



waterrights DNR <waterrights@utah.gov>

Fwd: Utah Export Water Rights application #A81080 (41-3747)

1 message

Teresa Wilhelmsen <teresawilhelmsen@utah.gov>

Thu, Aug 30, 2018 at 4:53 PM

To: waterrights DNR <waterrights@utah.gov>

Cc: Kent Jones <kentljones@utah.gov>, "Burbidge, Marianne" <marianneburbidge@utah.gov>

----- Forwarded message -----

From: **Marianne Burbidge** <marianneburbidge@utah.gov>

Date: Thu, Aug 30, 2018 at 3:58 PM

Subject: Fwd: Utah Export Water Rights application #A81080 (41-3747)

To: Kent Jones <kentljones@utah.gov>, Teresa Wilhelmsen <teresawilhelmsen@utah.gov>

I received this today - can you give me direction on what needs to be done.

*Marianne Burbidge
State Engineer's Office
Division of Water Rights
Administrative Assistant/GRAMA officer/Legislative Liaison/Public Information Officer
1594 West North Temple Suite 220
PO Box 146300
Salt Lake City, Utah 84114-6300
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www.waterrights.utah.gov

Office Hours

Monday – Friday 7:00 am -4:00 pm

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From: **Conway, Laura (Lori)** <Lori.Conway@wilmerhale.com>

Date: Thu, Aug 30, 2018 at 3:50 PM

Subject: RE: Utah Export Water Rights application #A81080 (41-3747)

To: "MarianneBurbidge@Utah.gov" <MarianneBurbidge@utah.gov>

Cc: "million_1@hotmail.com" <million_1@hotmail.com>, "Connor, Michael" <Michael.Connor@wilmerhale.com>, "Hall, Richard" <richard.hall@stoel.com>, Nathaniel Budd <nathaniel.budd@gmail.com>, "Spielman, Andrew" <Andy.Spielman@wilmerhale.com>

Good afternoon,

Please see letter and attachment, which are being sent on behalf of Andy Spielman.

Many thanks,

Lori Conway

Lori Conway | WilmerHale
Assistant to Andy Spielman,

RECEIVED
AUG 30 2018
WATER RIGHTS
SALT LAKE

9/4/2018

State of Utah Mail - Fwd: Utah Export Water Rights application #A81080 (41-3747)

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Teresa Wilhelmsen, P.E.
Assistant State Engineer - Applications and Records

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teresawilhelmsen@utah.gov

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2 attachments

 **Memorandum.pdf**
64K

 **Attachment.pdf**
227K

August 30, 2018

Andrew L. Spielman

Via E-mail

+1 720 274 3181 (f)
+1 720 274 3133 (f)
andy.spielman@wilmerhale.com

Kent Jones, P.E.
Utah State Engineer
Utah Division of Water Rights
1594 West North Temple, Suite 220
P.O. Box 146300
Salt Lake City, Utah 84114-6300

RE: Utah Export Water Rights application #A81080 (41-3747) (the "Application")

Dear Mr. Jones:


On behalf of Water Horse Resources, LLC, I am writing to provide you with a copy of a July 10, 2018 letter from The Colorado Water Conservation Board and the Colorado Commissioner of the Upper Colorado River Commission to the Utah Division of Water Resources concerning the above-referenced water rights Application.

As indicated in the letter, Colorado does not object to the project's application to divert but simply sets forth its view that because the water will ultimately be put to use in Colorado, the project will need to comply with the relevant laws for water rights administration in Colorado.

Water Horse Resources understands that a public hearing on the Application will take place on November 7, 2018 at 8:30 a.m. in the Division's offices in Salt Lake City, and is available to participate at that time.

Thank you.

Sincerely yours,



Andrew L. Spielman

Enclosure

Cc: Aaron Million
Nathaniel Budd
Richard Hall, Esq.
Michael Connor, Esq. (of the firm)



COLORADO

Colorado Water
Conservation Board

Department of Natural Resources

Eric Millis, P.E., Water Resources Director
Utah Division of Water Resources
1594 W. North Temple
Salt Lake City, UT 84114-6300

Re: Water Rights Application of Water Horse Resources LLC # A81080 (41-3747)

July 10, 2018

Dear Mr. Millis:

