



# United States Department of the Interior

OFFICE OF THE SOLICITOR

SUITE 6201, FEDERAL BUILDING

125 SOUTH STATE STREET

SALT LAKE CITY, UTAH 84138

April 6, 2018

PROTEST FEE PAID

18-01647

\$15.00

## VIA HAND DELIVERY

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

**Subject: Protest to Application to Appropriate Water Right No. 41-3747 (A81080) filed by Water Horse Resources, LLC**

Dear Mr. Jones,

The following protest is being submitted on behalf of the Bureau of Land Management (BLM), the National Park Service (NPS), and the U.S. Fish and Wildlife Service (FWS) concerning Application to Appropriate Water Right No. 41-3747 (A81080) (the Application) filed by Water Horse Resources, LLC, of 1436 West Oak Street, Fort Collins, Colorado 80521 (the Applicant). Enclosed is a check (#1001) in the amount of \$15.00 in payment of the protest filing fee.

According to the Division's online database, the Application is an export application, submitted pursuant to Utah Code Ann. § 73-3a-101 *et seq.* to divert water from the Green River, in Daggett County, Utah, and convey it to the Front Range of Colorado for a variety of uses. Specifically, the Applicant seeks permission to divert 55,000 acre-feet of water per year (AFY) from the Green River at two pumping stations located (i) South 285 feet East 1392 feet from the West¼ corner of Section 31, Township 2 North, Range 25 East, SLB&M, and (ii) South 655 feet East 1685 feet from the West¼ corner of Section 31, Township 2 North, Range 25 East, SLB&M, with both locations situated on BLM-managed public land in the Browns Park area. The 55,000 AFY would be transported through a to-be-constructed pipeline to the Front Range of Colorado for irrigation, stockwatering, domestic, commercial, municipal, and industrial uses from January 1 to December 31 of each year. The Applicant indicates that the proposed diversion of water from the Green River 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. Whether the State of Colorado concurs in this assertion will need to be determined as part of the State Engineer's consideration of the Application.

As discussed herein, the magnitude of the proposed annual diversions from the Green River, and the fact that all of the subject water would be depleted from the Green River system and exported

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to the Front Range of Colorado implicates a broad range of statutory criteria and related issues not present in a typical application to appropriate. And, at this point, there is no information in the Application that would support concluding that it satisfies any of the requirements of Utah Code Ann. § 73-3-3, applicable to applications to appropriate water, or Utah Code Ann. § 73-3a-108, applicable to export applications.

**A. The Bureau of Land Management (BLM) protests the Application for the following reasons:**

**1. Land Use Authorization Issues**

The BLM recognizes that the Division of Water Rights does not directly consider land use authorizations as one of the criteria governing the approval or denial of an Application to Appropriate. However, the BLM wishes to make the Division of Water Rights aware at the outset of several land use authorization issues that could affect the feasibility of the Application.

- The land on which water would be diverted and conveyed is federal public land managed by the BLM. To date, the Applicant has not presented any site-specific plans or engineering drawings to the BLM that would allow the BLM to determine the type and extent of the land use authorizations that the Applicant would need to obtain to construct and operate the proposed pumping stations and convey the diverted water from them to the place of use in Colorado in the event the Application were approved. Given the magnitude of the proposed project and its potential impacts, it is highly likely that BLM will be required to prepare an Environmental Impact Statement (EIS) in compliance with the National Environmental Policy Act (NEPA), and complete the tribal and other consultation required by the National Historic Preservation Act (NHPA), before being in a position to make a decision on any application by the Applicant for required land use authorizations.
- In addition, it is highly likely that the BLM will be required, under federal law, to formally consult and coordinate with the following federal agencies before being able to make a decision on any application by the Applicant for required land use authorizations:
  - BLM will be required to coordinate and consult with the U.S. Army Corps of Engineers on Clean Water Act Section 404 permits, if the proposed pumping station requires work in the channel of the Green River.
  - BLM will be required to coordinate and consult U.S. Fish and Wildlife Service regarding potential impacts to aquatic and terrestrial species that are listed as threatened or endangered under the Endangered Species Act.
  - BLM will be required to obtain concurrence from the Federal Energy Regulatory Commission for the proposed project. BLM notes that all of the federal public

lands in Section 31, T2N R25E, S.L.B.M., where the two proposed points of diversion are located, have been formally withdrawn from the public domain for potential construction of hydropower projects. The withdrawal prohibits any surface disturbance and construction, including pumping stations and electric transmission lines, in the withdrawal area without concurrence from FERC.

