OFFICE OF THE SOLICITOR
INTERMOUNTAIN REGION
SUITE 6201, FEDERAL BUILDING
125 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84138-1180

October 26, 1984

Blue Mesa

10/30
11-7
11-21

LBR.IM.0256

Memorandum

To: Regional Director, Bureau of Reclamation

From: Regional Solicitor, Intermountain Region

Subject: Depletion of Water Above Wayne Aspinall Unit (Curecanti)

In your September 21, 1984, memorandum to us you ask our opinion concerning a proposed action wherein Mr. John Hill, Department of Justice, would petition the Colorado District Court to revise certain water decrees assigned to the United States by the Colorado River Water Conservation District dated January 26, 1962.

We have reviewed your file and consulted with Mr. Hill and various members of your staff. We recommend that no action be taken by Mr. Hill in the Colorado courts on behalf of the Bureau of Reclamation in this matter.

The Colorado River Water Conservation District assigned on January 26, 1962, certain water rights to "the United States upon condition that the water rights assigned will be utilized for the development and operation of the Curecanti Unit in a manner consistent with the development of water resources for beneficial use in the natural basin of the Gunnison River." The assignment was transmitted to the Commissioner by memorandum dated February 21, 1962. The Regional Director recognized that the assignment "would provide for upstream development above Curecanti." Your files disclose the intent of the United States at the time it accepted this assignment, and also the intent of the Colorado River Water Conservation District. These file documents taken as a whole show that the United States has an obligation to allow junior appropriators, upstream of the Wayne Aspinall Unit (Curecanti Unit), the use of water in an amount not to exceed 60,000 acre feet. Upstream water development would be exclusively for the Upper Gunnison Basin and no transbasin diversion would be allowed.

Your files contain agreements between the United States and private parties wherein the United States recognized the right upstream water depletions by junior appropriators.

As early as 1959 Congress was advised by the Secretary that depletions in the Gunnison River upstream of the Curecanti Unit in the amount of 60,000 acre feet were contemplated. House Document No. 201, 86th Cong., dated July 15, 1959, p. 15.

We see no reason to initiate any court action in behalf of the Bureau of Reclamation in this matter and so advised Mr. Hill. I agreed to take no further action unless requested. Mr. Hill by letter dated September 13, 1984, advised Dr. Jeris A. Danielson, Colorado State Engineer, that the Bureau of Reclamation did not intend to enforce its rights as against upstream water users. You should contact the State Engineer and inform him that the United States will live up to its obligations in connection with the January 26, 1962, assignment from the Colorado River Water Conservation District. This means that you will fulfill your obligations [illegible] amount not to [illegible] feet, that the Bureau of Reclamation does not intend to take any action [illegible] obligations and tha the State Engineer, insofar as the Bureau of Reclamation is concerned, may administer upstream depletions in harmony with this position.

W. P. ELLIOTT, JR.
Acting Regional Solicitor

By William Robert McConkie
WILLIAM ROBERT MC CONKIE
Attorney

cc: Mr. John R. Hill, Jr., Esq., Assistant Attorney General, U.S. Department of Justice, Land and Natural Resources Division, Denver Federal Bldg., Drawer 3607, 1961 Stout Street, Denver, Colorado 80294

United States Department of the Interior

BUREAU OF RECLAMATION
UPPER COLORADO REGION
GRAND JUNCTION PROJECTS OFFICE
P.O. BOX 60340
2764 COMPASS DRIVE
GRAND JUNCTION, COLORADO 81506

TAKE PRIDE IN AMERICA

GJ-700

MAR 19 1992

Mr. Tyler Martineau
Manager, Upper Gunnison River
Water Conservancy District
120 North Boulevard
Gunnison CO 81230

Subject: Summary of February 20, 1992, Meeting Regarding Wayne N. Aspinall Unit Operations (General Correspondence Water Operation)

Dear Mr. Martineau:

Following is a summary of the results of a meeting held in the Upper Gunnison River Water Conservancy District Office, Gunnison, Colorado. An attendance list is enclosed.

The meeting was held to discuss the Bureau of Reclamation's (Reclamation) intent to pursue formal administration of Aspinall Unit water right decrees and present Reclamation's proposed "Substitute Supply Plan" (Plan). As presently contemplated, the Plan would potentially be made up of the following three major components:

1. Protection against Aspinall Unit calls would be provided through a Memorandum of Understanding (MOU) between Reclamation and the Upper Gunnison River Water Conservancy District (UGRWCD). Under the terms of the proposed MOU, Reclamation would agree that all perfected junior water right decrees that were listed in the Plan would be considered equal or senior to the Aspinall Unit water right decrees for purposes of administration. Therefore, their diversions would not be curtailed to the benefit of the Aspinall Unit.

2. Protection for junior domestic, municipal and industrial water right decrees from downstream decrees senior to the Aspinall Unit would be provided through replacement releases of Aspinall Unit storage under the terms of a water service contract with the UGRWCD. Replacement releases would be made from the Aspinall Unit to permit continued out-of-priority diversions by the junior water right decrees when an administrative call from a downstream senior water right is in effect.

3. Protection for irrigation water right decrees would be provided through replacement releases of either Aspinall Unit or Taylor Park refill storage under the terms of a water service contract with the UGRWCD. Again, replacement releases would be made to permit continued out-of-priority diversions by the junior water right decrees when an administrative call from a downstream water right senior to the Aspinall Unit is in effect. Reclamation Reform Act (RRA) compliance provisions would be associated with irrigation replacement releases as part of an Aspinall Unit Contract. RRA requirements associated with Taylor Park refill storage may possibly be waived. This issue is being more fully researched.

The UGRWCD indicated it would solicit input from water users and interested members of the public before making a decision regarding the proposed Plan. The UGRWCD presented a number of reasons why the local community and the Board of Directors feel that it would be difficult to initiate the proposed plan in 1992. However, the UGRWCD expressed the desire to cooperatively work with Reclamation to resolve these issues. Questions or comments regarding this meeting summary or the proposed Plan should be directed to Brent Uilenberg at (303) 248-0641.

Sincerely,

Jim Rooks

for Ronald Johnston
Projects Manager

Enclosure

cc: Mr. Randy Seaholm
Colorado Water Conservation Board
721 State Centennial Building
1313 Sherman Street
Denver CO 80203

Mr. Lee Spann
36781 West Highway 50
Gunnison CO 81230

Mr. William Trampe
393 County Road 8
Gunnison CO 81230

Mr. Richard Bratton
P.O. Box 669
Gunnison CO 81230

Mr. Art Cannon
Manager, Tri-County Water
Conservancy District
P.O. Box 347
Montrose CO 81402

Mr. Jim Hokit
Manager, Uncompahgre Valley
Water Users Association
P.O. Box 69
Montrose CO 81402

Mr. Eric Kuhn
Colorado River Water
Conservation District
P.O. Box 1120
Glenwood Springs CO 81602
(each w/encl)

Upper Gunnison Augmentation meeting

2/20/92
8:00 am

Name	Representing	Telephone
Tyler Martineau	Upper Gunnison	641-6065
Fred J. Crabtree	USBR	248-0655
Jim Hokit	U.V.W.U.A	249-3813
BRIAN AHRENS	S.E.O.	866-3581
KEITH KEPLER	"	249-6622
Bill Tremper	UGRWCD	641-0856
Steve McCall	USBR	248 0638
Brent Wilensberg	USBR	248-0641
Randy Seaholm	CWCB	866-3441
Eric Kuhn	CRWCD	945-8522
Mike Gross	CRWCD	" "
RONALD JOHNSTON	USBR	248-0690

Upper Gunnison River Water Conservancy District

MEMORANDUM

TO: Dick Bratton

FROM: Tyler Martineau

DATE: December 14, 1994

SUBJECT: Historical Aspinall Operations

The following is some evidence that there was an intent to operate the Aspinall Unit to fill downstream senior water rights that might be useful in your work on background information concerning the project. The information is from the decrees for the Upper Gunnison Basin Project which included Blue Mesa Reservoir, Morrow Point Reservoir, and Crystal Reservoir.

1000 CFS of Blue Mesa Power Plant right abandoned

In the decree dated October 21, 1965 in Case No. 5782 in Water District 59 the court found that one of three purposes of filing the supplemental statement of claim for the first enlargement of the Gunnison River Reservoir System was:

> "To effect a more perfect harmonization and correlation of the three principal units of the Upper Gunnison Basin Project or Gunnison River Reservoir System, to-wit: the Blue Mesa Reservoir, the Morrow Point Reservoir and the Crystal Reservoir and the releases therefrom through their respective power plant conduits, for the production of the ultimate amount of electrical energy in the three separate but correlated power plants connected therewith consonant with the final release of said stored, as well as direct flow water, into the channel of the Gunnison River below said project at a constant rate sufficient in quantity to fill all prior decreed priorities therefrom when commingled with the natural accretions therein." (See pp. 112-113).

With respect to Crystal Reservoir the court found:

> "That the releases from said reservoir, whether through the Crystal Reservoir Power Plant Conduit, or over the spillway of the dam shall, insofar as available, be in such quantity as will satisfy at all times prior decrees from said Gunnison River below the Crystal Reservoir Dam when commingled with the natural accretions in the channel of said river." (See pp. 132-133).

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Telephone (303) 641-6065 · Fax (303) 641-6727

And with respect to the Crystal Reservoir Power Plant Conduit the court found:

> "That the award herein requested to said conduit is a direct flow right, and is entirely independent of the water stored in the Crystal Reservoir as well as in the Reservoir system. However, in accordance with the integrated system of operation of the Blue Mesa, the Morrow Point and the Crystal Reservoir Power Plants, such stored water will be used to supplement the direct flow in whatever quantity necessary and available to operate said Crystal Reservoir Power Plant on a 24 hour basis at sufficient capacity, up to 20,000 kilowatts, to produce its integrated share of power, and at the same time provide the required releases of water to the channel of the river below the reservoir system, when commingled with the natural increases therein, to satisfy prior decrees therefrom".

and:

> "That said power plant will be located immediately below and at the base of the dam to said Crystal Reservoir, and the water discharged therefrom, as well as the water released over the spillway of said dam, will directly re-enter the channel of the Gunnison River and become available for irrigation and other beneficial uses on the lower reaches of said river." (See pp. 135-136).

I might mention that in this decree there are other similar references to operating the power facilities of the project to satisfy downstream rights. What is significant to me is that the language of the decree talks about the use of stored water to fill downstream rights, not just direct flow water. This indicates to me that there was an intent for the downstream rights to receive water in addition to what they could call down to their headgates prior to the Curecanti Project being built.

In the decree dated March 30, 1960 in Case No. 6981 in Water District 62 the court found that with respect to the Blue Mesa Power Plant:

> "That said power use being a non-consumptive use, said released water after passing through said power plant, as well as any water released over the spillway of said Crystal Reservoir dam, will immediately enter the channel of the said Gunnison River, and provide a constant year round flow in said river below said reservoir greatly in excess of the normal flow therein after the spring flood water season, greatly improving and stabilizing the supply available for existing decreed rights, and probably providing water for all potential uses and purposes hereinabove mentioned and described." (See pp. 261-262).

