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OF COUNSEL:
CLARK W. SESSIONS †
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EDWARD W. CLYDE (1917-1991)

† SENIOR COUNSEL
* ALSO ADMITTED IN DISTRICT OF COLUMBIA
* ALSO ADMITTED IN NEW YORK
* ALSO ADMITTED IN CALIFORNIA
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April 3, 2018

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

Re: Application to Appropriate and Export Water from Utah to Colorado from the Green River, 41-3747, (A81080), Water Horse Resources, LLC-Protest of Central Utah Water Conservancy District

Dear Mr. Jones:

This protest is filed on behalf of the Central Utah Water Conservancy District (“District”), a political subdivision of the State of Utah, and the sponsor of the Bonneville Unit of the Central Utah Project (“CUP”), developing a portion of Utah’s Colorado River Allocation under the Colorado River Compact of 1922, and the Upper Basin Compact of 1948, collectively the (“Compact”). The District holds or manages several water rights appropriated by the United States Bureau of Reclamation for CUP project purposes, including but not limited to:

A36639, 43-3822
A36642, 43-3825
A37093, 55-1875
A40523, 55-4494
A40524, 55-4495
A36644, 43-3827

The application proposes to appropriate from the Green River 76.00 cfs, limited to 55,000 acre-feet (ac-ft.) of water. The two identified points of diversion are located near Brown’s Draw

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SCANNED MD

along the Green River in Utah and below Flaming Gorge Reservoir. The water to be appropriated is to be exported to the Front Range of Colorado for multiple purposes, including hydro-electric generation; irrigation; stock water; domestic; commercial; industrial; municipal; and mining purposes within the State of Colorado. Applicant asserts that the water to be appropriated in Utah and exported to Colorado is a portion of water allocated to the State of Colorado under the Compact. However, there is no evidence that the State of Colorado, who controls its Colorado River allocation has agreed to this application and commitment of its river allocation to support this application to appropriate. The application is filed under UCA §73-3a-101, Water Exports Act the ("Act"), and under the provisions of Title 73, Chapter 3, Appropriation of Water.

In order to gain State Engineer approval of the application, the applicant must satisfy the requirements of the Act, as well as the requirements of UCA §73-3-8. Protestant contends the proposed appropriation fails to meet any of the requirements of either the Act or §73-3-8, and therefore must be rejected by the State Engineer.

Under the Act, the State Engineer is required by §73-3a-108 (1) among others, to investigate the application and may approve it only if he finds that the in the case of an application to appropriate, that the application satisfies the requirements of §73-3-8; that the proposed appropriation is consistent with Utah's reasonable water conservation policies or objectives; is not contrary to the public welfare; and, does not impair the ability of the state of Utah to comply with its Compact obligations and decrees that apportion water among Utah and in this instance, the other Colorado River Basin states.

The State Engineer, in making the review required by §73-3a-108 (1), shall consider the supply and quality of water available to the state of Utah; the current and reasonably anticipated water demands of the state; whether there are current or reasonably anticipated water shortages within Utah; whether the water sought to be appropriated and exported could, if left available for use in Utah, feasibly be used to alleviate the current or reasonably anticipated water shortages within Utah; and, the existence of alternate sources of water available applicant in the state of Colorado. Under §73-3a-108(3), if the application fails to meet any criteria of Subsections (1), it shall be rejected.

Utah is facing a crisis of water availability. The predictions of declining water supplies throughout the Colorado River Drainage are proving true, leaving Utah as well as other basin states with serious concerns over the availability of physical water to meet the water currently appropriated in Utah. Utah's population is expected to double over the next 40 years or so, making it essential that Utah have access to its full share of its Colorado River Allocation. The diversion of water under the proposed application from the Green River rather than from Flaming Gorge Reservoir or more local sources within Colorado, takes water that is critically needed within Utah to meet its reasonably anticipated needs, including the development of the federally reserved water rights of the Ute Indian Tribe.

The water released from Flaming Gorge Reservoir is essential to the Upper Colorado River Endangered Fish Recovery Program and Recovery Action Plan ("Program") for the recovery of the four endangered Colorado fish. These reservoir releases are tightly regulated to meet the needs of the Program while protecting downstream water rights in Utah and those of the Lower Basin. The diversion of water to meet this proposed new appropriation below the reservoir, would necessitate the release of even more water from the reservoir to meet the flows required by the Program, and in turn, negatively affect the ability of Utah, as well as the other Upper Basin States, to meet their annual release requirements to the Lower Basin. There is no indication of any communication with the Bureau of Reclamation regarding this issue, no apparent contract with the United States to require increased releases, nor is there any evidence of any NEPA review which would be required in this instance, because of the necessity of involving the Bureau of Reclamation in coordinating reservoir releases to meet the Program as well as this new appropriation, as well as existing water rights in the Green River and beyond. Consequently, the approval of this appropriation would be detrimental to the public welfare of the citizens of the State of Utah.