- The BLM's relevant land use plan, the Vernal Field Office Resource Management Plan (2008), which governs how it is to manage the federal public lands and resources in the area, provides that all future right-of-way grants in the Upper Green River corridor (from Little Hole to the Utah-Colorado border) shall be located in right-of-way corridors that are specified in the plan (Decision LAR-31). The BLM notes that the two proposed points of diversion and pipeline route referenced in the Application do not fall within any approved right-of-way corridor. Before any proposed right-of-way grants that do not fall within these RMP identified right-of-way corridors could be approved, the BLM would need to amend the RMP to allow such activity. (Decision LAR-31). The BLM notes that amending a land use plan is a lengthy and expensive process that requires NEPA compliance and public involvement, and the fact that an RMP might be amended so as to allow certain uses to occur in certain portions of the planning area is no guarantee of the ultimate approval of a specific proposed project.
- Thus, the BLM requests that, in the event the Application were approved, the order approving it make clear that the approval confers no new land use or facility use authorizations of any kind, and it is the sole responsibility of the Applicant to obtain all necessary authorizations from the BLM prior to any diversion and conveyance of water under the approved Application.

## **2. Sensitive Species Management Issues**

The segment of the Green River from which water under the Application is proposed to be diverted provides habitat for flannelmouth suckers, which are included on the BLM's sensitive species list. The proposed diversion may not be consistent with the conservation of this species for the following reasons:

- The BLM and Utah Division of Wildlife are signatories to a multi-state conservation agreement that is designed to prevent the listing of this sensitive species under the Endangered Species Act (ESA). Under the conservation agreement, the BLM has agreed to protect populations and suitable habitat located on BLM-managed lands from negative impacts that may be caused by BLM land use authorizations, including the indirect effects associated with land use authorizations.

- Water depletions are known to contribute to alterations in flow regimes that favor non-native fishes. Specifically, water depletions are known to increase predation and competition from nonnative species, to reduce food supplies for native species, and to reduce habitat for native species. The proposed diversions comprise 4 percent to 12 percent of the flow in the Green River during base flow periods. Consequently, it is likely that the potential impacts to the flannelmouth sucker and other sensitive fish species will be a major area of analysis in the EIS that would need to be prepared in connection with the necessary land use authorizations for the project.

### **3. Wild and Scenic Rivers Management Issues**

The BLM, through its land use planning process, has determined that the segment of the Green River from which water under the Application is proposed to be diverted is suitable for designation into the National Wild and Scenic River System.

The outstandingly remarkable values (ORVs) identified by the BLM for this segment of the Green River include scenery, recreation, fish, wildlife habitat and cultural. The BLM 6400 Manual, which guides the management of suitable river segments, requires that BLM make land use decisions that are consistent with protecting these outstandingly remarkable values. The BLM is concerned that the construction and operation of the facilities associated with the Application may not be consistent with the protection of the identified ORVs for the following reasons:

- The proposed diversion and conveyance facilities include two pumping stations and, very likely, electric transmission lines that may not be consistent with preservation of the scenery ORV. To protect the Scenery ORV, BLM has designated the stream corridor as Visual Resource Management Class II. The objective for this class is defined as follows:

*To retain the existing character of the landscape. The level of change to the characteristic landscape should be low. Management activities may be seen, but should not attract the attention of the casual observer. Any changes must repeat the basic elements of form, line, color, and texture found in the predominant natural features of the characteristic landscape.*

The BLM notes that in the Vernal Field Office Resource Management Plan (RMP), BLM has made several decisions intended to preserve the scenery ORV, consistent with the Class II designation. Specifically, BLM has imposed no surface occupancy (NSO) stipulations for oil and gas leasing, closed the river corridor to mineral materials extraction, and limited off-highway vehicle use to designated routes only. Authorizing major new surface disturbing facilities is likely to be inconsistent with these decisions in the RMP.

- The proposed project may deplete flows that are necessary for the continued maintenance and protection of the recreation, fish, and wildlife habitat ORVs, all of which are flow-dependent.

