

November 27, 2017

Protest submitted by:

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PROTEST FEE PAID

17-04680

\$15.00

Protest submitted to:

Kent Jones, PE  
State Engineer, Division of Water Rights  
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The purpose of this letter is to protest the San Juan Spanish Valley Special Service District (SJSVSSD or applicant) Extension of Time Request for 09-2349 (a37400) filed on 9/27/2017 pursuant to Utah Code Ann. 73-3-7. This protest is submitted on behalf of Canyonlands Watershed Council, a project of the Friends of the Abajos 501(c)3 non-profit organization.

#### Inadequate and misleading Public Notice

The notice to water users published in the November 2 and 9, 2017 Times Independent has inaccurate and misleading information. The notice states that the application is to put water to beneficial use in Grand County, and should read San Juan County. This is erroneous and misleading. The notice references a request for extension of 09-2349 (a37788e). A search of the DWR web database indicates that (a37788e) is not in the database, and thus does not provide potential interested parties with the reasonable opportunity to review documents and protest. It is assumed that the application in reference is 09-2349 (a37400)

#### Safe Yield, Existing Current and Planned Uses

The USGS presented a draft of their final groundwater study results indicating a finding that less water is available than previously believed in the Glen Canyon and Valley Fill aquifers within Moab/Spanish Valley. A major justification in the Order of the State Engineer (OSE) approving change application 09-2349 (a37400) was the "reason to believe" doctrine under the belief that additional volumes of water were still available and unused in this aquifer. This additional water has been shown not to exist, and the current "reason to believe" should be that any additional water not currently in use is owned by existing water rights holders, particularly the City of Moab and Grand County Water Conservancy District/ Grand Water and Sewer Service Agency (GWSSA).

Safe Yield needs to account for the total safe yield for each individual aquifer (Glen Canyon, Valley Fill, Granstaff Canyon) separately as well as cumulatively. When removing the Granstaff discharge from the USGS figures, the Safe Yield within the Moab/Spanish Valley is approximately 10,000-14,000 AF/YR.

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The OSE cites a credible study that indicates the potential for a "greater than 30% decrease in annual runoff" (p4) and indicates that the State Engineer's statutory directive includes consideration of "the potential for reduced water supply due to greater climate variability" (p5). Under this worst-case scenario, Safe Yield may actually be only 7,000 - 9,800 AF/YR.

Current groundwater uses presented at the Southeast Utah Water Workshop on 10/16/2017 show that at least 6,400 AF/yr are already being diverted. This amount does not account for the base flow volumes diverted by Moab Irrigation Company on Wilson and South Mesa, or in the three diversion points below the powerdam on Mill Creek. The Moab Irrigation Company 2017 Distribution Plan indicates planned diversion of 1,070 AF and 1,783 AF, respectively, or a total of 2,853 AF/yr from these sources. Assuming that 50% of this diversion is base flow groundwater, total groundwater currently diverted may be closer to 7,800 AF/yr. Additionally, withdrawals from private wells and springs may actually be higher than estimated in the initial figures presented in October.

Moab City and GWSSA have a combined reported source production capacity of at least 10,703 AF/YR and water rights totaling approximately 18,000 AF/YR (based on 2016 Moab Water Conservation Plan Update, 2016 GWSSA Culinary Water Master Plan, and 2014 GWSSA Water Conservation Plan). Planned build-out projections for both municipal suppliers are greater than currently reported production capacity, meaning that these municipal water suppliers are likely to use greater than 10,000 AF/yr for beneficial public uses based on senior water rights. Additional existing users include surface water diversions for GWSSA and Moab Irrigation Company, along with private wells and springs.

From this Safe Yield, 300 - 1000 AF/YR are estimated as subsurface discharge to the Colorado River. This water is likely held in water rights owned by the Nature Conservancy and UT Division of Wildlife Resources, and the OSE states that the applicant must show "no adverse effects to the natural environment including at the Matheson Wetlands Preserve" (p12).

The approval and development of a new municipal water system with junior water rights prior to the completion of a Groundwater Management Plan is premature and setting the stage for future conflicts and potential harm to existing senior rights holders and users of the aquifer and the physical and/or chemical properties of the aquifer

#### Proof of Source Capacity

The applicant's 40-year Plan lacks any proof of the ability to develop all of the water resources required to produce the volumes described. The OSE states that "The proof must also show the capacity of the sources of supply and demonstrate that each source can provide the water claimed to be diverted" (p15) Currently the 40-year plan does not list any specific sources or source capacity.

