

# PROTEST

**PROTEST FEE PAID**

\$15.00 22-02217

Fee Rec'd BY: ONLINE

April 26, 2022

Protestant: The Church of Jesus Christ of Latter-day Saints  
c/o Farmland Reserve, Inc.  
79 S Main St. Suite 1000  
Salt Lake City, UT 84111

RE: Protest of Water Right Application 81-5491

A hearing is requested.

See attached letter

Farmland Reserve, Inc.

Enclosure

**RECEIVED**

**APR 26 2022**

**WATER RIGHTS**

**ONLINE**

**SCANNED**

April 26, 2022

Teresa Wilhelmsen, P.E.  
Utah State Engineer  
1594 West North Temple, Suite 220  
P.O. Box 145300  
Salt Lake City, Utah 84114-6300

RE: Protest of Application to Appropriate Water A83170 (81-5491)  
Applicant: Washington County Water Conservancy District

Dear Ms. Wilhelmsen:

Washington County Water Conservancy District (“WCWCD”) seeks, through the above-referenced Application to Appropriate Water (the “Application”), to appropriate 12,900 acre-feet of water in a basin long since closed to new appropriations. The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole, formerly known as Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole, and or its affiliated entities (collectively, the “Church Corporation”), writes this letter to protest the Application.

WCWCD proposes to construct 18 underground water wells, each being 26-inches in diameter and between 1,000 and 5,500 feet in depth. Approximately half of those wells are proposed to be located generally parallel to the I-15 corridor between New Harmony and Leeds, and half in a line immediately south of Hurricane, to the Arizona border. The Church Corporation currently owns multiple water rights with groundwater sources for use in the New Harmony Valley, including but not limited to Water Right Nos. 81-192, 81-245, 81-465, 81-1635 and 81-4019. These water rights are used to irrigate approximately 450 acres of land owned by the Church Corporation in the New Harmony area. The Church Corporation also owns certain real property in Washington County between the Sand Hollow Reservoir and the Virgin River (including Parcel Nos. H-4141-A-1-NP and H-4141-A-6-NP) used for agricultural purposes that rely on groundwater, including water under Water Right Nos. 81-4595, 81-4596 and 81-3819 diverted from the local Navajo sandstone aquifer using wells operated by the Church Corporation. These Church Corporation lands and their proximity to certain of the proposed wells are generally identified on Exhibit A attached hereto. The Church Corporation is extremely concerned that both of these water sources will be impaired if the Application is approved.

The Application is to be considered by the State Engineer under the provisions of Section 73-3-8 of the Utah Code. That Section provides, in pertinent part, as follows:

**73-3-8. Approval or rejection of application -- Requirements for approval -- Application for specified period of time -- Filing of royalty contract for removal of salt or minerals -- Request for agency action.**

(1)(a) It shall be the duty of the state engineer to approve an application if there is reason to believe that:

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- (i) for an application to appropriate, there is unappropriated water in the proposed source;
- (ii) the proposed use will not impair existing rights or interfere with the more beneficial use of the water;
- (iii) the proposed plan:
  - ...
  - (B) would not prove detrimental to the public welfare;

...

(b) If the state engineer, because of information in the state engineer's possession obtained either by the state engineer's own investigation or otherwise, has reason to believe that an application will interfere with the water's more beneficial use for irrigation, municipal and industrial, domestic or culinary, stock watering, power or mining development, or manufacturing, or will unreasonably affect public recreation or the natural stream environment, or will prove detrimental to the public welfare, the state engineer shall withhold approval or rejection of the application until the state engineer has investigated the matter.

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

As articulated below, the Church Corporation believes the Application fails to meet the requirements of Section 73-3-8 because WCWCD has not provided sufficient information to support a “reason to believe” that (i) there is unappropriated water in the water source, (ii) the proposed use will not impair existing water rights, and (iii) the Application will not prove detrimental to the public welfare.

#### NO UNAPPROPRIATED WATER

The Division of Water Rights water management policy for Area 81—Virgin River, last updated April 17, 2011 (the “Area 81 Policy”), states in pertinent part as follows:

*“The waters of this area are considered to be fully appropriated with a few exceptions described below. New diversions and uses must be accomplished by change applications based on valid existing water rights.”*

The “exceptions” detailed in the Area 81 Policy are limited to relatively small applications in the Canaan Gap and Beaver Dam Wash drainages, neither of which encompass the locations of the wells proposed under the Application. Therefore, it is presumed for purposes of the Application and Section 73-3-8(1)(a)(i) that there is not unappropriated water to be appropriated.

