



PROTEST FEE PAID
17-01930 ml
\$15.00

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May 18, 2017

Kent L. Jones, P.E.
State Engineer & Director
UTAH DIVISION OF WATER RIGHTS
1594 West North Temple, Suite 220
P.O. Box 146300
Salt Lake City, Utah 84114-6300

--Via Hand Delivery--

Re: Protest on Change Application a42493 (35-8411)

RECEIVED

MAY 18 2017

WATER RIGHTS
SALT LAKE

Dear Mr. Jones:

Mountain Regional Special Service District (the “**District**”), through and by its undersigned legal counsel, respectfully submits this Protest on Change Application a42493 (Water Right No. 35-8411) (the “**Application**”) which has been filed by Wild Pony, LLC (the “**Applicant**”). The District does not request a hearing on the Application and this Protest, but asks to be provided notice of any hearing that is held. The \$15.00 protest fee is enclosed.

The District provides water to the majority of the Snyderville Basin, outside of Park City, including 515 homeowners within the Silver Springs Community. The District also provides water to Silver Willow Pond and Silver Willow Lake, both of which are an important water amenity. The Pond is approximately 5.24 acres in size with a storage capacity of 25 acre feet. The Lake, which is just north of the Pond, is approximately 20.84 acres in size and has a storage capacity of 140 acre feet. The Pond and Lake are extensively utilized by residents in the Silver Springs area. A total of approximately 1,500 residents live adjacent or near the Pond and Lake and utilize the Pond and the Lake for man-powered water craft (canoes, kayaks and small boats), fishing, and, in the winter, ice skating. The Pond and Lake also support a substantial riparian area.

The Pond and Lake are also a source of water for fire suppression and a future planned secondary water system. The Pond and Lake receive water from the same source the Applicant is proposing to use through the Application. Under an agreement with Silver Springs Master Home Owners Association, the District provides water for the Pond and Lake through Water Right 35-5778, which provides for the storage of water within the Pond and Lake.

The source of water for both the Applicant and the Pond of Lake are Spring Creek and springs that flow into Spring Creek. Thus, diversion of water from Spring Creek or its sources is of keen interest to the District and its homeowner customers. As the State Engineer well knows, there is substantial competition for the limited water resources in the Snyderville Basin. Careful

management and supervision of the diversion and use of water in the Basin is necessary to assure that water is allocated as required by Utah law and by Orders and policies of the State Engineer.

The District is concerned due to the fact that Applicant, or its predecessors, in operating a nursery that obtains its water under Water Right Nos. 35-8411 and 35-8416, has never installed a measuring device or measured its diversion of water in violation of Utah Code Ann. § 73-5-4. This lack of measurement has likely led to diversion of water in excess of the maximum 3.8919 acre feet allowed under Water Right Nos. 35-8411 and 35-8416. Despite requests by the District and others, the Applicant and its predecessors have never installed any measuring device on its diversions from Spring Creek or other sources which feed Spring Creek.

Because the District relies on water from the same sources, i.e., Spring Creek and its tributaries and springs, any over-diversion of water by the Applicant directly impacts and damages the District and its customers, and could affect the water level and the biologic health of the Pond and Lake. The District respectfully requests that a specific condition of any Order approving the Application require the Applicant to install and maintain totalizing meters and control works at any and all of Applicant's approved points of diversion. Also, Applicant should be required to report meter readings monthly to the State Engineer and to the River Commissioner for the Weber River. The Order should also state the State Engineer, River Commissioner, District, and others be given access to the meters so that they and others are able to monitor the water diversion of Applicant.

Further, the design of the meters and other controlling works be approved by the State Engineer, or his designee, prior to installation. The meter and controlling works should be installed and certified, in writing, by a licensed professional engineer, as to accuracy and efficacy, in measuring and controlling all water being diverted by Applicant, with such certification provided to the State Engineer and placed in the file for Water Right Nos. 35-8411 and 35-8416.

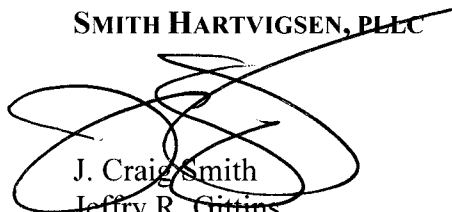
The meters and controlling works should also include a locking mechanism, controlled solely by the State Engineer and River Commissioner, to allow the State Engineer or River Commissioner to regulate and control diversion of water by the Applicant and, if necessary, to shut off the diversion of water by the Applicant. See Utah Code Ann. § 73-5-4.

Failure to install and certify the meters and controlling works, within sixty (60) days of approval of the Application, should be grounds for automatic revocation of the approval. Alternatively, a representative of the State Engineer should verify that the meters and controlling works are installed and will accurately measure and control all water being diverted by the Applicant as a condition for any approval of the Application.

The District also requests that a second express Condition of any Order approving the Application be imposed stating that diversion of water under the approved Application is junior and subordinate to the diversion by the District and other water right holders who divert water from the same sources. In the event that the flow is insufficient to satisfy the water rights of all water users who utilize the same sources, the Applicant be required to curtail its diversion such that other prior and senior water rights are satisfied.

Thank you for your careful consideration the District's concerns and Protest.

SMITH HARTVIGSEN, PLLC

A handwritten signature in black ink, appearing to be "J. Craig Smith", written over the printed name and partially overlapping the text below.

J. Craig Smith

Jeffrey R. Gittins

Attorneys for Protestant

Mountain Regional Special Service District

Enclosure

cc: Mountain Regional Special Service District