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PROTEST FEE PAID

17-04665
\$15.00

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

In the Matter of Water Right
No. 09-2349 (A37788e)

PROTEST and
HEARING REQUEST

November 25, 2017

INTRODUCTION

Living Rivers and Colorado Riverkeeper hereby submits a timely PROTEST and request for a HEARING, pursuant to Utah Code Ann. §73-3-7, regarding Request for Extension of Time to File Proof of Beneficial Use and filed by the San Juan Spanish Valley Special Service District (SJSVSSD or Applicant) and received by the Salt Lake Office of the Utah Division of Water Rights (UDWR) on September 27, 2017.

STANDING OF PROTESTANT

Living Rivers and Colorado Riverkeeper (member of Waterkeeper Alliance) are public interest, non-profit organizations dedicated to the restoration of Colorado River Basin ecosystems that are presently damaged by excessive diversions and pollution. The offices of Living Rivers and its program directors are located in the basin states of Utah, Wyoming and Arizona. Members and staff of Living Rivers are "persons interested" for the purposes of Utah Code Ann. §73-3-7.

PUBLIC NOTICE

UDWR must receive this protest and a processing fee of \$15 by November 29, 2017.
Address: Division of Water Rights, PO Box 146300, Salt Lake City, Utah 84114-6300.¹

¹ <http://www.riversimulator.org/Resources/farcountry/Utah/SanJuanCounty/2017/SJSVSSDpublicNotice2017November.pdf>

RECEIVED

NOV 28 2017

WATER RIGHTS
SALT LAKE

WATER RIGHT DOCUMENTS

Documents for the change application and request for the extension of time are located at the following UDWR web page:

<https://www.waterrights.utah.gov/cgi-bin/docview.exe?Folder=09-2349>

BRIEF CHRONOLOGY OF WATER RIGHT 09-2349

- **April 27, 2011** - SJSVSSD files change application (a37400).²
- **July 27, 2011** - Living Rivers files timely Protest and Hearing Request to UDWR.³
- **August 8, 2012** - Living Rivers attends one of two hearings in Moab, Utah.⁴
- **August 8, 2013** - Order of the State Engineer approves change application with stipulations.⁵
- **April 20, 2017** - SJSVSSD conducts a public meeting at Moab City Hall and provides two powerpoint presentations to explain the beneficial use; the board accepts comments from the public, which included concerns about due process; the board immediately votes unanimously to approve the project.⁶
- **May 11, 2017** - *The Times-Independent* publishes "Plan for San Juan Spanish Valley Water and Sewer Systems Gets Green Light."⁷
- **June 13, 2017** - SJSVSSD submits a proposed Groundwater Management Plan. Point of Diversion (POD) #14, on state lands, is selected as the proposed test well.⁸
- **September 15, 2017** - Notice of lapsed application from UDWR. The Applicant failed to properly inform UDWR of its new business address, which is solely the responsibility of the applicant.⁹
- **September 27, 2017** - SJSVSSD files Request for Extension of Time to File Proof of Beneficial Use.¹⁰

² <https://waterrights.utah.gov/docImport/0539/05396313.pdf>

³ <https://waterrights.utah.gov/docImport/0540/05408901.pdf>

⁴ <https://waterrights.utah.gov/docImport/0550/05509282.pdf>

⁵ <https://waterrights.utah.gov/docImport/0558/05586984.pdf>

⁶ <http://www.riversimulator.org/Resources/farcountry/Utah/SanJuanCounty/2017/SpanishValleyPublicProjectSummary2017SJSVSSD.pdf>

<http://www.riversimulator.org/Resources/farcountry/Utah/SanJuanCounty/2017/SpanishValleyWaterSewerMasterPlanPresentation2017SJSVSSD.pdf>

⁷ <http://www.riversimulator.org/Resources/farcountry/Utah/SanJuanCounty/PlanForSanJuanSpanishValleyWaterAndSewerSystemsGetsGreenLight.pdf>