In addition to identifying ORVs, the Wild and Scenic Rivers Act requires BLM to identify and maintain the existing level of development along suitable stream corridors, also known as “classification.” In this case, the river corridor has been given a “scenic” classification, which is described in the BLM 6400 Manual as follows:

*Largely primitive and undeveloped. No substantial evidence of human activity.*

The BLM is concerned that the proposed project, which may include significant amounts of new development in the river corridor, may not be consistent with maintaining its “scenic” classification. If the BLM determined it was appropriate to authorize development that would change the classification adopted in the RMP, it would first need to amend the RMP, which, as mentioned above, would be a lengthy and expensive process requiring compliance with NEPA and other applicable federal law.

#### **4. Recreation Management Issues**

The BLM manages recreation opportunities downstream of the two proposed points of diversion. BLM is concerned that these recreation opportunities could be negatively affected by lower flow rates, especially during base flow periods. Recreation activities that occur in this river segment include: sixteen (16) Special Recreation Permits for professional fly fishing guide services; white water rafting and fly fishing by private, unguided parties; and wildlife viewing and photography by a large number of visitors who come to the river to view birds of prey.

#### **B. The U.S. Fish and Wildlife Service (FWS) protests the Application for the following reasons:**

##### Background

The FWS, on behalf of the American public, has several interests in the portion of the Green River in Utah. These include federal water rights essential to the operation of two National Wildlife Refuges (Browns Park and Ouray), and interests in maintaining adequate flow and aquatic habitat in and along the Green River to support the survival and recovery of four endangered fish species in the Colorado River system: the Colorado pikeminnow (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), razorback sucker (*Xyrauchen texanus*), and bonytail (*Gila elegans*) as well as for the Ute Ladies’ Tresses, a threatened orchid found along riparian areas. The Browns Park NWR, located in Colorado, but downstream from the proposed points of diversion, relies on Green River flows for maintaining wetland areas essential to the mission of the Refuge.

#### **1. Potential Over-allocation of the Green River in Light of Reasonably Anticipated Water Demands**

There is a risk that approval of the Application, and the additional diversion of up to the 55,000 AFY, would represent an over-allocation of available water in the Green River system, leading to adverse impacts on aquatic habitat and the efforts to support the survival and recovery of the four endangered fish species in the Colorado River system. It is the FWS’s understanding that the

State of Utah intends to develop, over time, its remaining unused share of its allocated 1948 Upper Colorado River Basin Compact water, and that unused share, based on State of Utah estimates, is currently approximately 361,000 AFY. The FWS understands that of this total, Utah accounts for approximately 345,000 AFY as being either reserved under the Ute Tribe Compact, allocated to the Navajo Nation, or allocated to the development of the 'Ultimate Phase' water rights that were acquired by the State from the Bureau of Reclamation.

In light of these very substantial "current and reasonably anticipated water demands of the state of Utah" (Utah Code Ann. § 73-3a-108(2)(b)), a fundamental question in the State Engineer's review of the Application and determination of whether to approve or deny it is whether sufficient flows exist in the Green River to meet an additional 55,000 AFY of demand above and beyond the above-referenced State of Utah's identified reservation / allocations, including currently approved but as-yet undeveloped water rights. The FWS encourages serious consideration of this question in this process.

## **2. Potential Green River Water Shortages With Respect to Endangered Species Instream Flow Needs**

Target flows have been established in the Green River to support the survival and recovery of the four endangered fish species found in the Colorado River system (Muth et al, 2000). The Bureau of Reclamation, in compliance with the Biological Opinion (BO) issued by the FWS in 2005 for the operation of Flaming Gorge Reservoir, releases flows from the Reservoir in a manner that attempts to satisfy these flow targets within 'Reach 2' of the Green River (between the Yampa River and White River confluences). By achieving the Reach 2 targets, it has been assumed that 'Reach 3' targets also will be met (i.e, from the White River to the mainstem Colorado River confluence).

However, the FWS notes that even with the existing Green River water uses and the current Flaming Gorge operations pursuant to the 2005 Biological Opinion, flows in 'Reach 3' occasionally fall short of the July-through-September monthly flow targets, and modeling recently undertaken by the Utah Division of Water Resources suggests that these shortages are vulnerable to occurring with increased frequency under projected future development scenarios, in the absence of adequate offsetting mechanisms. To date, the FWS determinations have been that these occasional shortages have not interfered with "sufficient progress" toward the recovery of these species under the collaborative Upper Colorado River Endangered Fish Recovery Program, in light of other actions to recover these species. However, an additional 55,000 AF of annual depletions to Green River flows proposed by the Application has the potential to increase the magnitude and frequency of shortages to targets, unless and to the extent that these shortages are offset with additional releases from the Flaming Gorge Reservoir or with water acquired from other sources.