The State of Colorado, through Colorado's Upper Colorado River Commissioner and the Colorado Water Conservation Board (CWCB), and in furtherance of the interstate comity between Upper Colorado River Basin States, writes to provide and clarify information related to the Utah Export Water Rights application # A81080 (41-3747).¹

The application seeks to export 55,000 acre feet of water in Utah for use in Colorado. The proposed points of diversion are located on the Green River, tributary to the Colorado River, downstream of Flaming Gorge Dam near Browns Park.² The application provides that the export water "constitutes a withdrawal under the allocation apportioned to the State of Colorado under the 1922 Colorado River Compact and the 1948 Upper Colorado River Basin Compact." *Id.* The application further provides that it will "establish a priority date that will be relied on for the purposes of water rights administration as and against all water rights making beneficial use of water allocated and apportioned to the State of Colorado." *Id.*

Colorado recognizes and respects that the applicant must comply with Utah water law before it can appropriate and divert water from Utah's Green River Basin. Because use of the subject water is projected to occur in Colorado, the applicant also must comply with relevant laws and procedures for water rights administration in Colorado. Moreover, the subject water falls within the Upper Colorado River Basin. As such, its appropriation and diversion must be consistent with the requirements and considerations set forth in the Colorado River Compact and the Upper Colorado River Basin Compact among other elements of the Law of the River. Accordingly, a decision issued by Utah's State Engineer as to the subject application does not, by itself,

¹ By sending this letter, Colorado is not filing a protest pursuant to Utah Code § 73-3-7. Colorado does not take a position on Utah's water application process and does not intend to avail itself of Utah jurisdiction regarding the subject application at this time.

² *Attachment A to Application* Section 12.

complete the process for putting the water to use in Colorado or accounting for such use under the Upper Colorado River Basin Compact.

Only the State of Colorado, pursuant to its state sovereignty and the Upper Colorado River Commission (UCRC) pursuant to the Upper Colorado River Basin Compact have authority to make determinations as to Colorado's compact apportionments. The Colorado State Engineer has the authority to regulate deliveries of water to enable Colorado to meet its compact commitments.³ The Water Rights Determination Act provides Colorado's statutory framework for implementing the right to divert and the State's authority to administer and distribute waters.⁴ In order to place any water to beneficial use in Colorado, water users must comply with these statutory provisions to ensure that water is appropriated pursuant to a decree that can be administered in accordance with state water laws, rules and regulations. The Upper Colorado River Basin Compact provides that the UCRC is vested with the authority to make findings as to the quantity of water used each year in the Upper Colorado River Basin and in each Upper Basin State.⁵ Additionally, the UCRC is tasked with making determinations as to the necessity for and extent of curtailment of consumptive uses by each State if required by Article III of the Colorado River Compact.⁶ It further states that its provisions "shall not apply to or interfere with the right or power of any signatory State to regulate within its boundaries the appropriation, use and control of water, the consumptive use of which is apportioned and available to such State by this Compact."⁷

Under this framework, Colorado maintains that water from the Upper Colorado River Basin shall not be considered or accounted for as part of Colorado's compact apportionment unless and until proceedings for placing water to beneficial use in Colorado have been followed and completed, and the Upper Colorado River Commission has found such use to fall within the provisions of the Upper Colorado River Basin Compact. By noting this position, Colorado does not mean to influence or interfere with the State Engineer's process for considering and deciding on water rights applications in Utah. Rather, similar to Utah wanting to preserve its rights and interests as a pipeline project involving the Colorado River Basin progresses, it is Colorado's intent to provide a record of the full context as it relates to Colorado's rights and interests regarding use of Colorado River water within its boundaries.

We appreciate your attention and consideration of these matters and look forward to continuing the good work among the Upper Basin States as this and other water matters continue in the future. Please contact us if you have any questions or concerns.

³ C.R.S. § 37-80-104 (2017); See *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 108 (1938).

⁴ C.R.S. §§ 37-92-102, 301 (2017).

⁵ Upper Colo. River Basin Compact, art. VIII(d) (1948).

⁶ *Id.* at art. IV.

⁷ *Id.* at art. XV(b).

Sincerely,



L. James Eklund, Colorado Commissioner
to the Upper Colorado River Commission



Rebecca Mitchell, Director
Colorado Water Conservation Board

Cc: Amy Haas, Executive Director
Upper Colorado River Commission
355 S. 400 E
Salt Lake City, Utah 84111