this region. As planned, this project runs contrary to state, regional and basin-wide efforts to address future needs through varied approaches including conservation and reuse. Therefore, it is in the public interest for FERC to deny the License Application.

B. Not in public interest because applicants have not presented sufficient evidence of need for the project.

While water supply is among the allowable considerations listed in Section 10(a) of the FPA for whether a project will benefit the public interest, it is not the primary prerogative of the FERC. Section 4(e) empowers FERC to issue licenses for the improvement of navigation and power generation and supply, not specifically for water supply purposes. “FERC interprets the Act's requirement that a project be ‘necessary or convenient’ to preclude the licensing of a project in the absence of a demonstrated need for power”. *Idaho Power Co. v. F.E.R.C.*, 767 F.2d 1359, 1363 (9th Cir. 1985) (*hereinafter* “*Idaho Power I*”).

Therefore, Utah must show a timely need for the power produced by the project before FERC issues a license.

In the case of the LPP, The only demonstrated need for power generation arises from the project itself. UBWR proposes to “to generate electricity in project facilities to help offset electrical power consumed in pumping the water from Lake Powell to St. George, Utah.” Application for Original License of Utah Bd. of Water Resources for P-12966, Exhibit E, 2-1 (April 30, 2016). Any additional power generated would be sold to local utilities. *Id.* While UBWR goes on to describe a projected growing demand for power in the region and a projection that hydroelectric power will meet an increasing percentage of that demand, *Id. at 2-2*, they provide no evidence that the demand will outstrip supply or that an outstanding need for power will remain if the project is not licensed.

Moreover, UBWR admits that power generation is not the primary goal of the project. Throughout Chapter 2 of the Exhibit detailing the Purpose of the Action and the Need for the Action, power generation is consistently listed as a secondary, *Id. at p. 2-1*, or even quaternary concern, *Id. at p. 2-3* (“The LPP Project will meet the following UBWR needs: . . . 4. To develop clean, renewable energy sources wherever possible.” The first three needs deal entirely with water supplies). *Final Alternatives Development Study Report*, Application for Original License of Utah Bd. of Water Resources for P-12966, (April 30, 2016), discusses water supply issues with no mention of power generation. Further, alternative screening criteria were: 1) ability to meet projected water demands; 2) technical feasibility; 3) total conceptual cost opinion; 4) environmental considerations; and 5) land use considerations. *Id. at pp. 5-2-5-3*. Power generation did not even figure into the analysis, highlighting its relative unimportance to the project proponents.

Additionally, there is evidence that the project applicants do not even intend to build hydroelectric components initially. *See* Utah Rivers Council Cmt. Ltr. at p. 2. To license such a project would go against FERC's own policies and legal precedent. *See Idaho Power I* at 1363 (rejecting notion that applicant should be able to essentially hold a project site until a need for power can be demonstrated sometime in the future as against the public interest, noting the FPA "envisions prompt implementation of a project after it is licensed.")

Even if water supply needs were an appropriate primary need to consider for this project, there are a number of problems underlying the need established by Utah in their application. Firstly, the data upon which UBWR bases its needs assessment is un-transparent and unreliable. *See e.g.* W. Resource Advocates Cmt. Ltr. at pp. 3–4 (discussing discrepancies between the 2010 and 2015 Water Needs Assessments and the Performance Audit that calls into question the Utah Division of Water Resources local water use data and processes for ensuring data reliability).

Secondly, Utah has failed to consider a number of alternative water sources. *See Local Waters Alternative to Lake Powell Pipeline*, WRA Cmt. Ltr., Exhibit 1. Utah has also underestimated "the potential of conservation to reduce future water demands." W. Resource Advocates Cmt. Ltr. at p. 5. *See also*, Memo. from Robin Silver, M.D., Center for Biological Diversity, to Kevin McIntyre, Federal Energy Regulatory Commission, *FERC Must Disregard the January 23, 2018 Hatch-Lee Congressional Correspondence* 1 (February 6, 2018) ("St. George has the highest per capita water consumption rate for desert cities in the U.S. . . . twice as much water per capita as Phoenix." Former Utah Division of Water Resources Director Dennis Strong declares, "St. George can meet their water needs and continue to grow if they simply use their zoning laws to limit and control water use.") There

has been considerable evidence presented in the record that a more reasonable conservation goal that doesn't sacrifice quality of life would alleviate the need for LPP water.

