

FROM : HEAL

PHONE NO. : 801.3645110

May. 27 2009 10:12AM P3

May 26, 2009

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FAXED COPY RECEIVED

5-26-09

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

In RE: Application for Permanent Change
of Water #a35402 on water right 89-74
by Tim, Greg, and Jay Vetere and Green River
Companies
In Emery County

PROTEST

I. Introduction

Tim Vetere, Greg Vetere, Jay Vetere and Green River Companies hereby protest the Application for Permanent Change of Water a35402 by Kane County Water Conservancy District ("District") on the following water rights: 89-1285, 89-74, and 89-1513, to transfer 29,600 acre-feet of water from Lake Powell to near Green River, Utah.

II. Protesting Party

Tim, Greg, and Jay Vetere own a number of water rights along the Green River, both upstream and downstream of the proposed place of diversion for application a35402; including: 91-3810, a31113, and t21183. These water rights are include uses for stock watering and agriculture.

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III. Legal Framework

Overview

Utah law requires that before a change application is granted, it must meet requirements as established in Utah Code Ann. §73-3-8(1); otherwise, it will be rejected. Utah Code Ann. §73-3-8(1)(b)(ii).

Unappropriated water in the source

The water right in question, with a diversion from Lake Powell, is only about 39% constituted from Green River water (the other two main sources of flow into Lake Powell being the Colorado River and the San Juan River). Therefore, the entire water right should not be available for a change of diversion up the Green River—only 39% (or 11,544 acre-feet per year) should be. Otherwise, the State Engineer should reject the application for not having unappropriated water in the source. Utah Code Ann. §73-3-8(1)(a)(i).

Impairment of water rights, upstream and downstream

The law in Utah requires that a change application, such as the one filed by the District, not "impair existing rights." Utah Code Ann. §73-3-8(1)(a)(ii). The protesters, filing jointly, are concerned that the proposed application will severely impact their water rights. Prolonged droughts, lower projected runoff, prior water claims, and flow requirements for endangered fish will all, when combined with the proposed use for a nuclear power plant, impair water rights both up- and downstream of the proposed point of diversion. Furthermore, the seniority of the water right in question (89-74) if left unchanged, could impair many junior water rights up- and downstream in times of water scarcity. Unless the applicant can prove that the water transfer will not impair other water uses over the life of a nuclear plant (reasonably 40 – 60 years) then the application should be rejected.

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Interference with a more beneficial use

Furthermore, Utah law requires that a proposed application not "interfere with the more beneficial use of the water." Utah Code Ann. §73-3-8(1)(a)(ii). The Utah Supreme Court stated "That domestic use is the most beneficial use for water and that irrigation is the next most beneficial use in the arid western states is a self-evident and well recognized fact regardless of any statute." 103 Utah 494, 136 P.2d 957. Because the application presents a proposed use of power generation that could interfere with other more beneficial uses such as domestic and irrigation, the application should be rejected.

The applicant has not demonstrated the financial ability to complete the project

A nuclear power plant will cost several billion dollars to build. Neither the Kane County Water Conservancy District nor its partners in the proposed power plant have demonstrated the financial resources to build such a plant. This is therefore a highly speculative project and should be rejected. Utah Code Ann. §73-3-8(1)(a)(iv) and Utah Code Ann. §73-3-8(1)(a)(v).

Prove a detriment to the public welfare

If the proposed nuclear power plant impairs water rights for more beneficial uses, such as domestic and irrigation—either up- or downstream—it would be a clear detriment to the public welfare. The application should therefore be rejected. Utah Code Ann. §73-3-8(1)(b)(i).

IV. The change application should be rejected.

The applicant has not met the burden of proof as required by Utah law for a water change application; the application should be rejected in its current form, or at least not approved until the applicant provides data which unequivocally fulfills the criteria required by this application.

V. Hearing

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The protesters request a hearing on the change application filed by the District on application a35402 on water rights 89-1285, 89-74, and 89-1513.

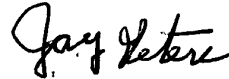
VI. Conclusion

The protesters respectfully request that the State Engineer reject or investigate the change application. The applicant has failed to meet its burden of convincing the State Engineer that all statutory requirements under Utah Code Ann. §73-3-8 (1) have been met.

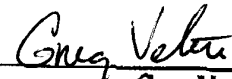
Respectfully submitted, May 26, 2009.



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