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Upper Chain Lake

Duchesne County Water Conservancy District

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April 2, 2018

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

RE: New Application 41-3747 (A81080)

Dear Mr. Jones:

Duchesne County Water Conservancy District (District) strongly opposes the above referenced application filed by Water Horse Resources (WHR), a Colorado company. The requisite fee for our protest is provided so the District will be a protestant of record on the Application.

It is our opinion that the application is an attempt to potentially circumvent Colorado water rights at the expense of Utah's apportionment of the Green and Colorado River system as granted under the Upper and Lower Basins, and the Upper Colorado River Compact (Compact).

In reviewing previously submitted protests we join with and agree with the all statements made by the Utah Board of Water Resources (Board) and incorporate herein their protest by reference, with the following single clarifying exception. In Paragraph 3 of their Substituted and Amended Protest dated April 2, 2018 they state that "The Green River, below the Point of Diversion, runs entirely inside Utah...". The Green River does leave Utah and enter Colorado approximately 7 miles downstream of the proposed diversion, and travels a length of approximately 40 miles through western Colorado before returning to Utah. With that single clarification, we join with the Board in their protest arguments.

Concurrent and/or in addition to those issues as stated above, the District emphasizes the following specific protest issues.

1. There is an error in the Segregation portion of the water right as posted on the Division website. The application requested 55,000 af, the website shows 550,000 af.
2. The northeast quadrant of Utah, continuing along the eastern border continues to be an important energy and industrial development corridor for Utah. Oil in the Uintah Basin, Potash in the Grand County area, Coal in Carbon and Emery County, the potential for power generation along the Green River, and other natural resource development opportunities will all depend upon the availability of surface water from the Green River. Only 40 miles (5%) of this 730 mile long river system runs through Colorado, mostly located in remote, mountainous, and undeveloped areas of the state. Two thirds of this 40 miles traverses through deep canyon

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areas wherein little access is provided or little development can occur. On the other hand, the Green River flows directly through or within close proximity to the Utah communities of Jensen, Naples, Maeser, Vernal, Ouray, Randlett, Fort Duchesne, Ballard, Roosevelt, and Green River. These communities are highly dependent upon existing and future water resources for their municipal, industrial and agricultural demands.

3. The diversion of water as proposed by WHR will significantly impact Utah's ability to develop their portion of the Colorado River, especially in Duchesne, Daggett and Uintah Counties.

4. The point of diversion chosen by WHR for the water right export may have been selected due to elevation and the ability to move water to Colorado along well established travel corridors. The flow path however shown in the application is long, estimated to be 400 miles in length. Two-thirds of the total route length is required to simply transport the water from Utah, through Wyoming, back into Colorado before it can be used. Any section of the route not piped would result in the significant increased loss of surface water through evaporation and infiltration, decreasing the beneficial use of the water through system inefficiencies. The water can be put to better beneficial use within the state of Utah where delivery systems are shorter, less energy is required for conveyance, and seepage losses would not be realized.

5. The Lake Powell pipeline proposed to deliver water from Lake Powell through a 140 mile long system to southern Utah is projected to cost in excess of \$1.5 billion dollars. Although the cost for the proposed 400 mile long WHR pipeline has not been disclosed, it will certainly be extreme. The District questions the ability of the developer to pay for and construct a piped water system of this magnitude to beneficially and efficiently utilize this water.

6. The place of use as shown in the WHR application shows that water is intended to be used within the area extending from the city of Denver, north and northeast, to the Colorado border. However, there are no agreements or authorizations provided within the application by any of the intended users of said water that they 1) have an interest in obtaining the water, 2) need the water, 3) understand what the high price of the water will be, and 4) are willing to pay for it to be developed and delivered. Without any said agreements in place, the application is merely speculation with a hope for financial gain by the developer. In short this application appears to be for the speculative welfare of the applicant/developer, not for the public welfare.

7. The state of Colorado has a right to waters within the Upper Colorado drainage basin, however, Colorado's right to utilize water from the river system should come from water sources within the state of Colorado, not through an export from Utah. There are locations along the Green River as it enters Colorado and a significant number of tributaries within the upper Colorado River Drainage Basin from which Colorado's portion of the Colorado River Compact right could be extracted. The application should therefore be submitted to the state of Colorado for consideration.

8. Future development from the Green River, the smaller of the two major river system, will likely be limited due to existing and future demands for the culinary and industrial water within the State of Utah, and due to environmental considerations. Flow stability has been enhanced with the construction and operation of Flaming Gorge Dam since it reached operational water levels in approximately 1971, however future downstream demands will continue to impact available flows. This application would place a significant demand on the resources of Flaming Gorge Dam.

9. No evidence has been provided that the applicant has an agreement with, or has even discussed the project with the Bureau of Reclamation in an attempt to secure water storage rights within Flaming Gorge Reservoir.

10. The export of the 55,000 af of water from a location only 7 miles downstream of Flaming Gorge Reservoir will permanently delete 55,000 acre-feet of water from the river system, whereas, uses in Utah will provide continued flows through much of the river system below Flaming Gorge Dam, thus permanently benefitting fisheries and recreation.

11. Based on our review of the water right application and filed protests, it appears that the submittal of the application is a continued attempt by the applicant to obtain and deliver water to the stake-holders on the "Western Slope" of Colorado, who appear to have a strong opposition to the developer and his intended projects.

As stated above as well as in other protests, there are many reasons why this application fails to meet the Utah standard for water right approval per Utah Codes 73-3-8 and 73-3a-108, including:

1. A water export application in Utah for Colorado rights that will have an impact on Utah's Green River development potential.
2. The undeclared economic infeasibility of the applicant to complete the project.
3. The lack of Colorado water contracts, agreements or supporters for the project.
4. The fact that the project would be detrimental to Utah's public welfare to the benefit of an independent Colorado developer.
5. The fact the water right Application is speculative.
6. The water right will interfere with Utah's ability to put the water to more beneficial uses with the state of Utah.
7. The application does not clarify how it will utilize the water to be compatible with Utah's reasonable water conservation policies and objectives.
8. The project is contrary to Utah's public welfare.
9. The granting of the water right may impact Utah's apportionment of the Colorado River Compact and impair the quality and quantity of available water in the Green River, and impair the ability of the state of Utah to efficiently and effectively utilize its water right on the Green and Colorado rivers.
10. The declared source of water is available within the state of Colorado without requiring an export permit from the state of Utah. The application for Colorado River water should therefore be filed within and approved or rejected by the State of Colorado.

Since the WHR application fails to meet not only one, but many of the above criteria set under Utah Code, the Duchesne County Water Conservancy District firmly and resolutely requests that the application be rejected and denied.

Sincerely,


Clyde R. Watkins,
General Manager