Should these potential shortages be offset through modified Flaming Gorge operations, this raises reasonable questions about the long-term impacts on reservoir storage, delivery obligations, and other reservoir benefits, including hydropower generation and public recreational uses. The FWS urges the State Engineer to consider, pursuant to Utah Code Ann. § 73-3a-108(2)(c), the extent to which shortages to target flows could be increased by exercise of this water right, the extent to which the operations of Flaming Gorge might need to be correspondingly modified, and/or the extent to which other offsetting water supplies may need to be identified and incorporated into river management.

In short, the FWS believes that the Applicant's assertion that "there is sufficient water within the source (the Green River) to . . . (3) provide sufficient flow to protect and assist in recovery of endangered fish populations and critical habitat" merits a thorough and detailed assessment on the part of the Division of Water Rights, particularly in light of the cumulative future demands on the River anticipated by the State of Utah.

In addition, the Green River supports some of the best populations of the threatened orchid, Ute ladies'-tresses, and therefore any loss or degradation of habitat along the river would be a concern for the species. As a riparian and emergent wetland species, changes in the hydrologic regime leading to loss of suitable and occupied habitat, is one of the primary threats to the orchid.

### **3. Future Uncertainties Associated with Green River Natural Flows**

The estimated 361,000 acre-feet of Utah's available remaining unused 1948 Upper Colorado River Basin Compact water allocation seems to presume that future hydrologic conditions in the Basin will resemble those seen in the recent past, including a continued long-term Upper Basin natural water yield of approximately 6.0 million acre-feet annually. This presumption seems increasingly questionable in light of the current best available science.

For example, in 2017, two papers were published presenting compelling evidence of an observed trend across the upper Colorado River Basin toward decreasing water yields associated with the warming climate. Udall and Overpeck (2017) assert that approximately one-third of the reduced flow in the Colorado River observed during 2000-2014 drought is attributable to higher temperatures, not a lack of precipitation. This implies that even should future winter snow accumulation in the upper Colorado River Basin be comparable to that seen in the past, the proportion of that snow actually becoming stream runoff will continue to decline as temperatures rise and an increasing portion of Basin snowpack is lost to evaporation, sublimation, and evapotranspiration. McCabe et al (2017) similarly demonstrate that, since the late 1980s, increases in temperature have substantially reduced Upper Basin runoff efficiencies (i.e., the ratio of streamflow to precipitation), resulting in an average 7% reduction in annual streamflow.

In concept, this reduced runoff efficiency could be offset by an increase in snowpack; however no compelling evidence exists that winter snow accumulation in the upper Colorado River Basin is

increasing. On the contrary, available measurements indicate the opposite: Mote et al. (2018), after evaluating data from 1955 through 2014, find that more than 90% of snow monitoring sites with long records across the western United States now show declines, 33% of which are significant. Their analysis includes the Upper Colorado River Basin. The trends they identified are further corroborated by gridded hydrologic modeling of the region that uses historic daily precipitation and temperature as inputs.

Collectively, these observations suggest that the State of Utah's estimated 361,000 AFY of developable unused allocation under the 1948 Upper Colorado River Basin Compact may be an optimistic figure, and may not be supportable over the long term. Certainly these observations suggest it would be prudent for the State Engineer to adopt conservative assumptions when evaluating available future water to meet projected demands on the Green River in Utah into the foreseeable future.

#### **4. Potential for incidental take of listed species near the site of withdrawal**

According to Tom Chart, Director Upper Colorado River Endangered Fish Recovery Program, there is no designated critical habitat for any of the four listed species in the Green River upstream of its confluence with the Yampa. However the FWS has recently learned that there is considerable endangered fish use of the river upstream of Lodore (e.g., 74 Colorado Pikeminnow detected in the mouth of Vermillion Creek last year). Given the mobility of federally listed fish in the Green River system, there is the potential for them to eventually make their way near the withdrawal site, risking entrainment or other injury associated with the pumping facilities, and causing a threat of incidental take.

#### **5. Potential backwater habitat development near proposed points of diversion**

The FWS is concerned that backwater habitat could inadvertently be developed near the two pumping stations in the Browns Park area that are identified in the Application as the two proposed points of diversion of the proposed 55,000 AFY diversions. In such case, the backwater habitat might become favorable habitat for the reproduction and growth of invasive and predatory northern pike, to the detriment of endangered fish survival and recovery efforts.