Given that Utah cannot sufficiently support their need for the project, either based on water or energy need in the region, FERC should deny Utah's license application.

C. Not in public interest because applicants statements are unreliable.

There are a number of data problems underlying the planning that do not instill public confidence in Utah's ability to successfully implement this project. Many intervenors and public comments discuss the Office of Legislative Auditor General's Performance Audit. That report set out to "determine the reliability of the division's data . . . and assess the accuracy of the division's projections of water demand and supply." Performance Audit at i. Among the findings of the report were that "water use data reported by public water systems to the Division of Water Rights contains significant inaccuracies," and, "a lack of documentation and changes in methodology raise doubts about the reliability of the division's water use studies." *Id.* at 9. Because local water use data is used as a basis for projecting and planning for future water needs, the accuracy of that data is critical. *Id.* Division of Water Resources has conceded the inaccuracies of local water use data, being cited in the report saying, "the data received by the Division of Water Rights was simply not accurate enough to make sound future water planning decisions." *Id.* at 11-12.

Further the report found reason to "question the division's projected demand for water, which assumes the average Utah resident will consume 220 gallons per day through the year 2060," noting that other western states use less water than Utah, suggesting that Utah residents may be able to reduce their water use," and, "ongoing trends towards conservation should continue to reduce per capita water use by more than the state's 25

percent conservation goal. The division has stated they intend to update the goal once it has been met.” *Id.* at 25. Many intervenors and commenters have declared that Utah overestimates its future water needs, or does not sufficiently consider the potential for conservation to reduce future water demand. *See e.g.*, W. Resource Advocates Cmt. Ltr. at p. 5; Utah Rivers Council Cmt. Ltr. at p. 3. Utah has stood by their projections and current conservation goals in their response to comments, *Responses to Participant Comments on PLP and Draft Study Reports*, Application for Original License of Utah Bd. of Water Resources for P-12966, Attachment 4, 77 (April 30, 2016), despite the findings of the Performance Audit.

Without reliable data underlying its projections, the public, FERC and other involved agencies cannot make a sufficiently informed determination of the need for this project and cannot properly weigh that need against potential impacts. Therefore, it is in the public interest for FERC to deny the License Application given the unreliability of Utah Division of Water Resources’ water use data.

D. Not in public interest because of adverse effects natural resources and wildlife, including listed species.

The LLP will take more water out of the Colorado River. While the Upper Basin of the Colorado River has not developed the full apportionment of water they are legally entitled to take out of the river, Colo. River Basin Water Supply and Demand Study, Exec. Summary at 3, as a resource, the Colorado River has been overused and pushed beyond its limits, Dettinger, Michael, et al, *ESA Centennial Paper: Western Water and Climate Change*, 25(8) Ecological Applications 2069, 2082-83 (2015) (*in record as* Am. Rivers Cmt. Ltr., Attachment 1). The mere fact that it is legal for an applicant to take water from the river

(though it is not clear it is in this case as discussed below), does not itself mean that it is in the public interest to do so.

Both the Colorado River from Lake Powell to the Grand Canyon and the Virgin River downstream from Washington and Kane Counties, Utah, are listed as wild and scenic rivers. National Park Service, Nationwide Rivers Inventory, Department of the Interior, Washington, D.C. 1993. The public enjoy use of these rivers for various recreation activities such as fishing, rafting, kayaking, hiking, and more. Additionally, these rivers provide habitat for a variety of wildlife, including threatened species.

A number of commenters have raised concerns about the projects effects on both Colorado and Virgin River flows and water quality. *See* Comments of the U.S. Fish & Wildlife Service on the Utah Board of Water Resources's Initial Study Reports for the Lake Powell Pipeline Hydroelectric System FERC No. 12966-001, U.S. Fish & Wildlife Serv. Cmt. Ltr., pp. 7-8 (February 29, 2016); Comments on Utah Bouard of Water Resources' (UBWR) Preliminary Licensing Proposal (PLP) and Revised Draft Study Reports for the Lake Powell Pipeline Project (FERC Project No. 129966), S. Nev. Water Auth. and Colo. River Comm'n of Nev. Cmt. Ltr., p. 2. (February 29, 2016). U.S. Fish and Wildlife Service also commented that the project has a potential to affect a number of listed plant and animal species as well as other migratory birds. U.S. Fish & Wildlife Serv. Cmt. Ltr. at pp. 8-10.