⁸ <https://waterrights.utah.gov/docImport/0592/05925739.pdf>

⁹ <https://waterrights.utah.gov/docImport/0592/05929202.pdf>

¹⁰ <https://waterrights.utah.gov/docImport/0592/05929201.pdf>

- **October 5, 2017** - Request for Extension is accepted by UDWR. Though the applicant is reinstated, the consequence of the lapse resulted in the demotion of their priority date to September 27, 2017.¹¹
- **October 10, 2017** - SJSVSSD submits 40-year plan to UDWR.¹²
- **October 17, 2017** - SJSVSSD requests permission to drill a test well at POD 3 located in a neighborhood, rather than previous choice at POD 14. No more than 50 gallons per minute would be diverted as stipulated by the Order; this amount will only service 90 units within the special service district.¹³
- **October 17, 2017** - SJSVSSD informs UDWR of their intent to file a change application in the near future.¹⁴
- **October 27, 2017** - Applicant's Groundwater Management Plan is revised.¹⁵
- **November 7, 2017** - UDWR submits two responses to two proposed Groundwater Management Plans, which explain the plans require additional compliance measures.¹⁶
- **November 13, 2017** - SJSVSSD revises 40-year plan.¹⁷
- **November 16, 2017** - *The Moab Sun* publishes "San Juan County Planning for Up to 6,000 people in Spanish Valley."¹⁸

OBJECTIONS

Living Rivers and Colorado Riverkeeper are pleased that SJSVSSD will be providing sewer service to eliminate septic tank systems in San Juan County. We are, however, concerned about the proposed over-consumption of water resources from the Glen Canyon Aquifer of Moab/Spanish Valley and the Colorado River Basin (CRB). In the case of our valley's groundwater, this community is fast-approaching *safe yield* and, in the case of surface water in the CRB, the *safe yield* was exceeded about 14 years ago. SJSVSSD's 40-year plan does not reflect the reality of a water budget that is imbalanced. For example:

¹¹ <https://waterrights.utah.gov/docImport/0592/05929202.pdf>

¹² <https://waterrights.utah.gov/docImport/0593/05935682.pdf>

¹³ <https://waterrights.utah.gov/docImport/0593/05932582.pdf>

¹⁴ <https://waterrights.utah.gov/docImport/0593/05932582.pdf>

¹⁵ <https://waterrights.utah.gov/docImport/0593/05936415.pdf>

¹⁶ <https://waterrights.utah.gov/docImport/0593/05938306.pdf>
<https://waterrights.utah.gov/docImport/0593/05938314.pdf>

¹⁷ <https://waterrights.utah.gov/docImport/0594/05940090.pdf>

¹⁸ <http://www.riversimulator.org/Resources/farcountry/Utah/SanJuanCounty/2017/SanJuanCountyPlanningForUpTo6000PeopleInSpanishValley.pdf>

- According to water accounting data from the US Bureau of Reclamation (USBR), the decadal shortfall at Imperial Dam (Yuma, AZ) is about 1.5 million acre-feet.¹⁹
- In about 40 years, the seven states and the USBR have determined the shortfall will double to 3.2 million acre-feet (see Colorado River Basin Supply and Demand Study of 2012).²⁰
- The drought contingency planning documents of the Lower and Upper Basin states, to avoid a Compact call and declared shortages, are now two years overdue, which clearing indicates a desire by the water managers to be responsive toward the issue of demand and negligent toward the issue of supply. The 40-year plan submitted by SJSVSSD follows this prevailing attitude in the Colorado River basin. Their lack of concern to provide a balanced water budget supported by peer-reviewed science is an unfortunate situation and why we are compelled to file this protest.

SJSVSSD Underestimates the Value of Due Process

We are uncomfortable with the approach of the applicant concerning the affairs of managing our shared water resources in a responsible manner. This discomfort became evident on the evening of the public meeting held by SJSVSSD at Moab City Hall on April 20, 2017. There were complaints from the attending public that the meeting was not properly noticed; that sufficient time and materials were not provided for hard working people to research the subject appropriately, in order to provide thoughtful questions, comments, and suggestions to the board; that the process was intentionally fast-tracked. Because the board voted unanimously to approve the project immediately following this unfair public process, the board indicated a general lack of respect for the residents that SJSVSSD supposedly serves.