#### **6. Browns Park NWR Water Management**

Browns Park NWR pumps water out of the Green River to support wetland and marsh habitat, and for cottonwood restoration activities. Reduced water levels resulting from diversions made pursuant to the Application if approved might render the Refuge unable to pump and use Green River water for these activities. Depending on the scale of reduced river levels due to increased water demand, the Refuge may be forced to redesign the delivery systems at significant cost or not be able to pump water at all.



**C. The National Park Service (NPS) protests the Application for the following reasons:**

Background

The NPS manages eleven park units along the Colorado River and its major tributaries, including Rocky Mountain National Park, Dinosaur National Monument, Curecanti National Recreation Area, Black Canyon of the Gunnison National Park, Arches National Park, Canyonlands National Park, Glen Canyon National Recreation Area, Grand Canyon National Park, Grand Canyon-Parashant National Monument, Rainbow Bridge National Monument, and Lake Mead National Recreation Area. These units encompass more than 5 million acres within four of the seven Colorado River basin (watershed) states. Regulation of the river system directly or indirectly affects the resources of these park units, which were generally established for their historic, ecologic, and/or recreational significance.

In recent years, the NPS has become increasingly aware that river operations decisions made or influenced by other federal agencies, states, and stakeholder groups affect its ability to manage these Colorado River park units. The mission of the NPS, as defined in the 1916 National Park Service Organic Act (16 U.S.C. § 1), is to preserve the natural and cultural resources and the wildness of parks unimpaired for the enjoyment, education, and inspiration of this and future generations. Impairment is any impact that would harm the integrity of park resources or values. As discussed herein, the Application's proposed diversion of 55,000 AFY of water from the Green River could potentially impair resources and values at several park units downstream of Flaming Gorge Dam and Reservoir on both the Green and Colorado rivers.

- 1. The Applicant has not provided evidence that the proposed project is hydrologically feasible within the Green River Basin, given existing and future commitments for what might be the same water.**

It remains unclear how much water is actually available and unappropriated within the Green River Basin under the 1922 and 1945 compacts, especially given possible future climate scenarios. The proposed project has not been thoroughly described in terms of water reliability. Before any decision could be made on the Application, the Applicant must demonstrate (or define the hydrologic conditions under which) 55,000 AFY is available for export outside the Green River Basin.

- 2. The Application does not contain enough detail to assess the potential impacts of all aspects of the proposed project.**

The Application is very general and lacks the degree of detail necessary to allow the State Engineer to make an informed decision on whether to approve or deny it. For example, the location of the necessary hydroelectric facilities and/or transmission pipeline routes is not provided and the Application indicates that such details are to be determined at some point.

Until this and other relevant information is provided, it is premature to even begin consideration of the Application. Depending on the location of the transmission pipeline routes, there may be potential impacts from the construction of such facilities on National Historic Trails found in Wyoming, Colorado, and Utah, and impacts to National Natural Landmarks and National Historic Landmarks along the pipeline route.

**3. The proposed project may affect reservoir volumes/elevations in the short-term and/or long-term, and have resource, recreation, and economic impacts.**

Diminished reservoir volumes at critical times may alter the ability to satisfy downstream delivery obligations, whether Compact deliveries or endangered fish needs. Similarly, lower volumes may affect reservoir and downstream water quality and water temperatures that are critical to aquatic life. Many species' life cycles are keyed to specific water temperatures at critical times of the year. Altering these timing / temperature relations (whether in the reservoir or the downstream environment) could disrupt natural ecosystem processes, including life cycles of fishes and macroinvertebrates, as well as food web dynamics.

Substantial diversions of water from the Green River could ultimately affect Lake Powell surface elevation levels and may affect release volumes. This would have potential impacts on water-dependent resources and recreation at Glen Canyon National Recreation Area and possibly Grand Canyon National Park, which in turn triggers concerns about resources in Lake Mead National Recreation Area, and economic impacts on these NPS areas and surrounding communities.

**4. The proposed project potentially will have short-term and/or long-term detrimental effects on water dependent resources and uses.**

The primary concerns of the NPS regarding the Application involve the potential short-term and/or long-term detrimental effects of reduced water flows in the Green River through Dinosaur National Monument in Colorado and Utah, and in Canyonlands National Park in Utah. The NPS is very concerned about the potential adverse effects on the natural environment, as well as recreational opportunities, from modified water flows.