The OSE limits any high production wells (>50gpm) from being located within 1000 feet of existing wells or within 3000 feet of Ken's Lake. The current notification of intent to drill

indicates production at less than 50 gpm, or a capacity to service approximately 90 connections.

Given these limitations, it is likely that all 23 Well Point of Diversions would be required to be developed and operated at a withdrawal rate of 50 gpm for SJSVSSD to meet the stated use projections in the 40-year plan to put the water right into beneficial use.

The current 40-year plan and Monitoring Plan neglect to provide proof of physical and economic feasibility of developing all of these sources at this production rate, and do not adequately describe monitoring measures that will be taken to ensure no localized interference or regional impacts on other senior users and the physical or chemical integrity of the aquifer.

### Monitoring Plan

There is currently no approved Monitoring Plan that meets the conditions set by the State Engineer. The two monitoring plans submitted to date have been determined not to meet the conditions set in the OSE, and the State Engineer on 11.7.2017 has now set additional conditions

GWSSA established a comprehensive Monitoring Plan in conjunction with developing the Spanish Valley and Chapmen wells that differentiates between the Glen Canyon and Valley Fill aquifers. The SJSVSSD should be required to develop a similarly comprehensive Monitoring Plan that accounts for potential local and regional interference and differentiates between withdrawals and impacts to different aquifers and Ken's Lake for the entirety of the proposed production development to assess cumulative impacts and not piece meal one well in at a time. Third party oversight should be required to oversee and review monitoring equipment installation and data analysis to ensure accuracy.

### Nature of Use

The applicant's 40-year plan does not indicate any specifics for use of new well production capacity, nor indicate if the initial source capacity would service existing residences or be used for new development. The 40-year plan does indicate that one or two wells would be developed initially "to supply water to the area", though if a maximum production of 50gpm for each well is assumed this would only be adequate to service 180 of the estimated 230 existing residences. This is contrary to the projected growth rates of 13% per year and statements like "the attractiveness for less expensive development places Spanish Valley in a favorable position for future development to accommodate increasing tourism" (p4)

Utah Code 73-1-4(2)(f) allows public water suppliers to hold unused water rights for the "reasonably anticipated service area based on reasonably anticipated population growth" The applicants 40-yr Plan estimates that growth rates will be 13% through 2025, or 43 times the Governors Office of Management and Budget estimated population growth rates of 0.03%.

Accelerated growth rate projections, a lack of differentiation of how source capacity will be used for existing homes versus new development, and a complete lack of data showing projected source capacity and financial resources to meet growing demand make this 40-year plan highly speculative and appears to be attempting to monopolize the remaining unused, though already owned by Right, water in the aquifer in direct violation of Utah Code 73-3-8(1)(a)(v) that requires application to be "filed in good faith and not for purposes of speculation or monopoly."

#### Lack of Diligence

SVSJSSD allowed their water right application to lapse due to a lack of diligence to provide proof of beneficial use or file a timely Extension of Time request. When an Extension of Time request was filed on 9/27/2017, a stated reason was "the mailing address was incorrect with the Division of Water Rights." The OSE clearly states, "It is the applicants responsibility to maintain a current address with this office"

Failure to update the mailing address, along with Monitoring Plans that do not meet the conditions of the OSE and a 40-year plan that neglects to show proof of source capacity or physical and economic feasibility all add up to a lack of diligence and grounds for denying the request for an extension of time to file proof of beneficial use.

#### Time Limit on construction and application to beneficial use

Under Utah Code 73-3-11(2)(b) there is no grounds for the extension of time for this application. The 50-year period since the original water right application was approved has been exceeded, reasonable and due diligence are lacking, and there is no "reasonable cause for delay in completing the appropriation." Under requirements of subsection (4)(c) the applicant has not constructed works nor "made substantial expenditures to construct the works." The applicant does not meet the requirements of (4)(b)(ii) per the above discussion under Nature of Use. Further, under Utah Code 73-1-4(4)(b), there is no clear "reasonable cause for nonuse" of these water rights.

Based on the above information, the Extension of Time request should be denied. The Canyonlands Watershed Council respectfully requests a hearing before the State Engineer regarding the subject application and reserves the right to submit additional information and evidence in support of its protest at the hearing.

Dated this 27<sup>th</sup> day of November, 2017

Sincerely,



Jeff Adams  
Executive Director  
Canyonlands Watershed Council