

Kane County
Water Conservancy
District

PROTEST FEE PAID

18-01661
\$15-00

725 E Kaneplex Drive
Kanab, UT 84741
(435) 644-3997
www.kcwcd.com

"Developing and protecting our water resources one drop at a time."

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

April 6, 2018

**Re: Protest of Kane County Water Conservancy District to Export
Application Number 41-3747 (A81080) filed by Water Horse Resources, LLC**

Dear Mr. Jones:

The Kane County Water Conservancy District (District) was organized in 1992 for the purpose of conserving and developing water for multiple uses including municipal, agriculture, industrial, commercial, wildlife and stock watering to benefit the public and citizens of Kane County, as provided under the Water Conservancy District Act. The District holds numerous water rights throughout the region including three water rights that divert water directly from the Green River that could potentially be impaired by the diversion of water proposed under Export Application Number 41-3747, A81080 (Application). The three water rights are Water Right Numbers 91-5230, 91-5231 and 91-5232 and they are the bases for Change Application Number a35402. Under that Change Application the District has the right to divert 29,600 acre-feet annually from the Green River in Section 22, T21S, R16E, SLB&M, with the water being used to supply a portion of the needs of the proposed Blue Castle Power Plant.

The District has many concerns and believes strongly that the Application does not meet the statutory criteria of either the water export statute or Section 73-3-8. As a threshold matter the Application does not contain enough detailed information, for example, regarding project design, economic feasibility, environmental impacts and many other important elements that need to be addressed in the State Engineer (SE) investigation. The District urges the SE to require from the applicant, and not process the application further, until the more detailed information is provided. Below are the District's primary concerns at this time regarding the project and it reserves the right to supplement the protest if additional information is made available.

The Proposed Application and Project. Considering information contained in the Application and on the web site of Water Horse Resources, LLC

725 E. Kaneplex Dr. • Kanab, UT 84741 • (435) 644-3997 • Fax (435) 644-8679
www.kcwcd.com • kcwcd@kanab.net

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(<https://www.waterhorseresourcesllc.com/>), it appears the major features of the proposed project are as follows:

1. Diversion of 55,000 acre-feet per year at two points of diversion (PODs) from the Green River in Section 31, T2N, R25E, SLB&M.
2. The diversion rate will be at a constant flow rate of 76 cubic feet per second (cfs);
3. The water will be pumped from the river and conveyed in a pipeline 375 miles to the Colorado Front Range Corridor.
4. The water will be used for irrigation, stock watering, domestic, commercial, municipal, mining and industrial purposes.
5. There are several different names used to reference the project. For purposes of this protest it is the Green River Project (GRP).

Compact Concerns. Utah along with Arizona, Colorado, New Mexico and Wyoming are signatory to the 1948 Upper Colorado River Basin Compact (Compact). In the Compact it provides that water diverted in one state for use in another state will be charged against the compact entitlement of the state where the water is beneficially use. (Section Article V(b)(2) and Article VII, Upper Colorado River Basin Compact, October 11, 1948). The water proposed to be diverted under this Application is subject to this provision and thus would be charged against the State of Colorado's compact entitlement. In the explanatory section of the applicant indicates they agree this will be the case. Because the water will be accounted for under the State of Colorado compact entitlement (depletion), it is both proper and necessary that the SE obtain written confirmation from the State of Colorado that they support this Application. If Colorado is unwilling to do this, the Application should be rejected.

Contrary and Detrimental to the Public Welfare. An export application may not be approved if it is "contrary to the public welfare." Section 73-3a-108(b)(i)(C). Nor may an application to appropriate be approved if it "will prove detrimental to the public welfare." Section 73-3-8(1)(b). The proposed Application will be both contrary and detrimental to the public welfare of the State of Utah. The Application will have adverse impacts on the stream flows in the Green River, potentially affecting the quantity of water available to existing and future Utah water rights, including those of the District, for beneficial uses required within the State of Utah. In addition, it will reduce the quantity of water available for the endangered fish, recreation and the natural stream environment.

Financial Ability Has Not Been Demonstrated. While an applicant is not

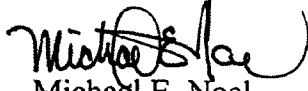
expected to have every dollar in hand, an applicant does need to provide detailed information as to how the project planning and construction will be funded. Such information must sufficiently demonstrate to the SE a reason to believe they have the financial ability to construct the GRP.

The Application is Speculative. The Application is another speculative version of a request previously rejected by FERC to divert and pipe water from the Green River for use along the Front Range of Colorado. The applicant does not currently have funding for the GRP nor have they indicated how they plan to obtain the funding. The applicant did not have any prior success demonstrating that the initial GRP was viable. Now the applicant has moved the venue to Utah for a project that will have little or no benefits to the citizens of Utah. The GRP as set forth in the Application is just a smaller version than the previous one they proposed. Just because it is smaller does not mean it is viable. The economics of the new proposed GRP will be worse than the original.

In reviewing the maps submitted with the Application they appear to only cover adjoining Townships within the State of Colorado and do not represent any definite planned service area. No documentation is provided that indicates the applicant represents the interests of actual water users or entities in the areas where they propose the water be used. In addition, no contracts are provided between the applicant and Colorado water users who would purchase the water. This Application is speculative, and the SE should not approve the Application for this reason alone.

Conclusion. Based on review of the information available related to this Application it should be rejected. The SE can hold a hearing and waste the time and resources of the Utah water community over the next several years. In the end the Application will be rejected because it is clearly speculative, the project is not economically feasible, the applicant does not have the financial means to move the project forward and the Application is contrary to the public welfare of the State of Utah. The District respectfully requests that the Application be denied.

Sincerely,



Michael E. Noel

General Manager

Kane County Water Conservancy District