



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 the following document relating to the above application.

Late Protest filed by:

WILLIAM H. AND GENIEL REAY  
PO BOX 257  
GREEN RIVER, UT 84525

We will continue to process your application. You will be notified at a later date of our decision.

Yours truly,

Kent L. Jones, P.E.  
State Engineer

KLJ:kh  
Enclosure

October 14, 2009

Name, Address, and Phone No.:

*Billy & Geniel Reay*  
*PO Box 257*  
*Green River, Ut.*  
*84525*

LATE PROTEST

**BEFORE THE STATE ENGINEER OF THE STATE OF UTAH**

In RE: Application for Permanent Change :  
of Water a35874 on water right 09-462 :  
: PROTEST  
In Emery County :

**I. Introduction**

We hereby file a protest on change application a35874 filed by the San Juan County Water Conservancy District (the "District") to relocate the point of diversion on 24,000 acre-feet of water from the San Juan River to near the town of Green River, Utah. The application is for up to 100% depletion of this amount of water from the proposed point of diversion.

**II. Protesting Party**

We currently reside in the town of Green River Utah and our drinking water, lawn and garden water, and farm water comes from the Green River. This proposed transfer of water from San Juan water district to our area for the purposes of a nuclear power plant will directly affect us.

**III. Legal Framework**

***Unappropriated water in the source***

We believe there may not be unappropriated water in the Green River sufficient to support the proposed water use in the application. A review of the Division of Water Rights'

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website shows that for area 91 -- in which the town of Green River is located -- "Surface waters of the area are considered to be fully appropriated." For area 92 -- Lower Green River -- "The water resources of this area are considered to be limited. New appropriations are limited to small amounts of beneficial use sufficient to serve the domestic requirements of one family, the irrigation of one acre, and ten head of livestock (or equivalent livestock units)."

The base water right that is the subject of this change application was approved on the San Juan River. Moving the point of diversion from the San Juan River to the Green River is akin to asking for a new diversion of water on the Green River, not a change in diversion from one point to another on the same stream. The Application should therefore be disallowed and the applicant should be required to follow the procedures required for a new appropriation of water. If there is not unappropriated water in the source equal to the large amount requested (24,000 acre-feet), the application should be rejected as required by Utah law. Utah Code Ann. §73-3-8 (1) (a) (i) and §73-3-8 (1) (b) (ii).

***Impair existing water rights***

Furthermore, Utah law requires that a water application "will not impair existing rights." Utah Code Ann. §73-3-8 (1) (a) (ii). We believe that a large water withdrawal in the same general location of our water rights points of diversion, as is proposed in the change application, could impair our water rights, especially during periods of drought. The Division of Water Rights is in the process of awarding water to several thousand more acres of farm ground here in the area of the town of Green River. It is unknown at this time how detrimental this will be to us. The farm ground in question has not been fully developed and there is no way the Division of Water Rights, the Division of Natural Resources, the Division of Wildlife Resources and/or others can know at this point just how much this will affect the dynamic of the Green River in

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this area. We ask that the applicant reasonably demonstrate that our water rights will not be impaired in any way by the requested change, after all proposed farm ground development near the town of Green River is completed, and that the State Engineer with-hold approval until then. If it is demonstrated that our water right may be impaired by the application, we ask that the State Engineer reject the application as required by Utah law. Utah Code Ann. §73-3-8 (1) (b) (ii).

***Interfere with the more beneficial use of the water***

The referenced change application does not specify who will benefit from the power generated by the proposed nuclear power plant. We've heard that the power could be sold out of state. If that's the case, then the water use may not be very beneficial for the state of Utah. The State Engineer oversees the state's water resources and has the ability to distinguish between more and less beneficial uses of Utah public's water: "the proposed use will not ...interfere with the more beneficial use of the water." Utah Code Ann. §73-3-8 (1) (a) (ii).

We ask that if you approve this change application that you consider making approval contingent upon the power being sold within the state of Utah. If the power could potentially be sold outside of Utah, we would ask that you consider uses such as ours, that support ranching and agriculture, to be a more beneficial use than power production for out-of-state users.

***Unreasonably affect public recreation or the natural stream environment, and detriment to public welfare***

We believe such a large water depletion could jeopardize the natural stream environment. The water consumption by the nuclear power plant would further reduce flows during low-flow times of the year and necessarily create additional warming in the Green River. There is no indication of how much water the nuclear power plant would divert from the river at different

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times of the year. Lower-than-normal water flows, especially in late summer when low flows already result in visible moss growth--could affect both the natural stream environment as well as recreation on the river year round, including fishing and rafting. If this is addressed after the fact we see the potential of the Division of Wildlife Recourses coming in and requiring the farmers in the area to reduce and/or quit pumping water to maintain flow levels necessary to keep endangered and listed fish alive. This would devastate this area.

Green River Melons are known far and wide for their flavor and are sought after in Utah and other states. This is a huge economic benefit to our local economy and a critical crop for the farmers in this area. Raising these melons next to a nuclear power plant could potentially destroy this aspect of our economy and culture forever. Even if there are no actual detrimental effects on the melons, the public will not accept the fact that our melons are "safe" when being raised close to a nuclear power plant.

Additionally, most nuclear power plants return water to the source of supply, either because the plant uses once-through cooling and the heated water is returned, or because the chemistry of the recycled water in a closed-loop system needs to be balanced through routine discharges. This application does not indicate what kind of cooling system the nuclear power plant will use. That piece of information needs to be investigated before the full impacts to the natural stream environment and public recreation can be determined. Utah law requires the State Engineer to investigate such matters: "If the state engineer ... has reason to believe that an application to appropriate water will unreasonably affect public recreation or the natural stream environment ... it is the state engineer's duty to withhold approval or rejection of the application until the state engineer has investigated the matter." Utah Code Ann. §73-3-8 (1) (b) (i).

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The discharge of significantly warmer water from a once-through system or water concentrated with salts from a closed-loop system could unreasonably affect the natural stream environment.

We are also concerned that anticipated or unanticipated radioactive release from the plant could affect the water we use, as well as farmers and domestic users all along the Green River and the Colorado River system. A successful terrorist attack on the plant could effectively cripple much of the Western United States in terms of our water needs.

For the reasons indicated above, we believe this application could also prove detrimental to the public welfare, and could be considered a national security risk.

#### **IV. Hearing**

We respectfully request a hearing on change application a35874 relating to water right 09-462.

#### **V. Conclusion**

Wherefore, we request that the change application a35874 be rejected in its current state.

Sincerely,

*Seniel Reay*  
*William H Reay*

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