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Colorado Riverkeeper  
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PROTEST FEE PAID  
18-011674 me  
\$15.00

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

In the Matter of Water Right  
No. 41-3747 (a81080)  
Water Horse Resources

PROTEST and  
HEARING REQUEST

April 5, 2018

**INTRODUCTION**

Living Rivers & Colorado Riverkeeper, Green River Action Network, Upper Green River Network, and Poudre Waterkeeper hereby submits a timely PROTEST and request for a HEARING, pursuant to Utah Code Ann. §73-3-7, regarding the application to appropriate water from the Green River and filed by Water Horse Resources (Applicant) and received by the Salt Lake Office of the Utah Division of Water Rights (UDWR) on January 12, 2018.

**STANDING OF PROTESTANTS**

Living Rivers & Colorado Riverkeeper, Green River Action Network, Upper Green River Network, and Poudre Waterkeeper (members and affiliates 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 Upper Basin states of Utah and Wyoming. Poudre Waterkeeper is based in the Upper Basin state of Colorado. Members and staff of these organizations 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 April 7, 2018.  
Address: Division of Water Rights, PO Box 146300, Salt Lake City, Utah 84114-6300.<sup>1</sup>

<sup>1</sup> <https://waterrights.utah.gov/docImport/0598/05981885.pdf>

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## **WATER RIGHT 41-3747**

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=41-3747>

## **NARRATIVE OF CONCERNS FOR WATER RIGHT 41-3747**

The point of diversion is the Green River in Daggett County, Utah at Brown's Hole; below Flaming Gorge Dam and above Dinosaur National Monument. The Applicant proposes a diversion of 55,000 acre-feet (af) per year, or 76 cubic feet per second (cfs). The withdrawal will require a federal contract and an environmental assessment from the Bureau of Reclamation (Reclamation) and a biological opinion from US Fish and Wildlife Service (USFWS). Consultation will be required with Uintah Ouray Ute Nation, Salinity Control Forum, Bureau of Land Management (BLM) and National Park Service (NPS).

The proposed need and purpose of this withdrawal is to supply water to the Front Range of Colorado; it is a trans-basin diversion into the watershed of the Mississippi River. The proposed plan will most likely include pumping stations, pipelines, hydropower stations and reservoirs. The construction of this water delivery system will require a federal NEPA review (Environmental Impact Statement) with a federal agency.

In the last decade the Applicant (Aaron Million) proposed a withdrawal of 300,000 af per year from the watershed of the Green River. The approval of this application for the diversion was unsuccessful.

In 2007, Reclamation determined the maximum annual depletion or releases from Flaming Gorge Reservoir for consumptive use by either Utah, Wyoming or Colorado could not exceed 165,000 acre-feet per year<sup>2</sup>. There is competition for this water from agriculture, municipal and industrial sectors. For example, Lake Powell Pipeline; extraction or processing projects for potash, uranium milling, and unconventional fossil fuels. A proposal for a nuclear power plant on the Green River is another potential rival. All these proposed uses combined are greater than 165,000 af per year; the Green River is over-appropriated. The yield of the Colorado River has been dropping 1 million af every 50 years and it is well-known that this trend will continue for the rest of the 21st century.

Non-adjudicated federal water rights in the Colorado River Basin, specifically for Native American tribes, are another factor that makes further upstream diversions unjustifiable. Tribal water rights are counted from the state in which the reservation exists. Tribal reserved water rights were recognized in 1908 under *Winters v. United States* that declared water rights were generated on the date the reservation was founded. *Arizona v. California* in 1963 further solidified the existence of these rights within the Colorado River Basin. The Bureau of Reclamation (BOR) quantified the collective diversion rights in

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<sup>2</sup> <http://www.riversimulator.org/Resources/UCRC/UCRCflamingGorgeWaterAvailabilityReclamation2007.pdf>

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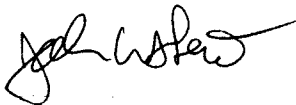
the Upper and Lower Basins as 2.9 maf/yr.<sup>3</sup> Three tribes in the Upper Basin (Navajo Nation, Ute Indian Tribe of the Uintah and Ouray Reservation, and the Ute Mountain Ute Tribe) all have unresolved claims to water of over 100,000 af.<sup>4</sup> A myriad of tribes in the Lower Basin also have rights to water based on the practically irrigable acreage (PIA) standard.

As a trans-basin diversion, the diversion will increase the concentration of salt and heavy metals, such as selenium, downstream. This is of critical importance for the recovery of endangered fish, for safe drinking water, and for the consumption of healthy food.

The long-delayed Drought Contingency Planning (DCP) documents for both the Lower and Upper Basins includes a strategy for the Upper Basin reservoirs to release as much as 2,000,000 af to maintain reservoir levels at Lake Powell (Glen Canyon Dam) to avoid hydropower contract defaults and violations of the Clean Water Act, Salinity Control Act, and Endangered Species Act, and etc. A high volume release of water from Flaming Gorge Reservoir to ensure hydropower operations at Glen Canyon Dam would jeopardize this water right; as well as all the other junior water rights mentioned above.

No state in the Colorado River basin has ever adapted to the hydrologic cycle. This includes the climate of the past, the present and certainly the climate of the future. Consequently a growing imbalance exists between supply and demand, and for the last two decades the deficit has averaged negative 2 million af. The seven states participated and co-financed the 2012 Basin Study, which concluded that this gap between supply and demand will increase. As we understand it, it would be reckless to increase depletions from the Green River in the states of Utah, Colorado and Wyoming at this time.

Respectfully submitted, this 5th day of April, 2018.



John Weisheit  
Living Rivers, Conservation Director  
Colorado Riverkeeper

Attachment: Check #1107 dated 4/5/2018 for \$15.00; the filing fee for this protest.

<sup>3</sup> The summary of quantified water rights is found in the Basin Study's Appendix C9, available at: [https://www.usbr.gov/lc/region/programs/crbstudy/finalreport/Technical%20Report%20C%20-%20Water%20Demand%20Assessment/TR-C\\_Appendix9\\_FINAL.pdf](https://www.usbr.gov/lc/region/programs/crbstudy/finalreport/Technical%20Report%20C%20-%20Water%20Demand%20Assessment/TR-C_Appendix9_FINAL.pdf)

<sup>4</sup> [http://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=1177&context=books\\_reports\\_studies](http://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=1177&context=books_reports_studies)

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**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 No. 41-3747 (a81080) 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: [waterrights@utah.gov](mailto:waterrights@utah.gov)

Dated April 5, 2018



John Weisheit  
Conservation Director  
Living Rivers

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