

PROTEST

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\$15.00 18-01659

Fee Rec'd BY: ONLINE

April 6, 2018

Protestant: Utah Rivers Council and Other Groups
c/o Nick Schou
1055 E. 2100 S. Ste. 201
Salt Lake City, Utah 84106

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WATER RIGHTS
ONLINE

RE: Protest of Water Right Application 41-3747

April 6, 2018

Kent Jones

State Engineer

Utah Division of Water Rights

1594 West North Temple, Ste. 220

P.O. Box 146300

Salt Lake City, Utah 84114

RE: Protest to Application to Appropriate Water # A81080 - Water Right # 41-3747

Dear Mr. Jones:

We the undersigned are writing to express our opposition and to submit our formal letter of protest to application #A81080 (water right 41-3747) by Water Horse Resources LLC to divert water from the Green River at Browns Park. Please include all of the undersigned organizations and individuals when sending any future notices regarding this application.

Our organizations and individual members, including many in the Uintah Basin have a long history of involvement with the Green River in the area of the proposed diversion and have worked to protect the Green River and the legacy of the fish and wildlife species that inhabit the river which will be impacted by this new proposed water right.

SCANNED

Founded in 1995, the Utah Rivers Council (URC) is a non-profit 501(c)(3) grassroots community-based organization that advocates for sound water policy and protection and conservation of Utah's rivers and streams for today's citizens, future generations, and wildlife. The URC and our members are seriously concerned with the impacts large water diversions have on Utah's aquatic ecosystems and its recreation economy.

The URC has a long history working to protect Utah's portion of the Green River and its tributaries and we believe the proposed water right affects numerous stakeholders including the thousands of members of our organization, as well as many URC members residing in eastern Utah and other areas. These members are taxpayers, ratepayers, conservationists, scientists, anglers, hunters, outfitters, guides and business leaders who have a vested interest in sustainable water management and economy-sustaining flows on the Green River as well as the continued existence of aquatic ecosystems supported by the flows of the Green River.

We believe approval of this water right would violate numerous sections of Utah Code 73-3a-108 and should be denied as such. We are particularly concerned with the impacts the proposed water right application would have upon the fragile aquatic ecosystems in the region. After carefully reviewing the application we believe the diversion poses unreasonably destructive threats to the Green River's sensitive riparian areas and the Colorado River endangered fishes downstream of the diversion, and also poses threats to the area's vibrant recreation economy.

The location of the diversion for the water rights application will be detrimental for the Browns Park National Wildlife Refuge, which acts as critical fish and wildlife mitigation for impacts resulting from decades of past water development activities in the Uintah Basin and elsewhere on the Colorado River, Green River and their respective tributaries. This water development has resulted in significant impacts on endangered species, stream flows, fisheries, wetlands, riparian habitat and wildlife migration corridors. The Ouray National Wildlife Refuge, located on the Green River downstream of the proposed diversion acknowledges these impacts in its own Comprehensive Conservation Plan from July 2000:

"Since the construction of Flaming Gorge Dam upstream, the Green River system has changed dramatically resulting in long-term loss and degradation of riparian habitats and wildlife species dependent on them. The Refuge's riparian habitat is now critically important to protect declining fish and migratory bird species using the Green River corridor."

The Green River is the longest tributary to the Colorado River providing over 40% of the river's inflows at Lake Powell Reservoir. The Colorado River supplies water to 35 million people in the Southwest. The Division of Water Rights should not approve a water right for a trans-basin diversion that will lead to any further impacts on the water quantity in the heavily developed Green and Colorado Rivers.

This proposed water right would impact the Green River in an area that provides habitat for a number of endangered species, and may cause significant loss or destruction of the aquatic ecosystem downstream. The proposed diversion has the potential to impact

endangered native fishes and their productive nursery habitats. Water depletions associated with implementation of the proposed diversion may also reduce the ability of the Green River and its tributaries to create- and maintain the physical habitat required by fish species and the supporting biological environment.

The Division should be careful not to overlook the importance of relatively small amounts of water that make all the difference in forming and maintaining essential backwater habitat on the Green River that is crucial for reproductive efforts of four species of endangered native fishes. These include the Colorado pikeminnow, humpback chub, bonytail chub and razorback sucker. Because of the location of the proposed diversion, any such depletion of 55,000 acre-feet of water would almost certainly harm large numbers of larval and young-of-year endangered fishes affecting recruitment and hindering efforts to restore the native fishery and fulfill US Fish and Wildlife Service obligations under the Endangered Species Act.