As you know there is language in other places in the decrees, and testimony, etc. that talks about the project facilitating the exchange of water for irrigation. I believe that the Bureau of Reclamation would have sought payment for the exchange of water while the releases of water described in the language above would have occurred as an incidental result of power operations at no cost to water users.

received 9-4-01

August 20, 2001
To: Those Interested
Re: Third Quarterly Meeting 2001 of Board of Directors of the Colorado River Water Conservation District held July 17-18 in Glenwood Springs
From: Marlene Zanetell, Director for Gunnison County

The CRWCD or "River District" met with Board Members from 13 of the Western Colorado Counties that comprise the District present. Absent were Bill Ferguson of Ouray County and Jack Hatfield of Pitkin County. The board welcomed new member Tom Sharp of Steamboat Springs, appointed by Rout County Commissioners to represent that County. He replaces Dan Burch, who had resigned this duty when he was recently offered and accepted a job with the River District, on its water engineering staff. Dan is also presently serving as Chair of the Colorado Water Congress.

I will be reporting to the public and the County Commissioners at the Commissioners August 21 meeting. I will also mail the report to interested parties. In addition, Bob Irby, Board member representing Saguache County, and I gave a report to the Upper Gunnison River Water Conservancy Dist. Board on July 23.

Here are some highlights from the Meeting:

1. Financial Matters:
At mid-year the River District is on target (revenues/expenditures) with its 2001 General Fund budget of $3,206,882. The general fund relies on property tax levy of .283 of one mill (a mill is .001 or 1/10 of 1%). Eric Kuhn, Manager, reported that property values overall in the District have increased by approximately 20% for taxing purposes, per the statewide reassessment required this year of County Assessors. As the District is not de-Bruced this will mean that the our revenues will increase in next year's budget, but per the Tabor cap, do so while lowering the present mill levy. The Board will be meeting in September for a special Budget Workshop, to begin preparation of the 2002 Budget.

The Board, on recommendation of its Investment Committee, hired Langhoff Brooks andCo (LBC) for investment advisory services and also adopted revisions to the District's Investment Policy.

Board also voted to proceed with sale of a parcel of land the District owns in Glenwood Springs, next to its Office Building headquarters. As there is ample extra room in that building, now rented to others, to accommodate future staff/administrative needs, it was thought best to sell the unneeded adjacent parcel and thus see it returned to the property tax base of Garfield County. Tom Sharp of Rout County dissented in that vote.

Other matters addressed included:
1. Proposed enlargement of over 8,000 a.f. of the Elkhead Reservoir near Craig. The Board met in Craig last May with local officials and the public on this matter. About half of the new capacity will provide water for the endangered fish in the Yampa

River Basin, per its PBO, and be funded by the federal/state Recovery Program. The remainder will provide for future supply needs in that area and be funded by partnership with local participators and beneficiaries.

2. Board heard presentation that updated the progress on the following studies: Report from Peter Binney, project manager for the Douglas County Water Resources Study, which Denver and the River District help fund. This study builds on the earlier Metro Area-wide Supply Investigation and its scope includes detailed examination of the already identified approaches that can stretch or produce "new" water for the larger metro area, including Arapahoe County, from existing supplies, obviating any need for more transmountain diversion from Western Colorado: more re-use systems, catching/using storm run-off, integrating systems, conjunctive use of surface/groundwater, and careful use and recharge of the vast Aquifers (underground reservoirs) under their feet—which contain 400,000,000 acre feet. Lee Rozaklis of Hydrosphere(who led the original Metro Supply Study mentioned above) reported on progress of the Upper Colorado River Basin (UPCO) Study of W.Slope water demands, rights and needs in Grand and Summit Counties. Water projects already in place in those counties divert about half of their natural water yield to the front range. We want no further export. As River Dist. Chair Paul Ohri puts it: "Not one more drop." The above studies will ultimately be inter-related.

In addition, Board briefly touched on some Gunnison River Basin issues. I attach a few pages from Eric's comprehensive written report which covers our basin as well as others and also broader issues of the District. Check it out in full on the web at www.crwcd.gov. An update from Eric on the statue of the Gunnison Basin PBO, per the endangered fish, is also attached.

re Black Canyon and Asp. degrees

Eric reported briefly with regard to the Black Canyon of the Gunnison National Park and the application the NPS has made to state water court to quantify flows for the Park, pursuant to their already decreed right. Eric wants to "keep the feds feet to the fire and resolve the quantification, and be sure they protect the historic water users" in the Gunnison Basin. (The NPS has publicly and to our Board said they will stipulate to this and also subordinate their '33 priority to a date co-equal with the Aspinal Unit's '57 decreed right.) Eric said Interior Sec. Gail Norton has assigned a counsellor to bring the "federal family" of agencies and obligations concerned with theAspinall unit together on the Black Canyon issues. During the negotations associated with the water courts proceedings on the NPS application a "new" protocal for the operation of the Unit will be developed—determining how/when water releases will be made from the Unit to meet its many obligations, federal and also state (per its water decrees). Meanwhile the Colorado Water Partnership has mounted an aggressive campaign in the state press and in Washington in an effort to use the Black Canyon quantification process/Aspinall Unit re-operations to lay claim to "240,000 a.f. of Blue Mesa water for Front Range use." Our Congressman Scott McInnis has resonded to Sec. Norton. As well, River Dist. Staff and att. David Hallford prepared the thoughtful response to her, which I attach here.

The Aspinall Unit is not a "typical" western water reclamation project. Often overlooked, I think, is its prime storage purpose by Congressional authorization as a Colorado River Storage Project (1 of 4 in the West), built for the benefit of Colorado and the other Upper Basin states to enable them to meet their obligations per the Colorado River Compact. The storage helps to assure that even in period of drought we have this storage buffer to meet the Compact requirement of Colorado River flows to the lower basin states: 7.5 million a.f. yearly, as measured at Lee's Ferry. Thus water right holders in Colorado can better rely that even in scarcity they won't be called out by the Compact obligation. Congressman Aspinall put this storage in place to thus serve and protect us in Colorado. This pertains, of course, to any rights tributary to the Colorado River (as is the Gunnison)—whether here in our County, on the W. slope, or even the front range providers with rights for transmountain diversion from that system. Few will want this fundamental obligation of the Aspinall Unit tampered with, as would the bald attempt to influence re-operations such that 240,000 a.f is raided.

Other obligations of the Aspinall Unit are pursuant to language in its adjudicated water decrees. These were obtained by the River District (and thus carefully worded) and then assigned by Contract to the federal government. The decrees (5 related) lay claim to the then unappropriated water of the Upper Gunnison River and its tributaries and govern the administration of the Unit's reservoirs and operations. The decrees are for, quoting from them, "the benefit of the in-basin beneficial users for irrigation, domestic, municipal, industrial, power generation, stock watering, flood control, piscatorial, wildlife protection and preservation, and recreation uses, and to release water insofar as is available into the Gunnison River in sufficient quantity, when commingled with the natural accretions to the river, to satisfy prior decreed priorities from the Gunnison River below the Aspinall Unit." A reading of the decrees shows they make this and similar statements again and again, which means the State will ultimately have to stand by them and this language—as they always have—as we proceed on to new understandings of how the Unit will operate. For example, when our Gunnison Basin friends, such as Uncompahgre Water Users and Redlands, exercise their rights with priority dates senior to the Aspinall's '57 right, those rights are to be met , as always, by Aspinall operational releases, and certainly not by the ranches we have left in the Upper Gunnison Basin (Gunnison & Hinsdale Counties). I believe we can look to the Attorney General for assure these decrees are respected and thus Assure our state's adjudicative system of appropriation retains its integrity. As well, the Colorado Water Conservation Board has in the past always provided this guidance to the BuRec with regard to operations of the Aspinall Unit and surely will, as re-operations are clarified for the future, through the negotiations that are beginning on the Black Canyon quantification. This is a key issue for many of those in Gunnison County who have filed statements of opposition. The opposers from the front range have, needless to say, other concerns.

Next regular Quarterly meeting is set for October 16-17, 2001. Please contact me with comments, concerns. I value your input and your work on water matters so vital to our future. Thank you. Marlene Zanetell

Marlene

Interim Agmt – Colo & Feds as to how the aspinal is to operated

From 1995 Fish Agreement re-signed 2000

to preserving the natural environment to a reasonable degree and is consistent with the Board's authorities under Section 37-92-102(3), Colorado Revised Statutes; and,

(k) WHEREAS, pursuant to the McCarran Amendment (43 U.S.C. 666), the United States, as assignee of the water rights for the Aspinall Unit acquired by the Colorado River Water Conservation District under state law, is "deemed to have waived any right to plead that State laws are not applicable or that the United States is not amenable thereto by virtue of its sovereignty," and is "subject to the judgments, orders, and decrees of the court having jurisdiction." The Aspinall Unit water rights governing the administration thereof were adjudicated in the following cases by State courts having jurisdiction over such matters in the Gunnison River Basin:

C.A. 5590 District Court/County of Gunnison

C.A. 5782 District Court/County of Gunnison

C.A. 6981 District Court/County of Montrose

C.A. C-10045 District Court/County of Montrose

The foregoing decrees are for irrigation, domestic, municipal, industrial, power generation, stock watering, flood control, piscatorial, wildlife protection and preservation, and recreation uses, and to release water insofar as available into the Gunnison River in sufficient quantity, when commingled with the natural accretions to the river, to satisfy prior decreed priorities from the Gunnison River below the Aspinall Unit; and,

(l) WHEREAS, the parties hereto desire to enter into a water delivery agreement to protect Aspinall Unit releases, on an interim basis, during the months of July, August, September and October, as necessary to provide a minimum flow in the Gunnison River for the

Upper Gunnison River Water Conservancy District

re Subordination Int. agreement for fish flows

January 10, 1995

Gunnison County Board of
County Commissioners
200 E. Virginia Ave.
Gunnison, CO 81230

Dear Commissioners:

The Board of Directors of the Upper Gunnison River Water Conservancy District understands from your meeting held on December 20, 1994 that Gunnison County is considering sending a letter to Jim Lochhead, Director of the Colorado Department of Natural Resources, thanking him for the state's ongoing efforts to obtain protection for historical uses of water from downstream senior calls in the Gunnison basin. The directors also understand that you delayed your decision concerning the letter in order to allow the district an opportunity to submit comments to the county.

As you know the Bureau of Reclamation (USBR), the U. S. Fish & Wildlife Service, and the Colorado Water Conservation Board (CWCB) have been negotiating a contract to deliver stored water from the Aspinall Unit to be used for endangered fish passage below the Redlands Power Canal diversion near Grand Junction. A principal issue in the contract is whether the USBR will be able to operate the Aspinall Unit reservoirs so that water users in the Gunnison basin will continue to receive the protection from downstream senior calls that the Aspinall Unit has provided for the past 28 years. The UGRWCD has been extensively involved in an effort to obtain political support from local, state, and federal agencies for the desired reservoir operations.

In the past six months we have succeeded in gaining the support of major stakeholders including, among others, the CWCB and the U. S. Fish & Wildlife Service for the protection of historic water uses from downstream calls. These organizations have all strongly communicated this support to the USBR. The USBR has just completed an internal legal review which concludes that it can legally operate the Aspinall Unit to provide incidental benefits to fill the downstream senior rights. We are now waiting to see how the USBR's legal review will affect the wording included in the next version of the endangered species contract prepared by the USBR. We should have a new draft of the contract by January 31. The district does not believe that additional communication with the state is needed prior to the new draft of the contract being made available. On the other hand after the next version of the contract is made available, letters to the state and other organizations may be helpful depending upon whether we wish to extend a thank you for the support previously received, or seek new support for a reconsideration of the matter.

