

# Utah spent \$33 million on a pipeline application it never finished. The feds approved it anyway.

If you're hoping to understand Utah's drive to build the massive Lake Powell pipeline and what it might cost you, don't start with the state's explanation of it all to the U.S. government.

The thousands of pages Utah produced to justify the 140-mile, multibillion-dollar pipeline from Lake Powell to water districts in two southwestern Utah counties are inscrutable to most involved — the project's opponents, government regulators, and even some of the people who wrote the documents.

“It has been confusing for everyone,” said Jane Whalen, a Hurricane-based environmentalist who has followed the project closely. “Even the lead attorney for the water district seems confused.”

Indeed, records obtained by The Salt Lake Tribune indicate those state documents — prepared at a cost of more than \$33 million — were part of a decadelong ordeal for the engineers who produced them, particularly in the final months as they feverishly sought to correct years of procrastination and disarray.

Now that Utah's bid for a license to build and operate the Lake Powell pipeline has been [cleared for further study](#), Utah water managers are hoping that they can put the documents' troubled past behind them. But a new snag has emerged over precisely which federal authorities will approve Utah's bid, raising prospects of further delays and added costs.

If state officials are feeling spooked, it could be because their application is arguably still incomplete — and because one of its major omissions is Utah’s vanished analysis of whether it can actually afford the project.

Utah’s leaders have been on a 10-year quest to build the interstate pipeline, meant to draw millions of gallons of Colorado River water out of Lake Powell and pump it through a series of reservoirs and hydroelectric generators for delivery to up to 13 southwestern Utah communities, including St. George.

They hope to break ground in the 2020s, before that region’s current water supplies are predicted to run dry.

Officially, Utah gave the Federal Energy Regulatory Commission (FERC) a final version of its 6,000-plus page application in May 2016. That document, however, was an unfinished draft, parts of which had not been reviewed or checked for errors by the Utah Division of Water Resources, the state agency tasked with constructing the Lake Powell pipeline.

Even with a 10-year lead time, internal emails and memos show that state officials and private contractors put in numerous sleepless nights and weekends working around the clock to complete the document at the last minute.

“Please let me know what I should tell [Division Director] Eric Millis about the study reports we have not yet received”

— *Josh Palmer, staffer at the Division of Water Resources, to MWH contractors on April 30, 2016.*

In 2007, Utah had hired MWH Global, an international consultant specializing in water and natural resource issues, to help write its application. While MWH ultimately received \$33 million for the task, records show most of that money changed hands in 2009 and 2010, when the state paid upward of a million dollars per month to the firm.

After 2010, those monthly payments slowed to a trickle of just tens of

thousands of dollars, until work picked up again in late 2015. That’s right about the time officials with the Washington County Water Conservancy District — an intended recipient of the Lake Powell pipeline water — discovered that only a third of the FERC application had been finished.

As of mid-November 2015, MWH Global had completed nine of the 23 studies Utah had promised to federal regulators.

Those studies were meant to document the project’s impacts on everything from dust and water quality to endangered species and Native American cultural resources along its route through Arizona and southern Utah.

Emails suggest that Ron Thompson, general manager of the Washington County water district, was unaware of that slow progress on those studies, which regulators at FERC and other federal agencies would rely on to decide whether the project should proceed.

“I heard today that we will only have nine of the twenty-three reports ready to file by Dec. 1st. This was not disclosed at our last meeting and could deal us a serious setback. I have asked Barbara to contact Clements and discuss potential impacts. Needless to say, what have we received for our large investment with MWH? Personally, I think we should file what we have on Dec. first.”

**— Ron Thompson, general manager of Washington County Water Conservancy District, on Nov. 19, 2015.**

In a later interview, Thompson said he was concerned about cost overruns and felt that he needed to put pressure on the state’s contractors to get the job done in time. Many of the studies — the one on archaeology in particular — were taking longer than he had anticipated.