Water development has reduced the frequency and duration of the connection between the Green River's main channel and floodplains along with barriers like levees, which isolate larval fish from critical nursery habitat. Self-sustaining razorback sucker populations depend on long-term inundation of floodplain habitat, which harbor their young and those of other native fish. Their larvae hatch in the spring just a week after the suckers spawn on gravel beds in the main channel and like larval pikeminnow they rely on substantial instream flows for passive drift. The lateral movement of water over the banks and into the Green River's many backwaters transports fish, oxygen and nutrients to the flood plain and enhances biological productivity, food and plant life that provides protection from predators and the periodic high velocity of the main channel.

The proposed water right application will impact critical habitat downstream on the Green River which now provides native fish with a source of protection from predation by non-natives, which is especially devastating to the defenseless young of many endangered native fish species. Explosions of non-native fish populations like small mouth bass in recent low water years in the Green River, also mean fewer native larval fish hatch and make it through the gauntlet to backwater habitat that acts as a nursery downstream. Water depletions can also contribute to alterations in flow regimes that favor non-native fish, which increases forage and habitat competition for and predation on the Colorado River fish species.

Despite being reduced to just 25% of its former range, a considerable population of endangered Colorado pikeminnow still exist in the Green River downstream of the proposed water right point of diversion, and have shown their evolutionary fitness by adjusting to numerous environmental impacts. In years with higher flows in the Green River, like 2011, the US Fish and Wildlife Service found larger numbers of pikeminnow larvae in the alluvial reaches of the Green River in late summer. This sampling was done on backwater habitat downstream of the proposed diversion.

Moreover, because the proposed diversion's impacts are likely to extend indefinitely into the future, the Division should consider the proposed water right point of diversion's impacts to the Green River associated with reduced flows in the future as a function of warmer air temperatures occurring from climate change. Given that scores of studies have been published over the last decade documenting the very real and impacting nature of air temperature increases to the West, Intermountain West, Southwest, and specifically the reductions of flows anticipated in the Colorado River Basin, it is incumbent upon the Division to acknowledge this alarming science when assessing the proposed water right point of diversion's impacts on endangered fishes in order to comply with the Endangered Species Act.

The proposed diversion also has the potential to impact world-class recreational opportunities on the Green River that attract people from around Utah and around the world. The Green River offers unique recreational amenities downstream of the proposed water right point of diversion - from the exciting rapids in the Canyon of Lodore to the placid flows of Echo Park. Angling opportunities are world-class, especially in the clear, cold flows of Red Canyon on into Brown's Park. At the proposed point of diversion, birders enjoy spotting countless species of waterfowl and other birds that rely on the river corridor for habitat. Hiking, biking, and other activities are popular throughout the Green River corridor, while camping opportunities range from extreme backcountry to developed state parks with recreational vehicle sites.

These recreational opportunities on the Green and Colorado Rivers support a robust and important recreational economy employing tens of thousands of people. This economy's importance for the local communities along the Green River downstream of the proposed diversion cannot be overstated. Many of these jobs rely on adequate flows in the Green River and will be threatened by the proposed water right diversion. It is incumbent upon the Division to consider the proposed water right's impact on this economy when reviewing the application.

We want to thank you in advance for your consideration of this protest. We would be happy to provide any clarification that may be necessary to enable you to provide an accurate and timely response to this very important matter.

Please give me a call if you would like to discuss any aspect of this letter.

Sincerely,

Nick Schou

Conservation Director

Utah Rivers Council

nick@utahrivers.org

(801) 486-4776

Ashley Soltysiak

Director

Utah Sierra Club

ashley.soltysiak@sierraclub.org

(616) 485-8290

Cory MacNulty

Senior Utah Program Manager

National Parks Conservation Association

cmacnulty@npca.org

Herm Hoops

Oneway Boat Works

Jensen, UT

hoops@ubtanet.com

Lauren Wood

Holiday River Expeditions

Naples, UT 84078

lauren.holidayriver@gmail.com

Nick Schou