

PROTEST FEE PAID

11-04-2011 TG

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OFFICE OF THE STATE ENGINEER
DIVISION OF WATER RIGHTS
STATE OF UTAH

In the Matter of Application No. A79183
(Water Right No. 92-674)

PROTEST AND
HEARING REQUEST

November 15, 2011

Living Rivers hereby submits a timely PROTEST and request for a HEARING, pursuant to Utah Code Ann. §73-3-7, regarding Application No. a37400 and Water Right No. 92-674 and filed by Pinnacle Potash International, Ltd; 111 Congress Avenue, Suite 2020, Austin, TX 78701.

To be timely a protest to this water right must be filed by November 23, 2011 and a filing fee of \$15 must be paid. A check to serve as payment for the filing fee is attached to this letter.

The intended purpose of the water right application is to extract potash under State Institutional Trust Lands in Grand County near Highway 191 and Interstate 70. Pinnacle Potash International (PII) is applying for a withdrawal of 20,000 acre-feet (annually) of ground-water from 16 wells, and for 30-years of solution mining operations. The total withdrawal for 30 years is equivalent to 600,000 acre-feet. The surface area drains into the Green River above Canyonlands National Park and the proposed mining activity is in close proximity of Arches National Park. To the south and west are perennial springs and sensitive riparian areas on public lands managed by the Bureau of Land Management.

Living Rivers is a public interest, non-profit organization dedicated to the protection and restoration of Colorado River basin ecosystems that are presently damaged by excessive diversions and pollution. Living Rivers is located in Moab, Grand County.

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1. Standing

Members of Living Rivers are "persons interested" for the purposes of Utah Code Ann. §73-3-7.

2. Utah Code Ann. §73-3-8

The application of the applicant (PII) has yet to be uploaded on the web page of Utah Division of Water Rights, or the web page is not functioning properly. Therefore Living Rivers will have to make generalizations in addition to stating our concerns that are obvious about this application in regards to submitting this protest and request for a hearing.

Utah Code Ann. §73-3-8 lays out the criteria for the approval of a water right appropriation or change application. Section 73-3-8 states, in pertinent part:

(1) (a) It shall be the duty of the state engineer to approve an application if:

- (i) there is un-appropriated water in the proposed source;
- (ii) the proposed use will not impair existing rights or interfere with the more beneficial use of the water;
- (iii) the proposed plan is physically and economically feasible, unless the application is filed by the United States Bureau of Reclamation, and would not prove detrimental to the public welfare;
- (iv) the applicant has the financial ability to complete the proposed works; and
- (v) the application was filed in good faith and not for purposes of speculation or monopoly.

(b) (i) If the state engineer, because of information in the state engineer's possession obtained either by the state engineer's own investigation or otherwise, has reason to believe that an application to appropriate water will interfere with its more beneficial use for irrigation, domestic or culinary, stock watering, power or mining development, or manufacturing, or will unreasonably affect public recreation or the natural stream environment, or will prove detrimental to the public welfare, it is the state engineer's duty to withhold approval or rejection of the application until the state engineer has investigated the matter.

(ii) If an application does not meet the requirements of this section, it shall be rejected.

As of today, there is no information provided to demonstrate that there is un-appropriated water in the proposed source; the proposed use will not impair existing rights nor interfere with more beneficial use of the water; the proposed plan is physically and economically feasible; the applicant (or, in this instance, the entity that will actually carry out the proposed project) has the financial ability to complete the proposed works; the application was filed in good faith and not for the purposes of speculation of monopoly; the Applicant will not interfere with more beneficial uses; the Applicant will not unreasonably affect public recreation or the natural stream environment; and the Applicant will not prove detrimental to the public welfare.

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Normally, when a government regulatory agency has criteria that must be addressed as a basis for agency action, the applicant must submit information responsive to those criteria. If the information is incomplete, the agency does not accept the application until it is, and the agency does not notice the application for public comment, challenges, or hearing requests until an acceptable application has been submitted.