“You get these scientists .... they’re not used to working on strict, hard time frames,” Thompson said. “They get it done when they get it done, and it’s frustrating from our standpoint and probably frustrating from theirs.”

But in MWH’s defense, Thompson said, there was a miscommunication in the years preceding the deadline crunch that may have led the contractors to believe they didn’t need to complete all 23 studies right away.

Either way, finishing the remaining application studies in just six months proved impossible. So, with about a month left before the federal deadline, emails indicate that Division of Water Resources Director Eric Millis opted to forgo state review of the some of the unfinished portions and directed MWH to use its “best judgment” and what consultants already had on hand to “fill in the blanks.”

“In the Lake Powell Pipeline check in meeting, Skip and Russ committed to working with Brian to get the project team a timeline for delivery for both cultural resources and mitigation documents by the end of the day yesterday. We did not receive that timeline yesterday and need to have it as soon as possible. We also determined in Thursday’s meeting that a draft of the PLP comments and responses, including those assigned to MWH needed to be delivered to the project team by April 14th. Please let us know if there is anything we can do to facilitate meeting that deadline. The project team trusts Brian to use his best judgment in utilizing already submitted responses and white papers to fill in the blanks and complete this task.”

— *Eric Millis, Utah Division of Water Resources, on April 8, 2016.*

However, a few weeks later, the state’s contractors indicated that they needed help replacing documents they were “unable to locate.”

“Attached is a Word file consisting of excerpted comments from the Comment and Response document. MWH requests assistance from UDWRe and WCWCD in responding to these comments, as indicated. If responses have previously been provided to MWH, please provide them again as we are unable to locate previously provided responses to these comments. I am sending this request to Josh and Brie as the point people for your respective agencies. Thanks.”

— *Brian Liming, project manager for private consultant*

Then, the day before FERC’s final deadline, Barbara Hjelle, attorney for the Washington County water district, told state officials to “get this filed, all of it.”

“I just spoke to Brian and gave him my 2 cents worth: we need to get this filed, all of it. If we miss a review, we can perhaps file a supplement to fix any important issues, but the most important goal is to file all documents by the deadline. He needs to prioritize his work to be most efficient with this primary goal in mind. If we haven’t seen documents now, I assume he is pushing hard just to get them finished, so his efficiency is paramount, IMHO. Our review cannot be a hold-up to the main goal to GET THIS FILED.”

— *Barbara Hjelle, attorney for the Washington County Water Conservancy District, on May 1, 2016.*

In a later interview with The Tribune, Hjelle said she feared the consequences if Utah hadn’t submitted the unfinished application on time. “That was not an alternative that I wanted to consider.”

The goal, Hjelle said, was to get the information to the public by FERC’s agreed-upon date — not to produce a perfect document.

## **‘What the water will cost’**

Among the application’s biggest omissions: details on Utah’s ability to pay for the project, estimated to cost \$1.4 billion-plus. Federal regulators have repeatedly asked Utah to study the pipeline’s potential economic impact, for taxpayers statewide and especially for residents of Washington and Kane counties, who stand to pay for the pipeline’s water.

Most recently, FERC pointedly asked the state to provide an estimate of how the pipeline’s cost “would be allocated among existing and new water users, including the likely impacts on user costs.”

Instead, the state has highlighted its own top-notch AAA bond rating for borrowing money. It has noted the Washington County water district's capacity to increase its water prices and raise other revenues through tax hikes and impact fees. And state officials referred regulators to the wording of a 2006 state law that spells out broad terms for how Utah plans to pay for the project.

According to that law, the Division of Water Resources will finance and build the Lake Powell pipeline — but only on the condition that Kane and Washington County water conservancy districts agree to buy the water at a price high enough to pay back the state over 50 years.

For the Washington County water district, that will involve tripling its current water rates in annual bumps of 10 cents, [district officials have said](#).