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The Upper Gunnison River Water Conservancy District appreciates the county's interest in seeking protection for the basin from downstream calls. The district would be more than willing to provide information to be used in future correspondence based upon the district's extensive knowledge of the history of the operation of the Aspinall Unit and the specifics of the past commitments made by others that are associated with that operation. There are a number of important elements of the past history and commitments of which you should be informed. We would also be happy to share with you the District's strategy for acquiring the desired protection.

Thank you for the opportunity to comment on the proposed letter.

Very truly yours,

William S. Trampe

William S. Trampe,
Chairman

STATE OF COLORADO

Colorado Water Conservation Board
Department of Natural Resources

721 State Centennial Building
1313 Sherman Street
Denver, Colorado 80203
Phone (303) 866-3441
FAX (303) 866-4474

Roy Romer
Governor

James S. Lochhead
Executive Director, DNR

Daries C. Lile, P.E.
Director, CWCB

November 22, 1994

Ms. Carol DeAngelis
U.S. Bureau of Reclamation
Grand Junction Projects Office
P.O. Box 60340
Grand Junction, Colorado 81506

Ref: Aspinall Unit Operation Matrix

Dear Carol:

The Colorado Water Conservation Board generally supports an operational philosophy for the Aspinall Unit (formerly Curecanti Unit) which embraces the following concepts. The Board suggests the following order of priority for satisfying as many of these concepts as possible.

1) Releases should be coordinated in a manner which continues to provide the amount of water that has historically been available to water users downstream of the Aspinall Unit. Historic releases have usually been sufficient to keep downstream water users whole except in severe dry years. The Aspinall Unit should not place a direct call for water under its water rights in a manner which violates the spirit and intent of the 60,000 acre foot subordination described in the 1959 Economic Justification Report for the Curecanti Unit of the Colorado River Storage Project.

   Releases should also be such that the 300 cfs minimum bypass flow for the Black Canyon below the Gunnison Tunnel is satisfied. This bypass when added to the tributary inflows will generally satisfy downstream water rights except during drought years. During drought years releases should be increased to the extent possible to keep downstream water users whole, particularly if releases to maintain 300 cfs for endangered fish below Redlands are made. In 1994, this required a Gunnison mainstem draft of between 550 and 600 cfs at the gage below the Gunnison Tunnel. Providing enough water out of Crystal to keep mainstem senior water rights from impacting upstream juniors should be the top priority in developing the annual operating plan.

In conclusion, as contracts for Endangered Fish, the National Park Service and others are negotiated and implemented the Board reserves the right to modify its position as may be appropriate. Also, we hope that the matrix concept can take on more definition as it evolves. It had been our hope that the matrix could have months across the top and uses down the side with recommended flows or reservoir levels in the matrix. The matrix would evolve in to a useful tool over time and replace the need to constantly go back and look through the record for similar situations when making decisions. Thanks very much for considering these recommendations.

Sincerely,

Daries C. Lile
Director

cc: Aspinall Operations Mailing List
DCL\DRS\vt

W:\BOARDMEM\NOV94\vt69.mem

STATE OF COLORADO

Colorado Water Conservation Board
Department of Natural Resources
1313 Sherman Street, Room 721
Denver, Colorado 80203
Phone: (303) 866-3441
FAX: (303) 866-4474

RECEIVED
MAY 0 5 2000
COLORADO RIVER WATER
CONSERVATION DISTRICT

MEMORANDUM

TO: Chuck McAda

FROM: Randy Seaholm

DATE: May 2, 2000

SUBJECT: Flow Recommendations to Benefit Endangered Fishes in the Colorado and Gunnison Rivers

Thank you for the opportunity to comment the draft final report dated January 2000. In general we are supportive of the approach taken that allows the flow recommendations to be based on the amount precipitation and reservoir inflow occurring during any given year. We strongly support matching flow recommendations to climatic and hydrologic conditions rather than forcing the reservoir system to meet recommendations on a frequency basis that may force drawdowns on the reservoirs unnecessarily and to the detriment of all resources.

The following are our comments on the draft final report.

Page 1-1, Last Paragraph; It would be useful to list the causes contributing to the decline of the native fishes in the Gunnison and the Colorado downstream of confluence into major factors and minor factors for these river segments. For example, there is very little dike construction in these two reaches. However, there are only few barriers to movement, but the Redlands diversion dam is clearly significant and has been addressed. Also, the vegetative encroachment that has occurred is largely non-native, while it is clearly significant, it likely would have occurred with or without water development. Finally, efforts to eradicate the species in the fifties and sixties should be included since they had to have at least as much impact as diking in these reaches.

Page 1-2 and 1-4; The map should show the critical habitat river reaches under study in this report and the flow recommendation monitoring points.

Page 1-3, 1st Paragraph; There are no reservoirs in the reaches of critical habitat under investigation in this report and this sentence should be removed or revised to reflect that fact.

See back page & then the 11/22/94 CWCB memo it relates to (attachment re "call protection

Page 1-11, Last sentence; I would prefer the word "hypothesized" to "inferred" as that is a logical premise that we are trying to prove or disprove given all the other changes that have happened on the river.

Page 2-1, Section 2.1.1 Colorado River; Need to expand the hydrology to show what the mainstem produces above the Gunnison confluence, what the Gunnison adds, and then what the stateline flows are in order to avoid confusion. It would also be appropriate to mention how much the three major diversions take and return. I would be happy to work with you on this so that it is not overly complex, yet accurate.

Page 2-1, Section 2.1.1 Gunnison River; Please include the average annual inflow of the North Fork of the Gunnison and the Uncompahgre Rivers. Since these rivers all join fairly close together, it is important for the reader to clearly understand that Aspinall controls only about one-half of all the water arriving at Whitewater and thus helps underscore the need to try and have any bypasses from Aspinall coincide with the peaks from these two major tributaries for maximum benefits without causing flood damages to property along the lower Gunnison River. The rest of your discussion does that, but the locations and volumes of inflow help bring further meaning to that point.

Pages 2-1 and 2-2; Gaged flows actually are reflective of the depleted flows. That is they show the amount of flow passing a given point considering all upstream storage and depletions that are occurring at any given time. In order to arrive at a natural flow, or a flow that would have occurred absent any actives of man, you have to add back in the depletions and upstream regulation due to storage.

Appendix Table A-3; It is unclear how Dolores River depletions were factored in to the discussion. Dolores River depletions only effect the lower 50-60 miles of the Colorado mainstem recommendations and not the upper half of the mainstem recommendations. ?

Page 2-2, 1st Paragraph; The 1977-1996 period while it had a good mix of wet and dry years, was likely statistically a wet period. How do the statistics for this period compare to the long-term average?

Page 2-2, Section 2.1.2 Colorado River; It seems like most of this discussion is unnecessary and could be better handled by simply referring the reader to the 15-Mile Reach PBO and flow recommendations. This section needs to focus on efforts to coordinate the 15-Mile Reach PBO activities with the Gunnison for the benefit of the Colorado downstream of the Gunnison and not revisit actions for a reach of river that consultation has already been completed on.

Page 2-2, Section 2.1.2 Gunnison River; The discussion of water development on the Gunnison River should include mention of reduced flood damages, certainty for water diversions which has not only benefited the irrigator, but the recreational rafting and sport fishing industry both above and below the Aspinall Unit as well. In fact, the gold medal trout fishery downstream of Aspinall and recreational rafting both above and below

Uncompahgre has likely been minimal to none given the warmer water temperatures coming in from the North Fork and Uncompahgre rivers. We have not had the opportunity to review the temperature model, but hope it fairly showed some increase in water temperatures coming in from the North Fork and Uncompahgre as a result of irrigation depletions and returns in those basins. It would be helpful to note some of those impacts as well.

We did not review chapter 3 extensively and will rely primarily on comments made by the Colorado Division of Wildlife in this area. However, we did notice a need to divide observations out by river reaches. It is not fair to mix observations for the Colorado mainstem at certain flows with observations made on the Gunnison or on the mainstem above the Gunnison confluence at different flows.

Page 4-6, 2nd Paragraph; Should really run statistics for the period of record and the study period used to see if they are in fact comparable. I have no problem eliminating wet and dry periods, but should still run statistics.

Page 4-10, Section 4.3.1; I doubt gage error is 10% or higher at the stations used. Should use the % error described in the quality of records for the stations used.

Page 4-11, Figure 4.2; The State of Colorado can not support flow recommendations that deliberately force totally uncontrolled spills at any CRSP facility and particularly spills that would cause flood flows at Delta in excess of 18,000 cfs or 20,000 cfs at Whitewater. Wet year flood flows that occur 10% of the time or less will likely be what they are and our goal and that of Reclamation's I hope well be to operate Aspinall in as safe and responsible manner as possible in order to minimize flood damages. In the really wet years reservoir operators are struggling to maintain as much control of flows as possible to minimize dam safety and flooding risks and it is simply not prudent to try and generate or guarantee flows under these circumstances. Reclamation was in an uncontrolled spill situation when floods of the magnitude requested happened before and there is no reason to believe things will be any different in the future.

Page4-17, 2nd Paragraph; Again, we do not believe 148,000 ac\ft is available to the Service, only that required to offset existing depletions. The language here should be changed to at least reflect both interpretations.

Appendix Table A-20; Please check values, I do not believe we have every released nearly 3,000,000 ac\ft from Blue Mesa.

Conclusion

We are generally supportive of the approach taken that ties the flow recommendations to climatic and hydrologic conditions that exist in the basin at any given time and urge you to continue that approach. However, we can not support flow recommendations that cause Crystal Reservoir to operate in an uncontrolled spill manner especially when the

please see p. 2 - 3 and attachments re Black Canyon / Asp. Unit / Rec. Prog.

August 20, 2001
To: Those Interested
Re: Third Quarterly Meeting 2001 of Board of Directors of the Colorado River Water Conservation District held July 17-18 in Glenwood Springs
From: Marlene Zanetell, Director for Gunnison County

The CRWCD or "River District" met with Board Members from 13 of the Western Colorado Counties that comprise the District present. Absent were Bill Ferguson of Ouray County and Jack Hatfield of Pitkin County. The board welcomed new member Tom Sharp of Steamboat Springs, appointed by Rout County Commissioners to represent that County. He replaces Dan Burch, who had resigned this duty when he was recently offered and accepted a job with the River District, on its water engineering staff. Dan is also presently serving as Chair of the Colorado Water Congress.

I will be reporting to the public and the County Commissioners at the Commissioners August 21 meeting. I will also mail the report to interested parties. In addition, Bob Irby, Board member representing Saguache County, and I gave a report to the Upper Gunnison River Water Conservancy Dist. Board on July 23.

Here are some highlights from the Meeting:

1. Financial Matters:
At mid-year the River District is on target (revenues/expenditures) with its 2001 General Fund budget of $3,206,882. The general fund relies on property tax levy of .283 of one mill (a mill is .001 or 1/10 of 1%). Eric Kuhn, Manager, reported that property values overall in the District have increased by approximately 20% for taxing purposes, per the statewide reassessment required this year of County Assessors. As the District is not de-Bruced this will mean that the our revenues will increase in next year's budget, but per the Tabor cap, do so while lowering the present mill levy. The Board will be meeting in September for a special Budget Workshop, to begin preparation of the 2002 Budget.

The Board, on recommendation of its Investment Committee, hired Langhoff Brooks andCo (LBC) for investment advisory services and also adopted revisions to the District's Investment Policy.