The Virgin River watershed already has over 80 imperiled species due to exploitation by the City of St. George. *Motion to Intervene from the Center of Biological Diversity*, 2 (January 11, 2018). Similarly, a large number of endangered species in the Colorado River confirm the ill health status of that river's ecosystem. *Id.* at 2-3. Even in the absence of more diversions from these systems, climate change is likely to have the effect of reduced

flow in these rivers, *Id.* at 3 (citing Udall, B., & Overpeck, J. *The Twenty-first Century Colorado River Hot Drought and Implications for the Future*. Water Resources Research, 53(3), 2404-2418 (2017), DOI: 10.1002/2016WR019638.), further imperiling these species.

On balance, the potential impacts of this project to this vital public resource far outweigh the limited benefit to Washington and Kane Counties, Utah, and therefore, it would be in the public interest for FERC to deny Utah's License for LPP.

II. Utah's License Application should be denied because it will be legally barred.

This project will likely be legally barred by state and interstate laws because it is likely that the release of the requested water will contravene the Colorado River Water Compact and Utah has not complied with Arizona's statute regarding interstate water transport.

A. Utah has not demonstrated that the release of the requested water from Lake Powell will comply with the Law of the River under the Colorado River Water Compact.

Comments submitted on the PLP by a number of intervenors and citizens have raised the concern that UBWR proposed use of the water right for the LPP is disallowed by the Law of the River. American Rivers, in their comments on the Preliminary Licensing Proposal, gave a detailed discussion of the Colorado River Compact, which governs the use of Colorado River Water by the seven states in the Colorado River Basin. American Rivers Cmt. Ltr. at pp. 5-6. They note that under the law of the river, beneficial consumptive use of allocated water must occur in the basin in which the water is allocated. *Id.* at p. 6 (citing Douglas L. Grant, Collaborative Solutions to Colorado River Water Shortages: The Basin States' Proposal and Beyond, 8 Nev. L.J. 964, 988 (2008); James S. Lochhead, *An Upper*

Basin Perspective on California's Claims to Water from the Colorado River Part I: The Law of the River, 4 U. Denv. Water L. Rev. 290, 323 (2000-2001)). For the LPP project, UBWR proposes to use a portion Utah's Upper Basin water in a part of the state located in the Lower Basin, Am. Rivers Cmt. Ltr. at p. 6 (citing UBWR, Preliminary Licensing Proposal, Lake Powell Pipeline Project FERC Project No. P-12966-001, p. 3-1), which would contravene the Law of the River.

In its response to comments submitted on the PLP, UBWR only states, "the compacts do not prohibit the use of upper basin water within an upper division state. The seven Colorado River Basin states have agreed that this is consistent with the "Law of the River", Responses to Participant Comments on PLP and Draft Study Reports, at p. 273, but provides no basis or support for its assertion.

Without a clear legal foundation for UBWR's belief that it is entitled to use the water in the manner it proposes in the application, it is in the public interest for FERC to deny the License Application.

B. Utah has not demonstrated compliance with all relevant statutes, including Arizona's Water Export Statute.

In addition to concerns regarding the Law of the River, a number of commenters have raised concerns that Utah has not complied with Arizona's Water Export Statute, Ariz. Rev. Stat. Ann. § 45-292. Section 45-292 prohibits a person or entity from transporting "water from this state unless approved by the director" of the Department of Water Resources. Ariz. Rev. Stat. Ann. § 45-292(A). After a hearing, the Director will approve or reject an application to transport water based on a number of factors, including:

"1. Whether the proposed action would be consistent with conservation of water, including any applicable management goals and plans . . . 5. The availability of alternative sources of water in the other state. 6. The

demands placed on the applicant's supply in the other state. 7. Whether the proposed action is prohibited or affected by other law” Ariz. Rev. Stat. Ann. § 45-292(C).

