



GARY R. HERBERT
Governor
GREGORY S. BELL
Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Water Rights

MICHAEL R. STYLER KENT L. JONES
Executive Director *State Engineer/Division Director*

October 26, 2009

SAN JUAN COUNTY WATER CONSERVANCY DISTRICT
P.O. BOX 246
BLANDING UT 84511

Dear Applicant(s): RE: Change Application a35874 (09-462)

Please find enclosed correspondence relating to the above numbered application.

If you desire to answer the issues raised in the correspondence, submit same in duplicate on or before November 15, 2009.

If the correspondence indicates a protest and requests a hearing, a hearing may be scheduled at a later date. Whether requested or not, the holding of a hearing will be at the discretion of the State Engineer in accordance with statute and rule. All documents concerning your application will become a permanent part of your file and used in the decision-making process.

If a hearing is held on this application, notice of this hearing will be sent at a later date to you and all interested parties.

Yours truly,

Kent L. Jones, P.E.
State Engineer

KLJ:kh
Enclosure

October 14, 2009

PROTEST FEE PAID

SN

09-03998

Mr. Kent Jones
State Engineer
Utah Division of Water Rights
P.O. Box 146300

Salt Lake City, Utah 84114-6300

Re: Protest of state filing water right number (09-462) and filing number (a35874) - San Juan County Water Conservancy District change application

Dear Sir:

*electronic copy
Received 10-14-09*

The application states that "The San Juan County Water Conservancy District (District) files the change application to use 24,000 acre-feet of water previously approved for a coal-fired steam generation power plant to be located in San Juan County, Utah. The District now proposes that the water be used for a nuclear power plant in Emery County, with a rated capacity of 1,500 to 3,000 MW, pursuant to a Water Rights Lease Agreement with Transition Power Development LLC (TPD). TPD is a Utah limited liability company, which serves the electric power generation industry by identifying and developing new nuclear power plant sites in the western United States. The water rights for the change application are part of Utah's allocation under the Colorado River Compact. Rather than divert the water from the San Juan River as previously authorized, the application proposes to divert the water from another point on the Colorado River drainage in Emery County. The original Application to Appropriate Number A37287a was approved for all the water diverted to be 100% depleted. Likewise, water under this change application may be 100% depleted. The hereafter points of diversion from the Green River and the hereafter places of use described in the change application represent alternative points and places of use. After construction the points of diversion and places of use not utilized will be abandoned." Utah Division of Water Rights <http://www.waterrights.utah.gov/cblapps/chprint.exe?chnum=a35874>

I find that the requirements for approval of an application for a new appropriation or a change are found at Utah Code 73-3-8.

I further find that, according to Section 73-3-8, it shall be the duty of the state engineer to approve an application if:

- There is unappropriated water in the proposed source.
- The proposed use will not impair existing rights.
- The proposed use will not interfere with the more beneficial use of the water.
- The proposed plan is physically feasible.
- The proposed plan is economically feasible.
- The proposed plan will not be detrimental to the public welfare.
- The applicant has the financial ability to complete the proposed works.
- The application was filed in good faith and not for purposes of speculation or monopoly.
- The appropriation will not unreasonably affect public recreation.
- The appropriation will not unreasonably affect the natural stream environment.

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OCT 19 2009

WATER RIGHTS
SALT LAKE

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

I find that the application does not contain any information that addresses any of the above criteria that are required to form a basis for any of the findings in Section 73-3-8.

My reasons are as follows:

First of all, Transition Power Development has not submitted a plan to the Nuclear Regulatory Commission on which to judge whether the District's change application would be a beneficial use. If the District is proposing the change on this basis - ie- for a nuclear power plant, the District is similarly devoid of any existing information to legitimately make this request.

Specifically, taken point by point:

* There is unappropriated water in the proposed source.

This basin is closed. There is no wet water to be had if all existing paper rights were to be called. With the current drought and globally-accepted fact that a projected deepening drought is due to climate change, the actual water available for a nuclear power plant would not be predictable. A facility such as this MUST have predictable water.

✓

* The proposed use will not impair existing rights.

If a nuclear generating facility is ever built, the need for the water is required – not flexible due to safety reasons for cooling etc- such that senior users would not be able to receive their respective shares.

*The proposed use will not interfere with the more beneficial use of the water.

Agricultural uses – such as farming and grazing - are more important locally, regionally and even nationally for sustainable economies. As stated, nearly 100% depletion may occur. Melon farmers, recent Community Supported Agriculture ventures, drinking water for the Town of Green River are just a few of the beneficial uses that would be adversely affected if the Green River were depleted due to the proposed plan.

*The proposed plan is physically feasible.

The District or TPD cannot demonstrate the physical feasibility of the proposed plan because there is no plan.

*The proposed plan is economically feasible.

The District or TPD cannot demonstrate the economic feasibility of the proposed plan because there is no plan.

*The proposed plan will not be detrimental to the public welfare.

The District or TPD cannot demonstrate that the public welfare will not be harmed by the proposed plan because there is no plan.

*The applicant has the financial ability to complete the proposed works.

The District nor TPD have provided DWR with any information to support the conclusion that there is financial backing in place for permitting process, successful completion, operation, de-commissioning of a nuclear facility (TPD has alluded to 2 reactors). Millions of dollars are needed for these steps to be achieved.

*The application was filed in good faith and not for purposes of speculation or monopoly.

The District nor TPD have provided enough information for this metric to be addressed, let alone answered definitively. These facilities would be the first on the Colorado and in the Intermountain west.

*The appropriation will not unreasonably affect public recreation.

Lower flows that will occur due to this large appropriation will definitely affect the rafting outfitter business, private boaters, fishers, and all those who use the river corridor for travel and recreation. Low flows or depletion will make navigation for most craft impossible. Recreational boating contributes a significant portion of tourist economy in Green River, Moab and greater region. Loss of recreational boating would therefore adversely affect local economies. The applicant(s) have provided no sociological studies to support a conclusion that public recreation would be unreasonably affected.

*The appropriation will not unreasonably affect the natural stream environment.

Lower flows and the prospect of depletion would be long term (for the life of the reactors). Impacts to riverine health, such as riparian corridor integrity, threatened and endangered fish, macroinvertebrate populations, would invariably be harmed. These resources cannot withstand long term low flows and certainly not depletion. The applicant(s) have not provided scientific studies to support a conclusion that the natural stream environment would be unreasonably affected.

I encourage you to find that this application is lacking and does not meet the requirements found at Utah Code 73-3-8, therefore it must be rejected.

I would also like to request that the Department conduct public hearings on this application in Green River and Moab.

Thank you for the opportunity to comment.

Pamala R Hackley

Pamala R. Hackley
HC 64 Box 3208
Castle Valley, UT 84532

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WATER RIGHTS
SALT LAKE

October 14, 2009

Mr. Kent Jones
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Utah Division of Water Rights
P.O. Box 146300
Salt Lake City, Utah 84114-6300

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Pamala R. Hackley
HC 64 Box 3208
Castle Valley, UT 84532

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OCT 14 2009
WATER RIGHTS
SALT LAKE KH

From: Pam Hackley <phackley@frontiernet.net>
To: <kellyhorne@utah.gov>
Date: 10/14/2009 11:45 PM
Subject: water rights filing protest, (09-462) and filing number (a35874)
Attachments: Protest San Juan Cty WCD change app.doc

Please find attached my Protest of state filing water right number (09-462) and filing number (a35874) - San Juan County Water Conservancy District change application

Hard copy to follow with filing fee of \$15.00

Thank you,

Pamala Hackley

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