Board also voted to proceed with sale of a parcel of land the District owns in Glenwood Springs, next to its Office Building headquarters. As there is ample extra room in that building, now rented to others, to accommodate future staff/administrative needs, it was thought best to sell the unneeded adjacent parcel and thus see it returned to the property tax base of Garfield County. Tom Sharp of Rout County dissented in that vote.

Other matters addressed included:
1. Proposed enlargement of over 8,000 a.f. of the Elkhead Reservoir near Craig. The Board met in Craig last May with local officials and the public on this matter. About half of the new capacity will provide water for the endangered fish in the Yampa

River Basin, per its PBO, and be funded by the federal/state Recovery Program. The remainder will provide for future supply needs in that area and be funded by partnership with local participators and beneficiaries.

2. Board heard presentation that updated the progress on the following studies: Report from Peter Binney, project manager for the Douglas County Water Resources Study, which Denver and the River District help fund. This study builds on the earlier Metro Area-wide Supply Investigation and its scope includes detailed examination of the already identified approaches that can stretch or produce "new" water for the larger metro area, including Arapahoe County, from existing supplies, obviating any need for more transmountain diversion from Western Colorado: more re-use systems, catching/using storm run-off, integrating systems, conjunctive use of surface/groundwater, and careful use and recharge of the vast Aquifers (underground reservoirs) under their feet—which contain 400,000,000 acre feet. Lee Rozaklis of Hydrosphere(who led the original Metro Supply Study mentioned above) reported on progress of the Upper Colorado River Basin (UPCO) Study of W.Slope water demands, rights and needs in Grand and Summit Counties. Water projects already in place in those counties divert about half of their natural water yield to the front range. We want no further export. As River Dist. Chair Paul Ohri puts it: "Not one more drop." The above studies will ultimately be inter-related.

In addition, Board briefly touched on some Gunnison River Basin issues. I attach a few pages from Eric's comprehensive written report which covers our basin as well as others and also broader issues of the District. Check it out in full on the web at www.crwcd.gov. An update from Eric on the status of the Gunnison Basin PBO, per the endangered fish, is also attached.

re Black Canyon and Asp. degrees

Eric reported briefly with regard to the Black Canyon of the Gunnison National Park and the application the NPS has made to state water court to quantify flows for the Park, pursuant to their already decreed right. Eric wants to "keep the feds feet to the fire and resolve the quantification, and be sure they protect the historic water users" in the Gunnison Basin. (The NPS has publicly and to our Board said they will stipulate to this and also subordinate their '33 priority to a date co-equal with the Aspinal Unit's '57 decreed right.) Eric said Interior Sec. Gail Norton has assigned a counsellor to bring the "federal family" of agencies and obligations concerned with theAspinall unit together on the Black Canyon issues. During the negotations associated with the water courts proceedings on the NPS application a "new" protocal for the operation of the Unit will be developed—determining how/when water releases will be made from the Unit to meet its many obligations, federal and also state (per its water decrees). Meanwhile the Colorado Water Partnership has mounted an aggressive campaign in the state press and in Washington in an effort to use the Black Canyon quantification process/Aspinall Unit re-operations to lay claim to "240,000 a.f. of Blue Mesa water for Front Range use." Our Congressman Scott McInnis has resonded to Sec. Norton. As well, River Dist. Staff and att. David Hallford prepared the thoughtful response to her, which I attach here.

The Aspinall Unit is not a "typical" western water reclamation project. Often overlooked, I think, is its prime storage purpose by Congressional authorization as a Colorado River Storage Project (1 of 4 in the West), built for the benefit of Colorado and the other Upper Basin states to enable them to meet their obligations per the Colorado River Compact. The storage helps to assure that even in period of drought we have this storage buffer to meet the Compact requirement of Colorado River flows to the lower basin states: 7.5 million a.f. yearly, as measured at Lee's Ferry. Thus water right holders in Colorado can better rely that even in scarcity they won't be called out by the Compact obligation. Congressman Aspinall put this storage in place to thus serve and protect us in Colorado. This pertains, of course, to any rights tributary to the Colorado River (as is the Gunnison)—whether here in our County, on the W. slope, or even the front range providers with rights for transmountain diversion from that system. Few will want this fundamental obligation of the Aspinall Unit tampered with, as would the bald attempt to influence re-operations such that 240,000 a.f is raided.

Other obligations of the Aspinall Unit are pursuant to language in its adjudicated water decrees. These were obtained by the River District (and thus carefully worded) and then assigned by Contract to the federal government. The decrees (5 related) lay claim to the then unappropriated water of the Upper Gunnison River and its tributaries and govern the administration of the Unit's reservoirs and operations. The decrees are for, quoting from them, "the benefit of the in-basin beneficial users for irrigation, domestic, municipal, industrial, power generation, stock watering, flood control, piscatorial, wildlife protection and preservation, and recreation uses, and to release water insofar as is available into the Gunnison River in sufficient quantity, when commingled with the natural accretions to the river, to satisfy prior decreed priorities from the Gunnison River below the Aspinall Unit." A reading of the decrees shows they make this and similar statements again and again, which means the State will ultimately have to stand by them and this language—as they always have—as we proceed on to new understandings of how the Unit will operate. For example, when our Gunnison Basin friends, such as Uncompahgre Water Users and Redlands, exercise their rights with priority dates senior to the Aspinall's '57 right, those rights are to be met , as always, by Aspinall operational releases, and certainly not by the ranches we have left in the Upper Gunnison Basin (Gunnison & Hinsdale Counties). I believe we can look to the Attorney General ~~for~~ to assure these decrees are respected and thus Assure our state's adjudicative system of appropriation retains its integrity. As well, the Colorado Water Conservation Board has in the past always provided this guidance to the BuRec with regard to operations of the Aspinall Unit and surely will, as re-operations are clarified for the future, through the negotiations that are beginning on the Black Canyon quantification. This is a key issue for many of those in Gunnison County who have filed statements of opposition. The opposers from the front range have, needless to say, other concerns.

Next regular Quarterly meeting is set for October 16-17, 2001. Please contact me with comments, concerns. I value your input and your work on water matters so vital to our future. Thank you. Marlene Zanetell Marlene ph 970-641-0850

Po Box 418, Gunnison CO 81230

d. Ruedi Reservoir futures study.

January to April 2001 Update
We are continuing to work with the Roaring Fork Conservancy and the Ruedi Water and Power Authority to select a biological consultant.

April to July 2001 Update
At the May 31-June 1 Special Board meeting the Board approved a contract with the Roaring Fork Conservancy to begin the stream biology work in the Fryingpan River. The Homestake partners have agreed to participate and contribute funding to the project. We hope to make a presentation to the Board on the results of last year's work which focused on regional economics.

e. Eagle Park Reservoir yield enhancement.

f. Evaluation/preparation of augmentation/substitute supply plans in the Muddy Creek, Lower Eagle River and Middle Colorado River sections.

GUNNISON RIVER BASIN (DIVISION 4)

The Gunnison River is the state's second largest stream in terms of mean annual flow. The average annual undepleted flow at Grand Junction is approximately 2.4 million a.f./year. The Gunnison River Basin and the lower portion of the Dolores River Basin create Water Division 4. Only that portion of the Dolores River which lies in Mesa County is included within the River District's boundaries.

The Gunnison River Basin has been dominated by federal water development efforts, including the Uncompahgre Project, Bostwick Park Project, Smith Fork Project, Dallas Creek Project, Paonia Project and the Aspinall Unit. The Aspinall Unit contains three reservoirs: Blue Mesa, Morrow Point and Crystal. At nearly one million acre feet of capacity, Blue Mesa Reservoir is the largest in the State. Agricultural uses and reservoir evaporation are major consumptive uses within the Gunnison Basin. Agriculture consumes approximately 460,000 a.f./year out of a total Basin use of approximately 490,000 a.f./year. The lower 60 miles of the Gunnison River is designated critical habitat for endangered fish.

There are no major transmountain diversions out of the Gunnison River. There are three small, older transmountain diversions into the Rio Grande Basin.

RIVER DISTRICT GUNNISON BASIN RESOURCES

The River District no longer holds any conditional water rights in the Gunnison River Basin. At one time the River District held a number of rights, which were ultimately conveyed to either the United States or conservancy districts (e.g., the Upper Gunnison Project's conditional rights).

The River District holds a contractual interest in the releases from Taylor Park Reservoir through its participation in the Taylor Park Reservoir exchange. In 1975 the River District, Upper Gunnison, Uncompahgre Valley Water Users Association, and the United States Bureau of Reclamation signed the original Taylor Park exchange agreement. That agreement was supplemented in 1990 when the same parties signed an agreement conveying the Taylor Park Reservoir refill right to the United States.

In 1961 the River District conveyed the primary water rights for the Aspinall Unit (then referred to as the Curecanti Unit) to the United States. The assignment included a provision that the United States would operate the Aspinall Unit in a manner consistent with the development of water within the Gunnison River Basin.

SUMMARY OF MAJOR BASIN ISSUES

The major issues in the Gunnison River Basin are associated with the operation of the major federal projects in the Gunnison Basin, the possible effects of the Union Park Water Authority to obtain a water supply contract from Blue Mesa Reservoir and the preparation of a basin-wide biological opinion.

In the early 1900's the Bureau of Reclamation constructed the Gunnison Project (also referred to as the Uncompahgre Valley Project because it is operated by the Uncompahgre Valley Water Users Association) which diverts Gunnison River water through a tunnel into the Uncompahgre Valley. In the 1930's the 106,00 a.f. the Taylor Park Reservoir was added to the project to provide late season water. Taylor Park Reservoir is located on the Taylor River, upstream from the City of Gunnison.

In the 1930's the United States withdrew lands from the Gunnison Gorge and created the Black Canyon National Monument. The southern boundary of the Monument is just downstream of the Gunnison Tunnel Diversion Dam. In the late 1970's the Colorado Supreme Court awarded the United States a federal reserved water right for the Monument. This right has not yet been quantified.

In the 1960's the Bureau of Reclamation built a three-reservoir complex now referred to as the Aspinall Unit. The Aspinall Unit is just upstream of the Gunnison Tunnel Diversion. The purposes of the Aspinall Unit include compact storage, power generation, water supply and recreation. Prior to the construction of the project, the River District and the Upper Gunnison River Water Conservancy District obtained an agreement from the United States subordinating the project to 60,000 a.f. of upstream in-basin depletions. A formal subordination agreement was executed in 2000.

The Aspinall Unit is currently undergoing a Section 7 Consultation review and PBO discussions will be getting underway. Issues surrounding the operation of the Aspinall Unit, the Section 7 consultation on the Aspinall Unit, the quantification of the Black Canyon National Monument water rights, interpretation of the subordination commitment and delivery of Aspinall water to the Lower Gunnison River for fish purposes are all intertwined.

ONGOING PROJECTS/ACTIONS

1. Participation in the Gunnison River PBO process.

MEMORANDUM
June 29, 2001

TO: Board of Directors, CRWCD

FROM: Eric Kuhn EK

SUBJECT: ***Update on the Gunnison Basin Programmatic Biological Opinion***
per Sect. 7 of End. Species Act - the Colo. Recovery Prog. for the four endangered fish species

In preparation for the Gunnison Basin Programmatic Biological Opinion (PBO), the Bureau of Reclamation has prepared a draft Gunnison Basin Water Demand Study. The purpose of the study is to estimate new depletions in the Gunnison Basin through the year 2050. This information would be used as input to discussion leading to a depletion allowance that will be incorporated into the PBO.

