

## **Utah May Not Have the Necessary Water Rights to Develop the Lake Powell Pipeline**

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The Bureau of Reclamation (BOR) had a public meeting in St George, Utah, December 2017 on two proposed service contracts so that Utah Board of Water Resources (Utah) can get water from Flaming Gorge reservoir to Lake Powell for the Lake Powell Pipeline. We were surprised after ten years of study that there was nothing in the studies about this issue that Utah may not have the water rights for the project where they need them in Lake Powell. Now, they want to exchange undeveloped spring high water Green River tributary water rights with the BOR to get water from the Flaming Gorge reservoir and then let it flow down to Lake Powell. Thus far, the BOR is agreeing to the exchange. Now, the exchange is subject to environment review.

Here is the story of what is going on:

Since 2016, Utah has been negotiating two 50-year service contracts with the BOR to put a portion of the Central Utah Project's "Ultimate Phase" 1958 water right that has not been developed to beneficial use. In 1958 this water right consisted of the Uintah and Ute Units, and only the Uintah Unit was partially developed. This water was intended for the Ute tribe, but this is no longer the case as Utah wants to use the portion that is left instead. Since the Ultimate Phase was never built in 1958 by BOR they assigned this water right back to Utah in 1996. Utah filed an application on 5-25-95 Water Right No. 41-3479 to draw 156,000 acre feet year (AFY) depletion and about 320,474 AFY diversion from Flaming Gorge Reservoir (FGR) for development. In 2009, this 1958 water right needed to be extended. The BOR mentioned in their protest letter of this water right extension in 2009 that there was an understanding that if Utah did not develop this water within a 50 year period it would lapse. But, this did not happen. Now 60 years later Utah has to put this water right to beneficial use by 2020.

According to a BOR official this is the last 165,000 AF of unallocated water in FGR and will be allocated on a first come, first serve basis. Colorado and Wyoming could have also applied for this water and put it to beneficial use.

Therefore, Utah is proposing two service contracts to utilize this water right. The two service contracts include:

- One, BOR 50-year service contract is for Utah to draw out 72,641 AFY from FGR to use for development along the Green River, known as the Green River Block (GRB.) (a portion of application Water Right No. 41-3479). EA
- The other, is a BOR 50-year service contract to develop the Lake Powell Pipeline (LPP) that will draw 86,249 AFY from FGR and let the water flow downstream to Lake Powell for the benefit of the endangered fishes. Then draw water for LPP from Lake Powell Reservoir. This

contract will be evaluated in the LPP EIS. (the remaining portion of application Water Right No. 41-3479)

Utah is proposing for these two BOR 50-year service contracts that it will not develop unperfected seasonal high-water Green River tributary flows and leave them in the Green River for the endangered fishes as long as Utah can withdraw this same amount of water out of FGR reservoir for development. But, the seasonal spring high-water Green River tributaries may not be available to exchange because there are undeveloped senior water rights holders and others who may already be using them, such as Central Utah Project. This application Water Right No.41-3479 is also junior to the Central Utah Project. Most importantly, the most senior water right holder of the Green River tributaries is the Ute Tribe of the Uintah and Ouray Indian Reservation with water rights on many Green River streams that have priority dates of 1882 and 1861. These are significant water rights of 470,594 AF of diversion and 258,943 AF of depletion on many tributaries. Utah has been trying for many years to negotiate a settlement of the tribe's water rights whereby the tribe would forfeit some of their Green River tributary water rights to the state, but thus far the tribe has not agreed. The Ute Tribe has not been identified to get any of the remaining water from FGR.

“The Ute Tribe is suing the U. S. Government Bureau of Indian Affairs. The Tribe's claims against the United States focus, in large part, on the Uintah Indian Irrigation Project (“UIIP”), an Congressionally-authorized Indian irrigation project designed to irrigate nearly 88,000 acres of Reservation land. The UIIP is a trust asset owned and operated by the United States for the benefit of the Tribe. Today, the UIIP is only delivering irrigation water to about 61,000 acres. The Tribe alleges that this disparity is the result of various breaches of the United States' fiduciary obligations.”

Moreover, Utah has not disclosed where these undeveloped high-water Green River tributary flows are located. More study is needed to verify what amount of water supply is available for Utah to exchange. Utah has not provided any evidence that it has a large amount of undeveloped water supply from high seasonal water rights in the Green River tributaries for these exchanges. Furthermore, Utah has not provided any proof that a junior 1958 LPP water right can be left in the river from FGR to Lake Powell for 50-years to benefit the endangered fishes without being diverted by the senior water rights holders. Thus far, there is nothing in FERC's study reports that address the problem that Utah may not have the necessary water rights for the LPP. In other words Utah's water rights are not in the Lake Powell Reservoir where they can be withdrawn for the LPP Project.

We suspect that Utah does not have these spring high-water Green River tributary water rights to exchange for development and that this is another deficit in an over-allocated Green River Basin. We suggest that before BOR makes a decision to approve these two service contracts it should do more studies, such as:

- Require Utah to provide proof it has undeveloped seasonal high water rights in the Green River tributaries to exchange with the Bureau of Reclamation (BOR) for water out of Flaming Gorge Reservoir for the Lake Powell Pipeline.

- Provide current hydrological climate modeling that could provide more realistic future projections on water supply availability for the LPP. Because, this new information is not accounted for in current studies that will be used to prepare the draft EIS. The draft EIS is the document that will be used to make the decision on the LPP. See: <http://www.inkstain.net/fleck/2018/06/new-usbr-modeling-suggests-a-bigger-risk-of-colorado-river-shortage-than-yall-might-think/>
- Complete a comprehensive study, such as a Hydrological Determination, that uses less than the historical 100 year average of 15 MAFY at Lees Ferry. This could determine if Utah has a sufficient water supply for the Lake Powell Pipeline. See information on a Hydrological Determination for the Jicarilla Navajo reservoir service contract. See [HERE](#)
- *The Colorado River Basin Water Supply and Demand Study* states that the Basin faces a wide range of plausible future long-term imbalances between supply and demand. See the fact sheet: [https://www.usbr.gov/lc/region/programs/crbstudy/FactSheet\\_June2013.pdf](https://www.usbr.gov/lc/region/programs/crbstudy/FactSheet_June2013.pdf)