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Protest of Fixed Time Application to Appropriate Water Number 49-2467 (F84954)

Fixed Time Application to Appropriate Water Number 49-2467 (F84954), filed by Greylock Production, LLC, proposes diversion and use of 581 acre-feet of water from White River, a tributary to the Green River, for oil and gas exploration, drilling and completion. It indicates contracts to provide water for the proposed uses are secured for the next two years, and loosely suggests continuing for ten years. However, Central Utah Water Conservancy District is concerned the hydrologic system cannot, in the short term, sustain the immediate request. As discussed next, the application should not be approved because the basin within which the source of water lies, the Colorado River Basin, is not providing the water. Simply put, water to satisfy this application is not available.

On cursory review, it may appear the river is producing ample water for this application. But the immediate source, the White River, is a tributary of the Green River within the Colorado River Basin, which is under serious stress. The Colorado River Basin is in widespread, long term drought, if the new normal should even be called drought. Perhaps it is just normal, not drought. Only if hydrology in the Colorado River Basin improves, then there may be water available for this application.

Utah has ratified the 1922 Colorado River Compact (Utah Code 73-12a) which allocated 7.5 million acre feet (maf) to the Upper Division States for beneficial and consumptive use,[1] and downstream non-depletion commitments.[2] These competing provisions of apportionment and non-depletion

[1] Colorado River Compact, Article III(a), Utah Code 73-12a-2, states "There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any right which may now exist."

[2] Colorado River Compact, Article III(d), Utah Code 73-12a-2, states "The states of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact."

commitments are reconciled through the 1948 Upper Colorado River Compact ratified by Utah (Utah Code 73-13), so Utah is entitled to 23% of the Upper Division States' allocation and is subject to the hydrologic limitation of what is "available for use each year."[3] The Upper Basin rarely, if ever, has 7.5 maf available on any given year because the river's actual flow is significantly lower than what was negotiated in 1922. The Upper Colorado River Commission is charged with determining if Upper Division States fail to comply with their non-depletion obligation at Lee Ferry and in such an event, how much beneficial consumptive use each Upper Division State may be required to curtail to restore compliance with the compact (a "compact call").[4]

In cooperation with the Bureau of Reclamation, Central Utah Water Conservancy District uses a Colorado River Basin water right (i.e. Water Right Number 43-3822), senior to the fixed time application at hand, serving nearly two million Utah residents. This water right faces increasing risk of a compact call. While such a compact call has never occurred, the risk is real, growing, and potentially imminent given the current trajectory of multi-state negotiations and the Basin's declining hydrology.

Although Utah has never used 23% of 7.5 maf within the Colorado River Basin possibly giving an impression of water available on an annual basis within compact allotments, administration of Colorado River system water cannot be evaluated only on a single-year time scale. The Upper Division's non-depletion/delivery obligation in Article III(d) of the Colorado River Compact of 75 maf over any 10 consecutive years at Lee Ferry is a driver of this. Therefore, interstate obligations in the Colorado River Basin operate on a multi-year basis.

To maintain compliance with the compacts and meet delivery obligations, water must be available in Lake Powell, and importantly, on an ongoing basis, water must *arrive* in Lake Powell. Lake Powell

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[3] Upper Colorado River Basin Compact**,** Article III(a)(2), Utah Code 73-13-10, apportions the consumptive use of water as follows: "To the States of Colorado, New Mexico, Utah and Wyoming, respectively the consumptive use per annum of the quantities resulting from the application of the following percentages to the total quantity of consumptive use per annum apportioned in perpetuity to and available for use each year by Upper Basin under the Colorado Compact and remaining after the deduction of the use, not to exceed 50,000 acre-feet per annum, made in the State of Arizona.
State of Colorado..... 51.75 per cent,
State of New Mexico..... 11.25 per cent,
State of Utah..... 23.00 per cent,
State of Wyoming..... 14.00 per cent"

[4] Upper Colorado River Basin Compact**,** Article IV, Utah Code 73-13-10, states "In the event curtailment of use of water by the States of the Upper Division at any time shall become necessary in order that the flow at Lee Ferry shall not be depleted below that required by Article III of the Colorado River Compact, the extent of curtailment by each State of the consumptive use of water apportioned to it by Article III of this Compact shall be in such quantities and at such times as shall be determined by the Commission …"

was at its fullest in 1983, and based on readily available information the last time it was over 90% full was in 2000. Since then, a cumulative hydrologic deficit has developed. Lake Powell is currently about 24% full by volume, containing about 5.85 maf of water, with a surface elevation near 3,530 feet above sea level. Over recent years, the water necessary to maintain compact compliance has not been arriving in Lake Powell. The Bureau of Reclamation has forecasted the most probable unregulated inflow for 2026 at 6.50 maf, or 68% of the average, and far short of the amount necessary for evaporation and the average annual release obligation. The Bureau of Reclamation's Most Probable 24-Month Study includes a release volume from Glen Canyon Dam of 7.48 maf in WY 2026 and 7.00 maf in WY 2027. With this, Lake Powell's elevation is projected to be 3,513.51 feet on December 31, 2026, a decline of another 16.5 feet from the present level. New appropriations should not be allowed until the hydrology improves and the long term deficit in Lake Powell is cured. In years of apparent surplus, water should not go to a new fixed time appropriation such as this, but to making up the previously existing multi-year deficit to ensure the compact obligation is met. While the compact obligation has always been met, recent developments with hydrology and Colorado River system administration are bringing compliance into question.

Significant efforts are underway to identify methods and mechanisms for maintaining compliance. One such effort is the Demand Management Pilot Program, which provides monetary compensation using state funds to encourage voluntary, temporary reductions in water use. The program is intended to evaluate whether financial incentives can attract willing participants. It has already drawn several agricultural water users who have reduced their consumptive use in exchange for payment. It would be difficult to reconcile the State's commitment of millions of dollars to incentivize reductions of a few hundred acre-feet of use, while at the same time authorizing new fixed-time appropriations within the same drainage basin that would deplete comparable volumes of water.

The principal purpose of the Colorado River Storage Project, particularly Lake Powell, was to ensure Upper Basin compliance with downstream delivery obligations under the Colorado River Compact by enabling storage, carryover, and smoothing of hydrologic variability across years. Because the law of the river and its operations are premised on multi-year balancing, the State should not separate these advantages (the existence of reservoirs and smoothing operations and the apparent availability of water in continuously flowing rivers) into a burden on senior appropriators, and a benefit for new fixed-time applicants. Senior Utah water users have undertaken projects and are coordinating monumental efforts to ensure a water supply for the public within the Colorado River Basin, and face the hydrologic pressures of a depleted system and the looming threat of a compact call under the Compacts. It would be inequitable to allow new consumptive use that draws from the very water needed to postpone or prevent such a compact call.

CENTRAL UTAH WATER
CONSERVANCY DISTRICT

Given existing shortages, long-standing over-allocation, and the credible risk of a compact call, no new consumptive surface water appropriation should now be approved in the Colorado River Basin.

Sincerely,
Central Utah Water Conservancy District

Gary Brimley, P.E.
Water Rights Engineer