Based on meeting the population projections provided by the State of Colorado Demographer's Office, Reclamation estimated that additional municipal and light industrial depletions in the Gunnison Basin will be about 11,300 a.f. Reclamation made three key assumptions that are shown on page 4.

Reclamation has asked for comments and a number of Gunnison Basin entities have responded. These letters are attached. From the basin perspective, the most controversial assumption is that irrigation and livestock use will not increase (NOR WILL IT DECREASE) over the next 50 years. The letters from Upper Gunnison, Redlands and Uncompahgre question this assumption. Uncompahgre's letter provides a good description of what is happening within their agricultural area.

Estimating what might happen to agricultural depletion is very difficult. Based on land use records from the mid-1980s, there has been a significant reduction in agricultural acreage. In the Eagle and Roaring Fork Rivers, depletions have been reduced, but this may not be the case elsewhere.

I never contemplated that the Gunnison Basin PBO depletion allowance would be limited to the Reclamation estimate. I will predict that the final depletion number will be similar to the Yampa Basin in the 30,000 to 50,000 a.f. range.

A controversial assumption from the State perspective is the "no new transmountain diversions." The River District has taken the position that the PBO should be based on what is "reasonably foreseeable" and no transmountain diversion meets this standard

Based on the results of the last PBO meeting, we will have some time to work out an acceptable depletion allowance. On June 26th, all parties agreed that a PBO cannot proceed until more progress is made on quantification of the Black Canyon Monument reserved right. This will delay the process by two to three years.

amount of water that can be developed in the future per PBO without jeopardizing the endangered fish in the lower Gunnison. But under the Colorado Recovery Program that water can be used within or taken out of the Basin. So a huge depletion allowance is not in our Basin's interest.

REK/ldp
Attachments

COLORADO RIVER WATER
CONSERVATION DISTRICT

Protecting Western Colorado Water Since 1937

August 15, 2001

The Honorable Gale Norton, Secretary
U.S. Department of the Interior
Washington, DC 20240-0001

Re: Quantification of the United States Water Rights for the Black Canyon of the Gunnison National Monument and Related Gunnison River Basin Issues

Dear Secretary Norton:

I am writing to you to provide input and seek your assistance in addressing the significant water issues facing the Gunnison River Basin. As you are undoubtably aware, the major issue currently facing the Gunnison River Basin is the quantification of reserved rights held by the United States for the Black Canyon of the Gunnison National Park (Black Canyon Reserved Right). In a parallel process, the Recovery Program is working on a programmatic (or basin-wide) biological opinion for the Gunnison River Basin. This proposed biological opinion (PBO) is critical to the continued operation of all existing federal projects and many private water diversions within the basin. At the last meeting of the PBO work group on June 26, 2001 in Montrose, there was unanimous agreement that further progress on the PBO is impossible until a number of major issues associated with the quantification of the Black Canyon Reserved Right are settled.

The River District believes that a relatively simple solution to these complex problems exists that is consistent with existing contracts, agreements and water decrees and meets the needs of the Fish and Wildlife Service, Park Service, Reclamation, the other federal and state resource agencies and the local basin interests. We believe that this solution would save hundreds of thousands, perhaps millions, of dollars in litigation expenses by all parties and would avoid a lengthy and politically divisive fight among numerous competing interests.

As background, the Colorado River Water Conservation District (River District) was chartered by the Colorado General Assembly in 1937 to develop and protect Colorado's compact entitled waters under the 1922 Colorado River Compact and to meet the present and future water needs of its inhabitants. The River District covers all of Western Colorado north of the San Juan Mountains and west of the continental divide including the entire Gunnison River Basin.

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The River District has a rich and active history of dealing with federal, state and local water issues in the Gunnison Basin, including adjudication of water rights for many federally authorized or participating projects such as those for the Aspinall Unit (formally Curecanti Unit), forming local conservancy districts, and brokering a number of critical contracts and agreements. Most recently, the River District has taken aggressive actions to assist with the recovery of four endangered fishes as contemplated by the Upper Colorado River Endangered Fish Recovery Program (Recovery Program).

The Gunnison River can be fairly characterized as a federally-dominated stream system. The Basin includes six active Reclamation Projects, the Wayne Aspinall Unit (a three-reservoir component of the Colorado River Storage Project System), a National Park, a National Recreation Area and miles of river reach designated as critical habitat for the four native Colorado River fishes listed as endangered under the Endangered Species Act. All of the Basin's major reservoirs, including Blue Mesa Reservoir - Colorado's largest, were built by the Bureau of Reclamation.

The United States was awarded the Black Canyon Reserved Right in Colorado State Water Court proceedings in the late 1970s, and several important issues have already been settled. The amount of the right was left open to be quantified by further Water Court proceedings. The United States' application (filed in January 2001) to quantify the Reserved Right triggered significant concern among water users within the Gunnison Basin because the amount claimed by the Park Service would seriously disrupt existing water supplies if it is exercised with the decreed 1933 priority date. Almost 400 statements of opposition were filed, the most ever filed in any Colorado State Water Court proceeding.

The Black Canyon Reserved Right is located just downstream of the Aspinall Unit. The reserved right, therefore, could be administered as senior to the decrees for the Aspinall Unit calling out its storage and power rights. This raises the fundamental question of how much water is available from the Aspinall Unit for delivery to downstream needs. However, this cannot be answered until the reserved right is quantified or an agreement is made that its priority will not affect the water supply to the Aspinall Unit.

In an effort to move the negotiations forward and reopen the door for continuing progress toward recovery of the four listed Colorado River fishes, the River District would urge you to take two major policy actions; further discussion of these actions follows.

1. Priority Date Subordination. The United States should agree that the Park Service Reserved Right be administered with a priority date co-equal to that of the Aspinall Unit Water Rights and be subject to the same Aspinall Subordination Agreement.

2. Aspinall Unit Operating Criteria. The United States should address the competing resource needs below the Aspinall Unit through the adoption by the Secretary of Aspinall Unit operating criteria that are consistent with existing agreements and decrees.
   Priority Date and Subordination. The River District strongly recommends that the Secretary

agree up-front that the Black Canyon Reserved Right will be administered as co-equal in priority to the Aspinall Unit rights and will be subordinate to the same Colorado water rights that now benefit from the existing subordination agreement. This would mean that all existing water rights and future rights up to the subordination limit would not be impacted by the right. Such an action would immediately simplify the case by addressing the basic concerns of all but a dozen or two of the opposers. That action also would focus the attention of the other opposers on the operational criteria for the Aspinall Unit, which the River District believes is the real issue in this case.

An overwhelming majority of opposers entered the case because they legitimately fear that quantification of the Black Canyon Reserved Right with a 1933 priority would seriously disrupt existing water supplies in the Basin. The River District believes that any solution that disrupts existing uses will be politically unacceptable to almost all parties in the case, including the Secretary. Therefore, we suggest a solution founded on the basic compromise that allowed the construction of the Aspinall Unit to proceed: a subordination to all existing water uses and a capped allowance for additional upstream depletions.

In the late 1950s when Reclamation was studying the feasibility of the Aspinall Unit, both the Administration and Congress were concerned that unlimited upstream depletions would make the project economically infeasible because hydropower generation at the Blue Mesa and Morrow Point dams is the primary mechanism for repayment of the United States' investment in the project. In-basin interests were concerned that the project's power call would limit upstream economic development. Since that time, power generation and the impact of upstream depletions have become even more critical. The Blue Mesa and Morrow Point power plants are the only major hydroelectric plants within the entire Colorado River Storage Project (CRSP) System that enjoy the benefit of a downstream re-regulating reservoir (Crystal Reservoir), thus, these plants can be operated for peaking (or load-following) needs, providing an extremely valuable power resource.

To solve this dilemma, the River District and the Colorado Water Conservation Board (CWCB) brokered an agreement where the Aspinall Unit subordinated its senior rights to upstream, junior depletions for in-basin uses up to a maximum of 60,000 a.f. per year. This agreement was widely supported within the Basin.

This compromise is well documented. The attached 1983 letter from then CWCB Director Bill McDonald outlines the agreement in very clear terms. In 2000, the Bureau of Reclamation, Upper Gunnison River Water Conservancy District, River District and Colorado State Engineer's Office entered into a formal agreement (Contract #00-WC-40-6590) documenting the subordination and providing a process for identifying and administering water rights upstream of the Aspinall Unit under the subordination.

By adopting a policy that subordinates the Park Service Reserved Right to the same rights that benefit from the subordination to the Aspinall Unit, the United States is preserving the status quo above the Black Canyon National Park and it is maintaining the commitment it made to this region in the late 1950s/early 1960s that allowed for the construction of Aspinall Unit Reservoirs.

Aspinall Unit Operating Criteria. The River District's second recommendation is that the Secretary, with input from all affected parties, establish formal long-term operating criteria for the Aspinall Unit in a manner that preserves the existing agreements and benefits to the Gunnison River Basin and meets the resource needs of the competing interests of the National Park Service, Bureau of Land Management, Fish and Wildlife Service and Western Area Power Administration. The basic framework and priorities for the Aspinall Unit's operating criteria are already in place through a number of existing agreements, decree provisions and operating protocols.

For your convenience, below is a summary of the agreements that we believe currently address the operation of the Aspinall Unit:

a. The United States acquired the Colorado water rights from the River District through an assignment contract dated 1/26/62. As consideration for the assignment of the decrees, the United States made a simple, but elegant, commitment "This assignment is made by the District and accepted by the United States upon the condition that the water rights assigned will be utilized for the development and operation of the Curecanti Unit in a manner consistent with the development of water resources for beneficial use in the natural basin of the Gunnison River."

b. In 1975, the United States, the River District, the Upper Gunnison River Water Conservancy District and the Uncompahgre Valley Water Users Association entered into the Taylor Park Reservoir Operation and Storage Exchange Agreement. This agreement primarily impacts the Gunnison Basin upstream of the Aspinall Unit and does not result in depletions beyond the 60,000 a.f. subordination agreement. The Agreement was amended in 1990 and a Colorado State Water Court decree supporting the Taylor Park operations was adjudicated by the Upper Gunnison River Water Conservancy District and conveyed to the United States in March 1993.

c. In the early 1980s, the Secretary of Interior dedicated water from the Aspinall Unit as the reasonable and prudent alternative to avoid jeopardy in ESA § 7 consultations for the Dolores and Dallas Creek Projects. The Dolores Project is actually located in the Dolores River Basin, not the Gunnison Basin. Those consultations allow for the current operation of these projects and have not been officially revised. We acknowledge that the opinions may be officially revised and replaced upon implementation of the proposed Gunnison River Basin PBO.

d. Since 1988 and the adoption of the MOU establishing the Upper Colorado River Basin Endangered Fishes Recovery Program, federal agencies have made a number of further commitments to operate the Aspinall Unit as the primary reasonable and prudent alternative (mitigation measure) necessary to offset the impact of the remaining Reclamation projects, non-federal depletions and a reasonably foreseeable level of future development within the Gunnison Basin. The Bureau of Reclamation is currently making progress toward an estimate of the reasonably foreseeable future depletions. It has issued a draft report and is seeking comments from Basin interests.

e. In 1995, Reclamation, Fish and Wildlife Service and the State of Colorado entered into an interim agreement providing sufficient water to operate the Redlands fish ladder and maintain minimum stream flows through a two to three-mile stretch of river from the Redlands diversion dam on the Gunnison River downstream to the confluence of the Gunnison and Colorado Rivers. This river reach is in designated critical habitat. The agreement was designed as interim to test whether or not the necessary flows could be delivered without impact to water rights. The interim Redlands fish ladder agreement has recently been extended for five more years or until the Gunnison PBO is completed. The River District believes that this agreement should be made permanent because it has demonstrated that stream flows critical for the Recovery Program efforts can be provided while mitigating any impacts on water use and water rights administration.

f. Through scheduled quarterly meetings to discuss annual and ongoing Aspinall Unit operations, Reclamation has been sensitive to other river issues such as flooding, recreation and fishing in the Gunnison River Gorge. Reclamation has developed protocols to prevent or reduce ice-flooding above Blue Mesa Reservoir and, with the exception of very high flow years, has kept flows below flooding levels in downstream reaches. We would expect that as a matter of prudent reservoir operations, Reclamation would continue these historical practices, as well.