But the district is technically a water wholesaler, a broker that sells water to southern Utah cities such as St. George, rather than directly to end customers. So it remains unclear how increased wholesale rates will boost water bills for households and businesses in Kane and Washington counties.

FERC first told Utah to study the pipeline's financial and social impacts for the region in 2008. Emails exchanged between Millis, head of water resources, and the MWH contractors indicate that both parties expected a third company — Las Vegas-based financial-consulting firm Applied Analysis — to provide a fiscal report that would “include the details of what the water will cost.”

“My understanding is that the Applied Analysis report prepared by Jeremy Aguero will include the details of what the water will cost (in \$ per acre-foot or 1,000 gallons) to the water users, taxpayers impact fee payers, etc. because it will also consider the financing costs. The Work Group previously agreed to incorporate the Applied Analysis report into the Socieconomics/Water Resource Economics study report as an appendix, and reference that cost. I expect that we will discuss this at the December 15 meeting with Applied Analysis in Las Vegas. Thanks.”

— *Brian Liming, project manager for MWH Global, on Dec. 3, 2015.*

Though officials with the Division of Water Resources spent much of 2017 filing new versions of the reports FERC requested, the third-party financial analysis is still missing. And while Millis said he'd "actually been in the room" when more detailed financial information was discussed, that analysis remains incomplete.

"We encouraged them to make that type of information available to the public, because the public was asking for it," Millis said, "but I don't think they got it to the point that it could be released."

Thompson, on the other hand, has since said the Washington County water district never expected a financial plan to be finalized and submitted with the license application.

Jeremy Agüero, the main Applied Analysis consultant working for the water district, told *The Tribune* he worked on some financial figures related to the pipeline but has not yet completed a full review.

Millis now says that he does not expect to see a completed financial analysis anytime soon — and that the state considers the FERC license application to be complete without it.



(Trent Nelson | Tribune file photo) The view from the Hite Overlook on the Colorado River, as seen in 2008.

But that doesn't appease pipeline critics.

"We are not convinced that Utah has a plan to pay for this project," said Matt Rice, director of the Colorado River Basin Program for the advocacy group American Rivers, based in Washington, D.C.

Given the high cost of the project — in the range of \$1.4 billion to \$1.8 billion — Rice said the project's proponents owe Utah taxpayers and others an explanation of how they plan to raise that kind of money "with a high level of specificity."

"Clearly, the state of Utah doesn't want to provide that information," he said, "because they may not have it, or because at the moment the numbers may not work out in their favor."

What's more, Rice said, FERC's own rules require that it determine whether a proposed project is "in the public interest" and that the project can be funded without harming its customers.

So Rice said he was surprised when FERC ruled in late 2017 that Utah's application was acceptable and ready for a formal environmental analysis.

"We don't believe the license is ready to be assessed," he said.

Officials with FERC declined to provide an interview for this story. In an email, a spokeswoman for the agency said only that the state's application has been approved and that Utah had "responded to all of our questions."

Similarly, representatives of MWH Global, which has since been acquired by Stantec, another large consulting firm, agreed that FERC's acceptance signaled the application was adequate. However, Brian Liming, who headed the application project for MWH, has since been replaced by Josh Cowdan, who is now the project's manager for Stantec.



(Tribune file photo) The base of the Glen Canyon Dam, on the Colorado River. Utah officials hope to build the Lake Powell Pipeline to pump river water 139 miles north and west to southwestern Utah.

Thompson said in a recent interview he felt much better about the project's status under the new leadership — though he and others insisted Liming's reassignment was not related to the application ordeal.

“They finally have a complete package,” Thompson said, crediting Stantec, state employees and “a lot of players” who worked to revise and complete the application over the past year.

But Rice, a close observer of FERC's process through the years, said Utah's omitted financial analysis could prove a major liability, with potential to delay final approval for years or even decades.

“A lot of times when you don't provide important data, it leads to problems,” he said, as FERC determines on its own if the project is feasible.