Considering that, as detailed above all of these considerations are subject to dispute in the case of LPP, it is by no means certain that UBWR will be granted approval to transport the water for LPP if and when they apply.

In its response to comments submitted on the PLP asking UBWR to include this statutory permit requirement in its application, UBWR states, “Arizona has been made aware of the proposed project, and will be coordinated with throughout this process”. Responses to Participant Comments on PLP and Draft Study Reports, 274 (April 30, 2016). They go on to state that, “ the Upper Colorado River Compact, of which Arizona is a signatory, requires all participants to facilitate use of a state’s own allocation”, *Id*, which suggests they do not intend to comply with the requirement. Moreover, there is nowhere in its application that UBWR indicates intent to comply with this statute, as it is not among the *Potentially Required Federal, State and Local Permits, Licenses, Approvals and Reviews* listed in Exhibit E *See* Exhibit E at 2-5.

It would not be in the public interest for FERC to license an application that will be legally barred or become the subject of costly interstate litigation. Therefore, without UBWR presenting sufficient evidence that it’s use of the water will not contravene the Colorado River Compact or Arizona State Law, the license application should be denied.

III. Utah’s License Application should be denied pursuant to 16 U.S.C. § 797(e) because FERC is not the appropriate lead agency for the project.

The FPA empowers FERC “To issue licenses to . . . any State or municipality for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the

development and improvement of navigation and for the development, transmission, and utilization of power across, along, from or in any of the streams or other bodies of water.” 16 U.S.C. § 797(e) (emphasis added). Power is the primary concern of the FERC licensing process; however, it is not the main concern of the applicant for this project. It is very possible that little power will ever be generated from LPP if insufficient water is available for the project. Even then, that power will be first used for project energy generation and then sold to various markets, though there is not explicitly described need for the power generation in the project area.

A project such as LPP will require assent from multiple agencies. FERC has been assigned lead agency status despite the fact it only has control over a small portion of the process which is not the primary project goal. *See* W. Resource Advocates Cmt. Ltr. at p. 12 (citing *Wyco Power & Water, Inc.*, 139 FERC ¶ 61,124 at pp. 4-5 (May 17, 2012 Order) as stating FERC “has jurisdiction over the discrete hydropower components of the Lake Powell Pipeline, but not the Pipeline itself” (emphasis in original)).

Western Resource Advocates also notes “most of the concern and controversy surround the LPP concerns the pipeline’s potential location, the applicants’ water supply and demand analyses, the potential impacts to the Colorado River, and other issues related to water supply management.” W. Resource Advocates Cmt. Ltr. at p. 12. They correctly argue that “the federal agencies with jurisdiction over the pipeline have more comprehensive knowledge of the associated environmental issues and are better suited to being the lead agency for the NEPA process.” *Id.* at pp. 12-13. In fact, as part of the Environmental Impact Statement, “Utah intends to consider amending a portion of the Arizona Strip Field Office Resource Management Plan (RMP) to allow development of the Lake Powell Pipeline

within the Kanab Creek Area of Critical Environmental Concern,” for which BLM will conduct its own scoping process. Notice at 3.

40 C.F.R. § 1501.5(c) lays out factors for appointing a lead agency when there is agency disagreement. While this regulation is not controlling in this case since the agencies agreed on a lead agency, it offers relevant guidance. FERC should interpret these regulations as creating a public interest in having the most appropriate agency lead a project. The Regulations list the following factors for lead agency determination in order of descending importance: “(1) Magnitude of agency's involvement. (2) Project approval/disapproval authority. (3) Expertise concerning the action's environmental effects. (4) Duration of agency's involvement. (5) Sequence of agency's involvement.” *Id.*

FERC’s authority is limited to the least essential part of the project. It has no direct approval authority over the essential and most contentious components such as the pipeline construction or the release of water from Lake Powell. Those agencies with authority over the pipeline itself have far more expertise about the pipeline’s potential effects.

FERC fails to meet the three most important criteria for consideration as lead agency on the LPP. Therefore, FERC is not the best lead agency to serve the public interest. Because FERC is not the appropriate lead agency for this project, it would be in the public interest for FERC to deny the license application.

IV. Utah’s License Application should be denied if the EIS fails to consider cumulative effects, including those of climate change, and does not sufficiently analysis the No Action Alternative.