In addition to meeting the priorities listed above, the River District believes that there remains sufficient flexibility to meet the reasonable needs of the Black Canyon with the Aspinall Unit. We are convinced that the same operational releases designed to meet the ESA/PBO requirements will satisfy the primary needs of the Park, and where there are determined to be gaps or shortages, the remaining flexibility in Aspinall could be available to address this need.

You have recently received correspondence suggesting that 240,000 a.f. of water is somehow available for marketing from the Aspinall Unit and that this water could be delivered to the Colorado Front Range. The River District believes that the operation of the Aspinall Unit is already committed to the priorities we have identified. The amount of water available after meeting these commitments, other priorities and the Park needs cannot yet be determined. Moreover, to our knowledge, there are no existing facilities, feasible projects, or state decrees that would allow Aspinall water to be delivered several hundred miles and thousands of feet in elevation gain to the Front Range.

In summary, the resources of the Gunnison River Basin can be best protected through the establishment of flexible operating criteria for the Aspinall Unit, not through the quantification of a rigid amount. Rather than embark down a path toward lengthy and costly water litigation pitting federal resources against state and local resources, the Secretary could promulgate operating criteria directing federal agencies to operate Aspinall to meet the existing commitments we have identified and use the remaining flexibility to satisfy the other competing interests, including the needs of the

Black Canyon. We believe that the adoption of carefully developed operating criteria for the Aspinall Unit which identifies priorities and a process for resolving disputes among competing interests should be ultimate product of the quantification process.

We would like to discuss our suggestions with you or your representative in further detail, and we would welcome your suggestions on how the River District could help serve as a catalyst or facilitator to move the quantification process toward a timely resolution.

Sincerely,

R. Eric Kuhn
Secretary/General Manger

REK/lln
cc: Ken Salazar
Greg Walcher
Rod Kuharich
CRWCD Board of Directors
Kathleen Curry
Jim Hokit
Gregg Strong
Mike Berry
Janice Sheftel
Greg Trainor

Has Catherine Curry read this?

COLORADO RIVER WATER CONSERVATION DISTRICT

Protecting Western Colorado Water Since 1937

August 15, 2001

The Honorable Gale Norton, Secretary
U.S. Department of the Interior
Washington, DC 20240-0001

Re: Quantification of the United States Water Rights for the Black Canyon of the Gunnison National Monument and Related Gunnison River Basin Issues

Dear Secretary Norton:

I am writing to you to provide input and seek your assistance in addressing the significant water issues facing the Gunnison River Basin. As you are undoubtably aware, the major issue currently facing the Gunnison River Basin is the quantification of reserved rights held by the United States for the Black Canyon of the Gunnison National Park (Black Canyon Reserved Right). In a parallel process, the Recovery Program is working on a programmatic (or basin-wide) biological opinion for the Gunnison River Basin. This proposed biological opinion (PBO) is critical to the continued operation of all existing federal projects and many private water diversions within the basin. At the last meeting of the PBO work group on June 26, 2001 in Montrose, there was unanimous agreement that further progress on the PBO is impossible until a number of major issues associated with the quantification of the Black Canyon Reserved Right are settled.

The River District believes that a relatively simple solution to these complex problems exists that is consistent with existing contracts, agreements and water decrees and meets the needs of the Fish and Wildlife Service, Park Service, Reclamation, the other federal and state resource agencies and the local basin interests. We believe that this solution would save hundreds of thousands, perhaps millions, of dollars in litigation expenses by all parties and would avoid a lengthy and politically divisive fight among numerous competing interests.

As background, the Colorado River Water Conservation District (River District) was chartered by the Colorado General Assembly in 1937 to develop and protect Colorado's compact entitled waters under the 1922 Colorado River Compact and to meet the present and future water needs of its inhabitants. The River District covers all of Western Colorado north of the San Juan Mountains and west of the continental divide including the entire Gunnison River Basin.

SUITE #200 • 201 CENTENNIAL STREET
P.O. BOX 1120/GLENWOOD SPRINGS, COLORADO 81602

The River District has a rich and active history of dealing with federal, state and local water issues in the Gunnison Basin, including adjudication of water rights for many federally authorized or participating projects such as those for the Aspinall Unit (formally Curecanti Unit), forming local conservancy districts, and brokering a number of critical contracts and agreements. Most recently, the River District has taken aggressive actions to assist with the recovery of four endangered fishes as contemplated by the Upper Colorado River Endangered Fish Recovery Program (Recovery Program).

The Gunnison River can be fairly characterized as a federally-dominated stream system. The Basin includes six active Reclamation Projects, the Wayne Aspinall Unit (a three-reservoir component of the Colorado River Storage Project System), a National Park, a National Recreation Area and miles of river reach designated as critical habitat for the four native Colorado River fishes listed as endangered under the Endangered Species Act. All of the Basin's major reservoirs, including Blue Mesa Reservoir - Colorado's largest, were built by the Bureau of Reclamation.

The United States was awarded the Black Canyon Reserved Right in Colorado State Water Court proceedings in the late 1970s, and several important issues have already been settled. The amount of the right was left open to be quantified by further Water Court proceedings. The United States' application (filed in January 2001) to quantify the Reserved Right triggered significant concern among water users within the Gunnison Basin because the amount claimed by the Park Service would seriously disrupt existing water supplies if it is exercised with the decreed 1933 priority date. Almost 400 statements of opposition were filed, the most ever filed in any Colorado State Water Court proceeding.

The Black Canyon Reserved Right is located just downstream of the Aspinall Unit. The reserved right, therefore, could be administered as senior to the decrees for the Aspinall Unit calling out its storage and power rights. This raises the fundamental question of how much water is available from the Aspinall Unit for delivery to downstream needs. However, this cannot be answered until the reserved right is quantified or an agreement is made that its priority will not affect the water supply to the Aspinall Unit.

In an effort to move the negotiations forward and reopen the door for continuing progress toward recovery of the four listed Colorado River fishes, the River District would urge you to take two major policy actions; further discussion of these actions follows.

1. Priority Date Subordination. The United States should agree that the Park Service Reserved Right be administered with a priority date co-equal to that of the Aspinall Unit Water Rights and be subject to the same Aspinall Subordination Agreement. 1933 1957

2. Aspinall Unit Operating Criteria. The United States should address the competing resource needs below the Aspinall Unit through the adoption by the Secretary of Aspinall Unit operating criteria that are consistent with existing agreements and decrees.

Aspinall Unit Operating Criteria. The River District's second recommendation is that the Secretary, with input from all affected parties, establish formal long-term operating criteria for the Aspinall Unit in a manner that preserves the existing agreements and benefits to the Gunnison River Basin and meets the resource needs of the competing interests of the National Park Service, Bureau of Land Management, Fish and Wildlife Service and Western Area Power Administration. The basic framework and priorities for the Aspinall Unit's operating criteria are already in place through a number of existing agreements, decree provisions and operating protocols.

For your convenience, below is a summary of the agreements that we believe currently address the operation of the Aspinall Unit:

a. The United States acquired the Colorado water rights from the River District through an assignment contract dated 1/26/62. As consideration for the assignment of the decrees, the United States made a simple, but elegant, commitment "This assignment is made by the District and accepted by the United States upon the condition that the water rights assigned will be utilized for the development and operation of the Curecanti Unit in a manner consistent with the development of water resources for beneficial use in the natural basin of the Gunnison River."

b. In 1975, the United States, the River District, the Upper Gunnison River Water Conservancy District and the Uncompahgre Valley Water Users Association entered into the Taylor Park Reservoir Operation and Storage Exchange Agreement. This agreement primarily impacts the Gunnison Basin upstream of the Aspinall Unit and does not result in depletions beyond the 60,000 a.f. subordination agreement. The Agreement was amended in 1990 and a Colorado State Water Court decree supporting the Taylor Park operations was adjudicated by the Upper Gunnison River Water Conservancy District and conveyed to the United States in March 1993.

c. In the early 1980s, the Secretary of Interior dedicated water from the Aspinall Unit as the reasonable and prudent alternative to avoid jeopardy in ESA § 7 consultations for the Dolores and Dallas Creek Projects. The Dolores Project is actually located in the Dolores River Basin, not the Gunnison Basin. Those consultations allow for the current operation of these projects and have not been officially revised. We acknowledge that the opinions may be officially revised and replaced upon implementation of the proposed Gunnison River Basin PBO.

d. Since 1988 and the adoption of the MOU establishing the Upper Colorado River Basin Endangered Fishes Recovery Program, federal agencies have made a number of further commitments to operate the Aspinall Unit as the primary reasonable and prudent alternative (mitigation measure) necessary to offset the impact of the remaining Reclamation projects, non-federal depletions and a reasonably foreseeable level of future development within the Gunnison Basin. The Bureau of Reclamation is currently making progress toward an estimate of the reasonably foreseeable future

e. In 1995, Reclamation, Fish and Wildlife Service and the State of Colorado entered into an interim agreement providing sufficient water to operate the Redlands fish ladder and maintain minimum stream flows through a two to three-mile stretch of river from the Redlands diversion dam on the Gunnison River downstream to the confluence of the Gunnison and Colorado Rivers. This river reach is in designated critical habitat. The agreement was designed as interim to test whether or not the necessary flows could be delivered without impact to water rights. The interim Redlands fish ladder agreement has recently been extended for five more years or until the Gunnison PBO is completed. The River District believes that this agreement should be made permanent because it has demonstrated that stream flows critical for the Recovery Program efforts can be provided while mitigating any impacts on water use and water rights administration.

f. Through scheduled quarterly meetings to discuss annual and ongoing Aspinall Unit operations, Reclamation has been sensitive to other river issues such as flooding, recreation and fishing in the Gunnison River Gorge. Reclamation has developed protocols to prevent or reduce ice-flooding above Blue Mesa Reservoir and, with the exception of very high flow years, has kept flows below flooding levels in downstream reaches. We would expect that as a matter of prudent reservoir operations, Reclamation would continue these historical practices, as well.

In addition to meeting the priorities listed above, the River District believes that there remains sufficient flexibility to meet the reasonable needs of the Black Canyon with the Aspinall Unit. We are convinced that the same operational releases designed to meet the ESA/PBO requirements will satisfy the primary needs of the Park, and where there are determined to be gaps or shortages, the remaining flexibility in Aspinall could be available to address this need.

You have recently received correspondence suggesting that 240,000 a.f. of water is somehow available for marketing from the Aspinall Unit and that this water could be delivered to the Colorado Front Range. The River District believes that the operation of the Aspinall Unit is already committed to the priorities we have identified. The amount of water available after meeting these commitments, other priorities and the Park needs cannot yet be determined. Moreover, to our knowledge, there are no existing facilities, feasible projects, or state decrees that would allow Aspinall water to be delivered several hundred miles and thousands of feet in elevation gain to the Front Range.