The State Engineer has failed in its duty to require the applicant to provide information that addresses the criteria in Section 73-3-8(1)(a) or is pertinent to the withdrawal and use of the water for such a large, expensive, and technologically complex project. So, an interested person does not know if the information that the State Engineer might rely on is complete, relevant, and accurate.

In this instance, the State Engineer lacks the required information on which to base any findings responsive to the requirements of Utah Code Ann. §73-3-8. Therefore the Application must be rejected.

3. Un-appropriated water in the proposed source

3.1. Section 73-3-8(1)(a)(i) requires sufficient un-appropriated water for the proposed appropriation. The State Engineer must evaluate the availability of un-appropriated water in the proposed source over the long term. The State Engineer must identify and assess the factors that could impact the availability of an adequate water supply for the proposed use — over the full life of the project. Such factors would include persistent drought, impacts from climate change, use limitations imposed by private, federal and state agencies, agreements and compacts affecting the use of Colorado River basin water, potential dewatering of sensitive riparian ecosystems, depletion of groundwater for drinking and agriculture, and water for federal reserve lands such as Canyonlands and Arches national parks.

3.2. The State Engineer must consider the amount of water that will be available, with the numerous demands on water from the Green River and Colorado River systems and factors impacting the availability of water, over the next century. This is because, if the Application is approved, the water sought could be tied up, with or without use, for that length of time.

3.3. Since the Colorado River Compact was negotiated in 1922; the annual yield of the Colorado River basin has been reduced naturally by over 2 million acre-feet (maf). Since 1948, when the Upper Colorado River Basin Compact was negotiated, the annual yield of the Colorado River has only averaged 14.1 maf. This declining trend is expected to continue beyond the next century as a result of human activities that cumulatively load the atmosphere with greenhouses gases. It is reasonable to assume that a full 10% reduction in the annual stream flow of the Colorado River has already occurred and a 20% reduction will likely occur before the current century ends. The Colorado River system cannot function properly with a 10% reduced annual yield of

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13.5 maf, and a 20% reduction to 12 maf will render an impossible situation that will assuredly lead to complex legal struggles that will include the State of Utah.

Considering this cumulative impact, it would be appropriate for the State Engineer to fully consider a worst-case scenario occurring within the next 100 years. Specifically, the State Engineer must evaluate how this proposed water withdrawal in a time period of severe water shortages would likely contribute harm toward preexisting water users in the State of Utah.

3.4. Considering the huge amount of water proposed to be withdrawn by the applicant, the State Engineer must determine if the depletion will cause dewatering of nearby springs, if subsidence will occur, and if earth movements are possible.

The State Engineer must also determine if the mining of groundwater and the removal of potash will cause earthquakes that could destroy the natural arches that are important to the local tourist economy, or cause harm to local residents and important infrastructure such as the nearby highways or Canyonlands Fields Airport.

4. Supplement to protest

The State Engineer must obtain all of the necessary information that would enable him to fully address all of approval criteria set forth in Utah Code Ann. §§ 73-3- 8(1), 73-3-8(2), and 73-3-11. The State Engineer must make that information available to protestors in a timely manner so that protestors will have an opportunity to review and respond to the new information that is submitted.

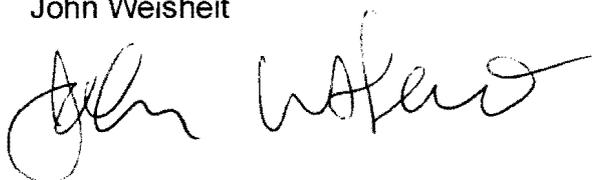
Living Rivers reserves the right to supplement this protest in writing, or at the hearing, as additional information becomes available.

5. Conclusion

Based on the lack of information that is currently available by the Applicant, the State Engineer must reject the Application, because the requirements of Utah Code Ann. 73-3-8 have not been met.

Respectfully submitted, this 15th day of October 2011,

John Weisheit



Conservation Director
Living Rivers and Colorado Riverkeeper

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725 NORTH MAIN
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