The doubling of Utah's population will create tremendous new demands for water within Utah, and when coupled with a declining water supply and reduced flows in the Colorado River drainage, it will create a serious strain on the water supplies available to Utah. Currently, more than 1 million people are dependent on the water supplies developed by the CUP at tremendous public expense. The population that will receive CUP water over the next 40 years or so will grow by an additional 1.5 million people to close to 3 million people reliant on the CUP developed water supply. Utah will need all of its available Colorado River Allocation to meet this ever-increasing demand that is driven largely by its own high birth rate rather than immigration. <http://gardner.utah.edu/wp-content/uploads/State-and-County-Pop-Estimates-Nov-2017.pdf>.

The proposed application is seeking to use this vast quantity of water for unspecified uses in unspecified locations along the Colorado Front Range. There is nothing in the application to indicate the appropriation of water in Utah for use in Colorado meets Utah's conservation policies and objectives, nor is there any indication that various proposed uses in Colorado would conform to Utah's conservation policies and objectives.

There is considerable doubt about there being any water available below Flaming Gorge Reservoir beyond that needed to meet existing appropriations in Utah, environmental flows for the four endangered fish and to meet the obligations of the Upper Basin to the Lower Basin as mandated in the Compact. The appropriation of this additional water in Utah raises the risk of a Compact Call by the Lower Basin, which would be detrimental to Utah as well as Colorado.

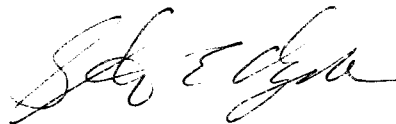
Under §73-3a-108(3), this application must be rejected as it fails to meet at least three of the criteria; public welfare, conservation objectives, and impairs the ability of Utah to meet its Compact and environmental obligations under the Program.

Additionally, the application fails to meet the requirements of §73-3-8, which criteria must also be met in order for it to be approved by the State Engineer. If an application fails to "meet the requirements of this section it shall be rejected." §73-3-8(1)(c). In this instance, the application will prove detrimental to the public welfare of the citizens of the State of Utah, because it will create an even greater shortage of water within Utah making it more difficult, if not impossible, for Utah to use its full Colorado River allocation and to meet the needs of a rapidly expanding population. The appropriation of this water from below Flaming Gorge will negatively affect the ability of the Upper Basin States to meet the requirements of the Program, which will negatively affect the natural stream environment. The reduction in flows caused by the diversion of 55,000 ac-ft. will impair public recreation in Utah and impair the successful recovery of the four endangered Colorado fish species.

Applicant has suggested the water is needed for general use in various areas of the State of Colorado, but it has no customers, no authorized rights of way across federal lands, no demonstrated ability to finance the construction of this proposed infrastructure that will take billions of dollars to move water from the Green River to the Front Range of Colorado. The application is therefore not filed in good faith and is highly speculative, will harm public recreation, harm the natural stream environment, prevent the more beneficial use of water in Utah, and seeks to create a monopoly of this vast quantity of water for private gain. The application will interfere with the water rights of the CUP, the Program to aid the recovery of the four endangered fish species, and interfere with water rights of the State of Utah in the Green River above Lake Powell. Consequently, the State Engineer must reject this application as it fails to satisfy the criteria of §73-3-8.

Sincerely yours,

CLYDE, SNOW & SESSIONS



Steven E. Clyde

CC: Central Utah Water
Conservancy District

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April 5, 2018

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

Re: Application to Appropriate and Export Water from Utah to Colorado from the Green River, 41-3747, (A81080), Water Horse Resources, LLC-Protest of Central Utah Water Conservancy District

Dear Mr. Jones:

I am writing as a follow-up to our written protest that was filed April 3, 2018. A conformed copy of our protest is attached for your reference. I am concerned in that as of today the Central Utah Water Conservancy District's protest has yet to be posted on the web site for this application, and wonder if the protest has been misplaced. I would appreciate it if this letter and a copy of the protest as filed could also be placed in the file so that the district's protest is on record as having been timely filed.

Also, the district requests a hearing.

Sincerely yours,

CLYDE, SNOW & SESSIONS



Steven E. Clyde

CC: Central Utah Water
Conservancy District

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EDWARD W. CLYDE (1911-1921)

EDUCATION COUNSEL
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* ALSO ADMITTED IN NEW YORK
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* ALSO ADMITTED IN OREGON
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April 3, 2018

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P. O. Box 146300
Salt Lake City, Utah 84114-6300

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COPY

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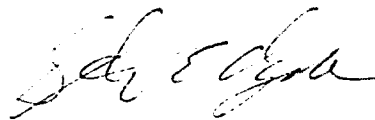
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Sincerely yours,

CLYDE, SNOW & SESSIONS



Steven E. Clyde

CC: Central Utah Water
Conservancy District

1343-WHR
(34)



GARY R. HERBERT
Governor
SPENCER J. COX
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

Division of Water Rights

MICHAEL R. STYLER
Executive Director

KENT L. JONES
State Engineer Division Director

OFFICIAL RECEIPT No. 18-01591 **Date: April 3, 2018**

RECEIVED FROM:

CENTRAL UTAH WATER CONSERVANCY DISTRICT
C/O CLYDE SNOW ATTORNEY
201 SOUTH MAIN STREET
SALT LAKE CITY UT 84111

NATURE OF SERVICE:

Protest	41-3747 (A81080)	\$	15.00
	TOTAL:	\$	15.00

METHOD OF PAYMENT: CC-VISA 00619G

RECEIVED BY: MADUNCAN