In summary, the resources of the Gunnison River Basin can be best protected through the establishment of flexible operating criteria for the Aspinall Unit, not through the quantification of a rigid amount. Rather than embark down a path toward lengthy and costly water litigation pitting federal resources against state and local resources, the Secretary could promulgate operating criteria directing federal agencies to operate Aspinall to meet the existing commitments we have identified and use the remaining flexibility to satisfy the other competing interests, including the needs of the

United States Department of the Interior

BUREAU OF RECLAMATION
Washington, D.C. 20240

IN REPLY REFER TO:

D-5200

NOV - 5 1999

MEMORANDUM

received 11-17-99

To: Regional Director, Salt Lake City, Utah
Attention: UC-442 (Cook)

From: Eluid L. Martinez
Commissioner

Subject: Delegation of Authority and Approval to Execute a Depletion Allowance Contract Among the Colorado State Engineer, Colorado River Water Conservation District, Upper Gunnison Water Conservancy District, and the Bureau of Reclamation, Wayne N. Aspinall Storage Unit, Colorado (Your Memorandum Dated February 8, 1999)

You have requested authority to enter into a depletion allowance contract (Contract) among the Bureau of Reclamation, the Colorado State Engineer, the Colorado River Water Conservation District, and the Upper Gunnison Water Conservancy District. We understand the purpose of the Contract is to formalize a long-standing oral commitment to effectuate a depletion allowance, if and when hydrologic conditions allow, that was made by the United States prior to the construction of the Curecanti Unit (now known as the Aspinall Unit) of the Colorado River Storage Project.

Background

Reclamation constructed the Aspinall Unit for the purpose, among other things, of regulating flows of the Colorado River to permit the Upper Colorado River Basin States to more fully utilize their allocation of Colorado River water as set forth in the Upper Colorado River Basin Compact.

The February 1959 Economic Justification Report for the Aspinall Unit recognized that upstream depletions from five potential participating projects (Bostwick Park, Fruitland Mesa, East River, Ohio Creek, Tomichi Creek) of the Colorado River Storage Project were assumed to begin in 1971 and increase until full depletion is reached in 2020. Of the five potential participating projects listed in the report, only the Bostwick Park Project was completed. The depletions outlined in the report are as follows: 40,000 acre-feet above Blue Mesa Dam, 10,000 acre-feet above Morrow Point Dam, and 10,000 acre-feet above Crystal Dam. A supplemental Economic Justification Report dated April 1962, reiterated these depletions.

U.G. Dist conditional rights subordination

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(C.P. from call from Aspen)

We understand that in order to alleviate concern that a water project of this magnitude would preclude junior upstream development, Reclamation has agreed to allow up to 60,000 acre-feet of upstream junior depletions as a concession to the local users to gain support for the construction of the Aspinall Unit. Since the 1960's, Reclamation's practice concerning the Aspinall Unit has been to allow private development of up to 60,000 acre-feet, which would otherwise be subject to the Aspinall Unit water rights, by junior users within the natural basin of the Gunnison River.

On June 28, 1963, the Commissioner approved the form of contract for in-basin development and authorized the Regional Director to execute subordination contracts up to a maximum of 60,000 acre-feet, which would include depletions by the Fruitland Mesa Project which was never built and exclude depletions by Bostwick Park Project since its water rights are senior. We understand that of the 60,000 acre-feet, 40,000 acre-feet of depletions are allowed above Blue Mesa Dam, 10,000 acre-feet of depletions are allowed between Morrow Point Dam and Blue Mesa Dam, and the remaining 10,000 acre-feet of depletions are allowed between Morrow Point Dam and Crystal Dam. Furthermore, four contracts for small amounts of water were executed in the early 1960's to allow the depletions pursuant to the Commissioner's June 28, 1963, approval. Other than these four contracts, Reclamation has effectuated the depletions by not placing a call when it might have been entitled to do so, which allowed junior in-basin users to continue diverting.

We understand that implementing these depletion allowances by Reclamation not calling its senior water rights when they came into priority became problematic when Arapahoe County wanted to divert water from the Upper Gunnison Basin to the Front Range via its proposed Union Park Project. Arapahoe County asserted that they had a "right" to count the subordinated Aspinall Unit project water or a portion of it that was not being used by water users upstream of the Aspinall Unit toward water available for their Union Park Project.

This issue was litigated in the 1980's based on Colorado's "can and will doctrine," whereby Arapahoe County would be required to demonstrate that a sufficient amount of water is available to appropriate. The United States won and Arapahoe County appealed to the Colorado Supreme Court which remanded the case for retrial under revised rules of water availability.

During retrial, the United States' position was that the depletions were authorized because Congress allowed construction of the Aspinall Unit to begin with the understanding that no more than 60,000 acre-feet would be depleted above the Aspinall Unit. Only the source of this depletion amount has changed, not its effects on the Aspinall Unit (upstream appropriations by junior users rather than depletions by the nonexistent projects). In addition, the United States further specified during litigation that the depletion was only for use in the Natural Basin of the Gunnison River to offset Aspinall's effects on upstream water users. Again the United States won, and the water court judge ruled that the commitment for the depletion allowance amounted to a condition on the construction of the Aspinall Unit and therefore, constituted an executory contract, binding on the United States.

STATEMENT OF INTENT

WHEREAS, the Curecanti Unit of the Upper Colorado River Project will take water from the drainage of the Upper Gunnison River and its tributaries and water rights in Colorado Water Districts 28, 59 and 62 have been obtained therefor;

WHEREAS, the purpose of the Colorado River Storage Project is ". . . to initiate the comprehensive development of the water resources of the Upper Colorado River Basin, ...";

WHEREAS, development of water resources upstream from said Curecanti Unit is consistent with the purposes of the Colorado River Storage Project;

WHEREAS, it is now estimated that there will be available for use upstream from the said Curecanti Unit total depletion of 60,000 acre feet of water;

WHEREAS, ~~there is~~ a survey is being conducted by the Bureau of Reclamation to ascertain the ~~exact~~ amount of water actually available for depletion upstream from said Curecanti Unit without impairing the feasibility of said Curecanti Unit;

WHEREAS, the future operation of said Curecanti Unit will be controlled by operating principles drafted after all necessary information is available, including the above mentioned survey;

WHEREAS, there are projects for water resources development now ready for construction which have or will have priorities subsequent to those of the projects of the Upper Colorado River Storage Project and the feasibility ~~construction~~ of which depends upon whether the United States will waive its priorities to the use of water under their decrees for such projects;

WHEREAS, it will be to the advantage of all concerned for the United States to waive their priorities to the use of water in order to allow the above mentioned projects to be constructed without further delay and in order to promote the development of water resources within the Upper Gunnison River Basin;

It is therefore agreed by the United States of America, acting through the Regional Director, Region 4, Bureau of Reclamation, hereinafter referred to as the Regional Director, and the Upper Gunnison River Water Conservancy District, hereinafter referred to as the District, that the following is a correct statement of the present intentions of both of said parties in connection with the operation of said Curecanti Unit:

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BUR OF REC TO
SEN. TIM WORTH
March 19, 1990

ANSWER TO QUESTION 5.

Reclamation is responsible for the management, operation, and maintenance the Aspinall Unit and Taylor Park Dam and Reservoir in conjunction with the Uncompahgre Valley Water Users Association who physically operate and maintain Taylor Park Reservoir pursuant to a contract with Reclamation. We are involve in the litigation because we believe that the possibility of adverse effects exist, but Reclamation also believes that it is possible with the cooperation all concerned parties to develop a plan which would utilizes existing faciliti and provide benefits for everyone.

6. What is Reclamation's position concerning the 1962 assignment of water rights for the Curecanti Unit from the Colorado River Water Conservation District which requires these rights "to be utilized for the development and operation of the Curecanti Unit in a manner consistent with the development of water resources for beneficial use in the natural basin of the Gunnison River?' May these water rights be used to benefit transbasin diversion projects either under the terms of the assignment or the restrictions contained in the water rights decrees themselves?

ANSWER TO QUESTION 6.

It is Reclamation's position that the 1962 assignment of water rights and the water rights decrees for the Aspinall Unit provided that operation of the Aspinall Unit would be consistent with development of water for beneficial use in the Gunnison River Basin, but the assignment did not restrict the use of water stored by the Aspinall Unit to the Gunnison River Basin. The assigned water rights do not specifically restrict the Federal Government to only in-basin water sales and use, nor do they restrict Reclamation in carrying out the intent of Congress when it passed Public Law 485. If a transbasin diverter purchased water from the Aspinall Unit, completed all the necessary requirement including NEPA compliance, and was supported by the State of Colorado, then Reclamation would be willing to execute a water purchase contract.

7. What is Reclamation's position regarding its agreement to subordinate the Curecanti Unit water rights to 60,000 acre-feet of upstream depletions? Does Reclamation intend to allow this subordination agreement to be used to benefit projects which divert water out of the natural basin of the Colorado River? If the Colorado State Engineer will not enforce this "selective subordination," will Reclamation subordinate to all users or none? In what amount? What is the authority for this position.

ANSWER TO QUESTION 7.

Reclamation's intent at the time the Aspinall Unit was constructed was to subordinate the project's water rights to 60,000 acre-feet of in-basin depletions. Although this is Reclamation's position, we do not have the authority to require the Colorado State Engineer (CSE) to administer our subordination in this manner if it is in conflict with Colorado State law. Reclamation has already subordinated to 60,000 acre-feet of in-basin use, but w

DIST. CT. DECREE #85CW 209 6/16/88
WATER COURT
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Power Plant, and due to the relocation of Crystal dam, entered a new decree granting a reduced water right for Crystal Reservoir and for Crystal Power Plant.

12. Subsequently, the Colorado River Water Conservation District assigned the water rights for the Curecanti Unit to the United States. As a condition of that assignment, it was intended by the parties thereto that 60,000 acre feet of new depletion would be permitted above the Curecanti Unit which would not be subject to curtailment to supply the water rights of the Unit. The United States recognized this obligation as a condition of the assignment of these water rights to it. Accordingly, consistent with its obligation under this assignment of water rights, the United States cannot exercise the water rights of the Curecanti Unit to demand curtailment of those upstream junior water rights, the exercise of which, results in an annual depletion of 60,000 acre feet of water.

13. At the time of entry of this decree, there has been less than 60,000 acre feet of new depletions above the Curecanti Unit caused by water rights junior to those of the Curecanti Unit. The depletions to be made pursuant to the absolute water right herein decreed, and the conditional water rights, if made absolute by reason of completion of the appropriation, will come within the 60,000 acre feet of new depletions above the Curecanti Unit which may not be curtailed by the United States or its successors or assigns in order to supply water to the decreed senior water rights of the Curecanti Unit. Therefore, the water rights decreed herein may not be curtailed to meet a call by the water rights of the Curecanti Unit. This does not, however, prevent the administration of the water rights decreed herein in priority as necessary to meet the lawful demands of other senior appropriators.

JUDGMENT AND DECREE

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED

14. The Findings of Fact and Conclusions of Law contained in paragraphs 1 through 13 are hereby incorporated into this decree as fully as if set forth herein.

15. Each of the water rights requested in the Application for Conditional Surface Water Rights, Conditional and Absolute Underground Water Rights, and Conditional Water Storage Rights for San Juan Springs Subdivision, as described in subparagraphs 4A-4L inclusive, are hereby granted subject to the conditions of this decree.