A. The License Application should be denied if the EIS does not sufficiently address cumulative effects of the project and of climate change.

Commenters have identified a number of cumulative effects of the project that have not been sufficiently discussed. American Rivers pointed out that UBWR's plan "to release water for project operation from Flaming Gorge Reservoir and wheel it to Lake Powell using Green and Colorado Rivers," could affect the volume and timing of flows in those rivers thereby causing cumulative impacts to listed species in those rivers. Am. Rivers Cmt. Ltr. at pp. 4-5. They also raised the concern that "Project diversions from Lake Powell to the Project's Water Intake System would affect these listed fish by increasing the likelihood of reduced water levels at Lake Powell," by creating increased barriers to fish passage for listed fish that migrate up the San Juan River. *Id.* at p. 5.

Commenters have also noted that "[t]he PLP does not accurately characterize the cumulative impacts of climate change on the Project and on the affected environment over the term of the license." Lake Powell Pipeline Coalition's Comments on the Preliminary Licensing Proposal and Draft Study Reports, Lake Powell Pipeline Coalition Cmt. Ltr., p. 5 (February 29, 2016). Climate change is likely to impact water availability for the project and lead to "increased evaporation of water stored in Lake Powell." *Id.* American Rivers has included in the record as Attachment 1 of their comment letter, a paper detailing the projected effects of climate change on the Colorado River and its associated listed species. These effects include changes in the annual hydrograph, changes to water quality, and increased drought. These changes can have cumulative effects on listed species. For example, drought caused decreased in hydropower sales have resulted in reduced funding for Recovery Programs under the Endangered Species Act. Dettinger, et al, *Western Water and Climate Change* at 2083.

UBWR has not sufficiently addressed these issues in its application reports. In response to American Rivers, UBWR references Final Study Report 19 which deals specifically with climate change; however, the conclusions drawn from this study primarily address future water delivery scenarios and do not speak to impacts on ecosystems or wildlife. Application for Original License of Utah Bd. of Water Resources for P-12966, Attachment 4, 782 (April 30, 2018). In some cases it has elected to eschew raised cumulative effects issues entirely. *See Id.* at 329 (UBWR's response to BLM Comment that it identified "numerous additional cumulative effects for other resources, including cultural, Native American issues, visual resources, etc on BLM managed lands," was that "resources listed as having the potential for cumulative effects were identified by FERC.") The National Environmental Policy Act of 1969, 42 U.S.C. § 4331 et. seq., requires consideration of any identifiable environmental impacts, not just those identified by the lead agency for a permit application. Given that the License Application has not fully analyzed these cumulative impacts, the project will likely not meet the requirements of NEPA as currently constituted. The License Application should be denied if these issues are not remedied before production of the EIS.

B. The License Application should be denied if there is insufficient analysis of the no-action alternative in the EIS.

Commenters note that the applicants have failed to "include a realistic and reasonable no action alternative." W. Resource Advocates Cmt. Ltr. at p. 11. Western Resource Advocates points out that, in light of state Performance Audit and intervenor recommendations (*see Local Waters Alternative to Lake Powell Pipeline*, W. Resource Advocates Cmt. Ltr., Exhibit 1), "it is clear that the PLP includes inflated water demands and

ignores reasonable alternative water supplies and water conservation measures.” W. Resource Advocates Cmt. Ltr. at p. 11. UBWR defends its water demands and conservation goals in its response to comments despite their recognized shortcomings, and has not made any attempt to incorporate these recommended changes into its license application. Given this failure, the License Application, “does not represent the best available information to craft alternatives and analysis in an environmental impact statement.” *Id.*

Sufficient analysis of any viable alternative is vital for weighing the costs and benefits of the project. Given the shortcomings of the No Action Alternative, the analysis presented in the License Application may fail to satisfy NEPA requirements and the License should be denied if this analysis is not supplemented before producing the EIS.

V. Conclusion

WHEREFORE, Save The Colorado requests that the Commission grant Save The Colorado’s Motion to Intervene in this proceeding.

Respectfully submitted,

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Dated: February 7, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at this

7th day of February, 2018.

By: _____  _____

Gary Wockner
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