The operation of the Flaming Gorge Dam, located 47 miles upstream from Dinosaur National Monument, has severely altered the natural flow regime of the Green River. Regulated releases from the Flaming Gorge Reservoir have reduced the magnitude of high water peaks, increased early spring and late summer flows, and created erratic diurnal fluctuations. In addition to modifying the flow of the River, impoundment in the Reservoir has lowered water temperatures, decreased turbidity, altered natural deposition and scouring processes, and modified riparian communities. The diversion of the additional 55,000 AFY from the River above Dinosaur National Monument could very likely cause additional adverse impacts to

park resources as a result of less frequent and lower magnitude peak flows through the Monument, altered base flows in summer and winter, and changes in the timing of critical flows. These changes could prove detrimental to riverine ecosystems and water dependent floral and faunal communities.

Therefore, in the consideration of the Application, the resource impacts that should be thoroughly analyzed for direct and indirect impacts, short-term and long-term impacts, and cumulative impacts include, but are not limited to: vegetation encroachment and subsequent channel narrowing/simplification, further spread of tamarisk and other nonnative invasive plants, loss of aquatic invertebrate biodiversity, detrimental effects to all aquatic resources, impacts to public recreation opportunities and user-days, and diminished water quality.

Depending upon the actual points of diversion, and locations of pipelines and related hydroelectric facilities, there could also be impacts to upland habitats and sensitive plant and wildlife species. This is because pipelines and hydroelectric facilities (and related transmission lines) could fragment habitat and disrupt movements of important wildlife species, such as the pronghorn and greater sage-grouse.

**5. The proposed project could jeopardize ongoing efforts to protect and assist in recovery of listed endangered fishes and their critical habitats, and ongoing conservation efforts to prevent the listing of three additional fish species common to the Green River.**

Biologists from several agencies, including the NPS, have struggled for decades to identify and implement actions to recover four endangered fish species endemic to the Colorado River system (humpback chub, bonytail, Colorado pikeminnow, razorback sucker) through the Upper Colorado River Endangered Fish Recovery Program (CRRP). Dinosaur NM contains critical habitat for these declining fish species.

The Bureau of Reclamation (BOR) operates Flaming Gorge Dam to meet or exceed flow recommendations developed for the four endangered fish by the U.S. Fish and Wildlife Service. Currently, releases from Flaming Gorge are designed to protect and assist in the recovery of these species and to create and maintain important critical habitats. With the additional diversion of up to 55,000 AFY proposed in the Application, it is possible that the flow recommendations may not be met, thus jeopardizing the recovery of the fish. Similarly, additional depletions may undermine the conservation efforts by the State of Utah and others designed to prevent listing of the roundtail chub, bluehead sucker, and flannelmouth sucker.

**6. The proposed project may not be consistent with protection of the Outstandingly Remarkable Values (ORVs) associated with the potential inclusion of this segment of the Green River in the National Wild and Scenic Rivers System.**

The Green River through Dinosaur National Monument was found to be "eligible" for inclusion in the National Wild and Scenic Rivers System and classified as a "wild" segment (U.S. Department of the Interior, 1980). The ORVs identified include: scenery, recreation, geologic, and fish and wildlife. The proposed project could deplete or alter flows necessary for the continued maintenance and protection of these flow-dependent ORVs.

For these reasons, the Application does not appear to fully satisfy the statutory criteria in Section 73-3-3 of the Utah Code governing applications to appropriate, and Section 73-3a-108 of the Utah Code governing export applications. Therefore, the BLM, FWS, and NPS respectfully request that the Application be denied. The agencies also request that a hearing before the Utah State Engineer be held on the Application and reserve the right to submit additional information and evidence in support of this protest in connection with such hearing.

Please have a copy of any notice, correspondence, or decision concerning the Application mailed to me c/o Department of the Interior, Office of the Regional Solicitor, 125 South State Street, Suite 6201, Salt Lake City, UT 84138.

Please contact me at your convenience (801-239-0544) if you have any questions.

Sincerely,



James E. Karkut  
Attorney-Advisor

Enclosure

cc: Roy Smith, Colorado State Office, Bureau of Land Management  
Brian Caruso, Region 6, U.S. Fish and Wildlife Service  
Sue Masica, Regional Director, Intermountain Region, National Park Service  
Forrest "Ed" Harvey, Chief, Water Resources Division, National Park Service