Hjelle, the Washington County water district lawyer, counters that she isn't worried that any missing information or errors will come back to haunt officials.

“Whatever happened prior, we have reached the successful conclusion of all that,” she said. “The material portions of the documents are certainly

adequate and accurate and.... FERC took them.”

Far more concerning, district and state officials say, is FERC’s recent announcement that it’s reconsidering how large a role the agency ought to play in the project’s approval.

## ‘Seemed like the best course’

In 2008, FERC said it would oversee licensing of all portions of the project related to hydroelectric power, an assurance that included the downhill portion of the project, or about 90 miles of its full 140-mile length.

*Pipeline or "hydro system?"*

This map, from a 2008 scoping document produced by the Federal Energy Regulatory Commission, outlines the portion of the pipeline that the federal agency considered to be a hydropower system that would fall under that agency's jurisdiction. In December, FERC issued a statement in which the agency indicated it would need to review whether it will actually issue a license for the large portion of the pipeline shown here.

[Leaflet](#) | Tiles © Esri — National Geographic, Esri, DeLorme, NAVTEQ, UNEP-WCMC, USGS, NASA, ESA, METI, NRCAN, GEBCO, NOAA, IPC

Source: Utah Division of Water Resources, Federal Energy Regulatory Commission



Pipeline



Hydropower

But, in December, FERC instead said its leaders had not yet determined the extent of their duty to review even that 90 miles of the project — a small

nuance with huge implications.

If FERC does not license that length of the pipeline — and instead reviews and permits only the half-dozen hydropower generating sites to be built along the route — then the project would also require additional review by the Bureau of Land Management (BLM).

And that is something project proponents hadn't banked on.

FERC's previous assurance "has been the baseline for thousands of pages of effort," Hjelle said. "We have nine years of reliance on those statements."

The surprise caused Utah to ask FERC to delay its own proceedings until further notice — a request FERC quickly obliged.

But there may be more riding on the difference of opinion than nine years of potentially wasted effort and expenses.

Joel Williams, assistant director of the Division of Water Resources, said the state had long hoped FERC would play the lead role in permitting the pipeline because that agency had a more clearly defined process for reviewing applications than the BLM.

The FERC process included rules for cooperating with other federal agencies as well as a set of clearly defined deadlines to move things along — something Williams said was attractive to the state.

"It seemed like the best course to go at the time," he said.

## **'Barrier to public participation'**

Rice noted that many utilities and local governments are drawn to working with FERC, as opposed to other federal agencies, partly because of FERC's more defined process and timeline.

But, he said, FERC proceedings also tend to be less accessible to the public,

especially compared to review by the BLM.

FERC's permits "tend to be more complicated, and that presents somewhat of a barrier for public or state agency participation," Rice said. The BLM, on the other hand, "when they issue a right of way, everyone can get involved in that to influence the BLM's decision."

So going the FERC route, Rice said, could be appealing if proponents of a project wanted to avoid public scrutiny.

Thompson disputed the assertion that the BLM was more transparent than FERC, but said he understood the public's frustration with the state's all-but unintelligible application. Officials at the Washington County water district, he said, were also more familiar with the BLM's process but felt federal law compelled them to go to FERC first.



(Francisco Kjolseth | The Salt Lake Tribune) Overview of The Loop from the saddle that looks down on the Colorado River in Canyonlands National Park, Utah.

But Whalen, the Hurricane activist, agreed with Rice that starting with BLM review could have simplified public involvement.

"I don't see how the average person could ever get through these documents," she said. "This makes the FERC process hard to participate in. The BLM process would be much easier."

After the surprising news that FERC had accepted the application and planned to move ahead, Whalen said the fact that Utah and FERC now both

want to push pause strikes her as a good thing.

“There are still a lot of unanswered questions,” Whalen said. But this latest episode of confusion, she added, might just give the public a little more time to “dig into the answers.”