As a reaction to this approach to community concerns, we feel it is very appropriate to protest this extension and to ask for a public hearing. This would include future stakeholder meetings between the applicant and the Moab/Spanish Valley community at-large. The public rightly deserves such opportunities.

We request that the public hearing and stakeholder meetings we are requesting occur after the peer-review of the Groundwater Study of Moab/Spanish Valley, that is being prepared by the US Geological Survey. The documents provided by SJSVSSD are heavy on the subject of demand projections, whereas the subject of supply projections is non-existent. This oversight increases the risk of future conflicts over water rights; allowing time for the final report by the USGS to become part of the administrative record of this Extension Request is a prudent course of action.

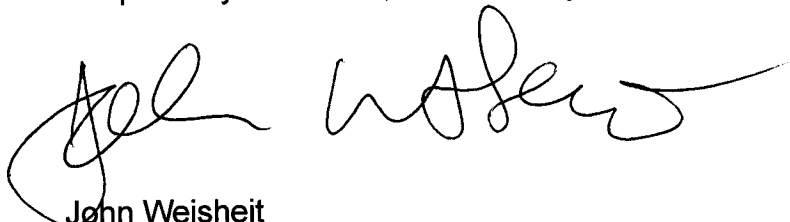
¹⁹ <https://www.usbr.gov/uc/water/crsp/studies/index.html>

²⁰ https://www.usbr.gov/lc/region/programs/crbstudy/finalreport/Executive%20Summary/CRBS_Executive_Summary_FINAL.pdf

Groundwater Management Plan & 40-year Plan

SJSVSSD's groundwater monitoring plan and 40-year plan are insufficient despite revisions. As we mentioned above, this problem can likely be solved by the Applicant participating in meetings with the stakeholders of Moab/Spanish Valley that would address the community concerns. We understand UDWR is organizing such meetings, and we ask the State Engineer to allow the findings of these meetings to become part of the administrative record before the State Engineer issues his Order for this extension.

Respectfully submitted, this 24th day of November 25, 2017.



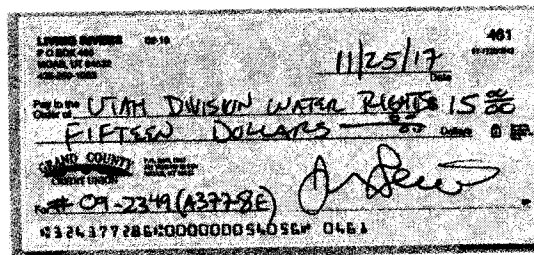
John Weisheit
Living Rivers, Conservation Director
Colorado Riverkeeper

Attachment: Check #491 dated 11/25/17 for \$15.00; filing fee for this protest.

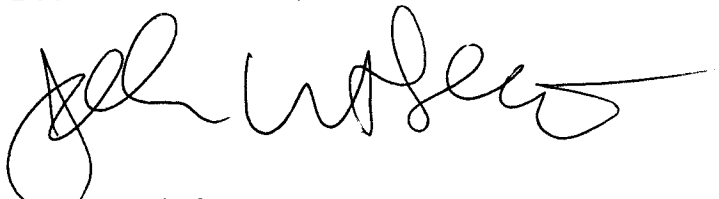
CERTIFICATE OF MAILING

I hereby certify that I sent an electronic copy and mailed, First Class, a copy of this Protest and Request for Hearing regarding Water Right 09-2349 (A37788e) and with the required fee to:

Kent L. Jones, State Engineer
Utah Division of Water Rights
Box 146300
Salt Lake City, Utah 84114-6300
E-mail: kellyhorne@utah.gov



Dated November 25, 2017



John Weisheit
Conservation Director
Living Rivers