The Application recognizes that the basin is closed to new appropriations, but asserts without evidence that such closure by the State Engineer was “... based on review of the relatively shallow basin-fill, Navajo Sandstone, and Kayenta Formation aquifers . . . ,” and that all current appropriations divert water from these shallower aquifers. According to the Application, the proposed wells will penetrate past or through these aquifers to the deeper “C Aquifer” and “R Aquifer.” It is asserted that no water is currently drawn from these deep aquifers, that “. . . the

groundwater in the C and R Aquifers is unappropriated,” and that, therefore “WCWCD can develop unappropriated water from the C and R Aquifers without impairing existing water rights.”

The Application’s conclusion that WCWCD can withdraw 12,900 acre-feet of water annually from the C and R Aquifers without impairing existing water rights is based on at least two unsupported premises. The first is that the C and R Aquifers are entirely isolated from and not connected to the basin-fill, Navajo Sandstone, and Kayenta Formation aquifers (the “Shallow Aquifers”), and that annually withdrawing 12,900 acre-feet of water from the C and R Aquifers will not affect the Shallow Aquifers over time. The second is that the sources of recharge (if any) that feed the C and R Aquifers are separate and distinct from the sources that feed the Shallow Aquifers, such that the diversion of water from the C and R Aquifers will not operate to intercept or remove water that would otherwise recharge the Shallow Aquifers.

#### IMPAIRMENT OF EXISTING RIGHTS

If either of these premises is untrue, the Application must fail. That is, if there is communication between the Shallower Aquifers and the C and R Aquifers, then diversions from the lower C and R Aquifers will tend to drain the Shallow Aquifers, and impair the water rights of those users depending on the Shallow Aquifers. Likewise, if water that would otherwise have recharged the Shallow Aquifers is hydrologically captured to replenish water taken from the C and R Aquifers, the Shallow Aquifers will suffer, to the detriment of existing water users.

#### PUBLIC WELFARE

If however both premises *are* true, it presents WCWCD with a dilemma. To succeed, WCWCD must prove that the C and R Aquifers are hydrologically isolated from the Shallow Aquifers and from water sources that recharge those aquifers. WCWCD must essentially show that the C and R Aquifers consist of “fossil water,” and constitute a finite, nonrenewable resource. This raises the policy question of whether it is wise to mine and deplete a finite resource, or, better said, whether it is wise to support municipal, commercial and industrial development with a resource that will eventually be fully depleted.

Furthermore, if the C and R Aquifers are depleted over time, what will be the geological impact on the Shallow Aquifers above them? What is the likelihood that the de-watering of those deep aquifers will result in compaction and subsidence, which may propagate to shallower formations and introduce communication with and potential impacts to the Shallow Aquifers and their storage capacity?

The Church Corporation contends that, lacking persuasive evidence to demonstrate that the C and R Aquifers are hydrologically isolated from the Shallow Aquifers, it is only reasonable to conclude that diversions from the deeper aquifers *will* eventually impact the shallower resources by depleting water stored therein, and/or damaging the physical properties of the Shallow Aquifers. Without such evidence, the water in the C and R Aquifers cannot be deemed to be unappropriated and the annual diversion of 12,900 acre-feet of water from those aquifers will, eventually but unavoidably, impair the prior rights already established in the groundwater resource.

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The sheer size of the Application warrants particular diligence and scrutiny on the part of the State Engineer. This is not a case where a mistake can be easily rectified. The Application does not disclose the anticipated cost of this project, but it will easily run in the tens, if not hundreds, of millions of dollars. Unlike a smaller appropriation application, the “fishing expedition” analogy does not apply here. The public cannot afford to gamble hundreds of millions of dollars on unproven geological extrapolations, only to learn years later those facilities must be abandoned. The science must precede the investment, and that science must be robust.

We respectfully ask the State Engineer to require WCWCD to provide information sufficient to show the targeted aquifers are fully isolated from the aquifers presently administered as fully appropriated. Additionally, it must be shown that the targeted aquifers will not be subject to mining and the potential for compaction and subsidence that such depletion may incur. If this information cannot be provided and found persuasive to the extent required by statute, the Application must be rejected.

The Church Corporation requests a hearing be scheduled and held on this Application, and the Church Corporation be given notice and opportunity to participate in that hearing and to present additional information as these administrative proceedings progress.

Respectfully,

A handwritten signature in blue ink that reads "Rex Burgener". The signature is fluid and cursive, with "Rex" on the first line and "Burgener" on the second line.

Rex Burgener, Authorized Agent  
The Church of Jesus Christ of Latter-day Saints

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EXHIBIT A  
Locations of Church Corporation Property