United States Department of the Interior

OFFICE OF THE SOLICITOR
INTERMOUNTAIN REGION
SUITE 6201, FEDERAL BUILDING
125 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84138-1180

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October 26, 1984

Blue Mesa

10/30 11-7 12-31

LBR.IM.0256

Memorandum

To: Regional Director, Bureau of Reclamation

From: Regional Solicitor, Intermountain Region

Subject: Depletion of Water Above Wayne Aspinall Unit (Curecanti)

In your September 21, 1984, memorandum to us you ask our opin concerning a proposed action wherein Mr. John Hill, Departmen Justice, would petition the Colorado District Court to revise certain water decrees assigned to the United States by the Colorado River Water Conservation District dated January 26, 1962.

We have reviewed your file and consulted with Mr. Hill and various members of your staff. We recommend that no action b taken by Mr. Hill in the Colorado courts on behalf of the Bur of Reclamation in this matter.

The Colorado River Water Conservation District assigned on January 26, 1962, certain water rights to "the United States condition that the water rights assigned will be utilized for development and operation of the Curecanti Unit in a manner consistent with the development of water resources for benefi use in the natural basin of the Gunnison River." The assignm was transmitted to the Commissioner by memorandum dated February 21, 1962. The Regional Director recognized that the assignment "would provide for upstream development above Curecanti." Your files disclose the intent of the United Sta at the time it accepted this assignment, and also the intent the Colorado River Water Conservation District. These file documents taken as a whole show that the United States has ar obligation to allow junior appropriators, upstream of the Wa Aspinall Unit (Curecanti Unit), the use of water in an amoun to exceed 60,000 acre feet. Upstream water development woul exclusively for the Upper Gunnison Basin and no transbasin diversion would be allowed.

Your files contain agreements between the United States and private parties wherein the United States recognized the rig upstream water depletions by junior appropriators.

As early as 1959 Congress was advised by the Secretary that depletions in the Gunnison River upstream of the Curecanti Uni in the amount of 60,000 acre feet were contemplated. House Document No. 201, 86th Cong., dated July 15, 1959, p. 15.

We see no reason to initiate any court action in behalf of the Bureau of Reclamation in this matter and so advised Mr. Hill. agreed to take no further action unless requested. Mr. Hill b letter dated September 13, 1984, advised Dr. Jeris A. Danielso Colorado State Engineer, that the Bureau of Reclamation did no intend to enforce its rights as against upstream water users. You should contact the State Engineer and inform him that the United States will live up to its obligations in connection wi the January 26, 1962, assignment from the Colorado River Water Conservation District. This means that you will fulfill your obligation to allow upstream depletions in an amount not to exceed 60,000 acre feet; that the Bureau of Reclamation does n intend to take any action contrary to these obligations; and t the State Engineer, insofar as the Bureau of Reclamation is concerned, may administer upstream depletions in harmony with this position.

W. P. ELLIOTT, JR.
Acting Regional Solicitor

By William Robert McConkie
WILLIAM ROBERT MC CONKIE
Attorney

cc: Mr. John R. Hill, Jr., Esq., Assistant Attorney General, U.S. Department of Justice, Land and Natural Resources Division, Denver Federal Bldg., Drawer 3607, 1961 Stout Street, Denver, Colorado 80294

Pending the completion of the operating principles ~~basis~~ of the Curecanti Unit,

1. the United States will waive their priority to the use of water under decrees which they now have in Colorado Water Districts 28, 59 and 62 for projects in the Upper Gunnison River Basin which are now ready for construction, under the terms of the attached contract which is incorporated herein and made a part hereof provided each of such projects ~~are~~ is first approved by the Director and the District.

2. The operation ~~of principles~~ of said Curecanti Unit will allow continue ~~to~~ promotion of future water resources development in the Upper Gunnison Basin by the terms of the operating principles which shall ~~be drawn up by~~ provide ~~ing~~ for the waiver by the United States of its ~~their~~ priority to the use of water under the decrees set out in paragraph 3 of the attached contract in an amount to be determined by the United States but in any event shall allow water depletion of not less than 60,000 acre feet of water upstream from ~~above~~ the Blue Mesa Reservoir, including the depletion of the Fruitland Mesa Project, which is now estimated at 29,000 acre feet of water. In the event the results of the current water survey shows that there is sufficient water, the United States will waive its ~~their~~ priority to the above mentioned decrees for the use of water ~~users~~ in the Upper Gunnison River Basin upstream from the Blue Mesa Reservoir for an amount in excess of said depletion of 60,000 acre feet of water to the extent water is available market for without impairing the economic feasibility of said Curecanti Unit.

In witness whereof (see last page of K)

US - - -

By _____

Upper Gunnison - - -

By _____

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BARNARD AND BARNARD
ATTORNEYS AT LAW
GRANBY, COLORADO

JOHN B. BARNARD
DUANE L. BARNARD

July 29, 1957

Mr. Robert G. Porter
Porter & Klingsmith
Attorneys at Law
Gunnison, Colorado

Dear Mr. Porter:

It was not an oversight on my part that I had not written you earlier with regard to the District's plan in connection with the Upper Gunnison Basin project, which includes the Curecanti Reservoir or reservoirs, as I promised to do at the meeting of the Board of Directors on July 16. I postponed writing you purposely until Mr. Smith and I had had an opportunity to talk to officials of the Bureau of Reclamation in the Region IV offices at Salt Lake City, which we did last week.

Our present plans comprehend more or less of a reshuffling of preliminary plans for development of water resources in the Gunnison Basin, particularly in Gunnison County. As you of course know, three Gunnison County participating projects are designated in Public Law 485 for the completion of planning reports. They are: Tomichi Creek, East River and Ohio Creek. In addition, the Fruitland Mesa unit, also named in the Bill, is to receive the principal portion at least of its water supply from Soap Creek, Curecanti Creek and other tributaries of the Gunnison River. Heretofore we have proceeded upon a general plan of making filings on the various facilities connected with these participating projects, separately. For example, I understand from Mr. Smith that a filing map on the Monarch Reservoir at Sargents on Tomichi Creek will soon be ready for submission to the State Engineer.

As we have given further consideration to this general program, it is our conviction that we should now proceed by making filings for power, municipal, domestic and irrigation purposes on the proposed units of the so-called Curecanti Dam itself, in the name of the District, and to present testimony

thereon in pending adjudication proceedings in Water District No. 52, seeking a conditional decree therefor. The objectives and reasons for this program, as I analyze them, are the following:

1. By obtaining this conditional decree, we will, in effect, tie up the entire flow of the Gunnison River at the Curecanti site, thus preventing the vesting of any rights senior to ours for transmountain diversion from any of the tributaries of the Gunnison River. This is extremely important, particularly in connection with the Lake Fork, which is very vulnerable to transmountain diversion to the Rio Grande drainage basin.

2. Rights acquired in the Curecanti Reservoir for irrigation purposes will be utilized by a system of exchange. In other words, the District will have the right to store water in Curecanti to be released to meet downstream demands senior to certain presently decreed rights along the upper reaches of the Gunnison and its tributaries. The most important and largest of these downstream senior rights, of course, are those of the Uncompaghre Water Users Association.

As I understand the present situation, there are now rights along tributaries of the Gunnison River which cannot avail themselves of water in the late summer periods because of senior demands at the Gunnison Tunnel. Water stored in Curecanti would be released when these demands are made, and these presently existing rights can then avail themselves of the amount of water flowing in their various sources of supply.

Further, it is conceivable that water from the Taylor Park Reservoir, now released for the benefit of the Gunnison Tunnel, can be used for irrigation and other purposes in Gunnison County, assuming that the topography and physical conditions are such as to make such use feasible.

3. It is conceivable, as I view it, that such an operation will enhance the feasibility of other participating projects in Gunnison County, the feasibility of which is now questionable.

For example, if a reservoir should be constructed on Cochetopa Creek, having stored water available in Curecanti for release for downstream senior demands, undoubtedly would permit the storage of a greater amount of water in such a reservoir than would now be possible. Understand, these are my thoughts, and I present only possibilities, not certainties.

4. It is also conceivable that the power right acquired by the District in connection with the Curecanti project may be correlated with the production of power at Taylor Park, thus further protecting that reservoir from the schemes of the transmountain diversionists.

The above is a very general outline of the present plan, and details will be changed from time to time. It is my present thought that the filing made in the State Engineer's office should be for a whole project, under a name such as that applied to it by Phil Smith, Upper Gunnison Basin Project. This entire project would have several somewhat interdependent features, such as the Tomichi Creek unit (the Monarch Reservoir), East River unit, Ohio Creek unit, Cochetopa Creek unit, a unit designed to utilize water stored in Taylor Park Reservoir, and possibly others. My present thinking is that by working it out along these lines, and obtaining a conditional decree to the entire project in these pending adjudication proceedings, we can now make a preliminary filing which can be supplemented and amended as surveys of the detailed units are completed and maps thereof prepared.

Our discussion with the Bureau officials in Salt Lake was intended to avoid any misunderstanding with the Department of the Interior or the Bureau of Reclamation as to our plans. We advised Mr. Larson and the other officials in attendance that the filing for the generation of power and for holdover storage to aid the Upper Basin states in meeting the Lee Ferry commitment was being made for the benefit of these states and not for the State of Colorado alone; and we told these men that we would prepare and submit to the Board of Directors of the District, at its October meeting, a resolution to that effect, stating therein that rights acquired for power generation and holdover storage purposes would be assigned to the United States at such time as such assignment appeared to be desirable. This would reserve to the Colorado River District the right to use the stored waters for beneficial consumptive purposes, such as irrigation, etc. Incidentally, I feel that such use by Colorado is at least impliedly authorized and justified by Art. 5 of the Upper Colorado River Basin Compact, which I suggest you read at your leisure.

Both Mr. Smith and I feel that the contents of this letter should be kept in the strictest confidence until after our filing has been made, and possibly until the conditional decree has been entered. The Judge and Referee in the proceedings in Water District No. 62 have assured Mr. Smith that they

will hold those open to permit the filing of the proper statement of claim for this project therein, thus avoiding the necessity of opening a further proceeding, the expense incident thereto, and the complications which would arise if new proceedings were commenced, and transmountain diversionists should appear therein and resist our claim. I would therefore ask that you admonish anyone to whom you communicate the contents of this letter to maintain complete secrecy and to discuss the matter only among themselves. Time will not permit Phil to start this survey work at present, possibly not until the middle of August.

If, after going over this letter and considering its contents, you have further questions to ask which I can answer, I will be glad to provide such answers so far as they can be provided, at this time.

I would appreciate your comments. I assume you will discuss the matter with Mr. Dutcher; and I would like to know what his reaction is.

For your information, I have received a complete list of the decrees in various adjudication proceedings in Water Districts numbered 28, 59 and 62. I plan to study these decrees over and to discuss them with you when I am next in Gunnison, which probably will be when Phil starts his survey work.

I am sending a copy of this letter to Mr. Smith. It is probable that he may want to add to, supplement, amend or correct some of the statements I have made; and I am suggesting to him that he make such changes or corrections as appear to him to be proper.

Yours very truly,

John B. Barnard
for Barnard and Barnard

JBB:sc
cc Phil Smith

Box 717

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December 4, 1962

Mr. Robert W. Jennings
Bureau of Reclamation
P. O. Box 780
Grand Junction, Colorado

COPY

Dear Bob,

Following the meeting held on Thursday, November 1, 1962, at our offices, at which you and Mr. J. W. Robins were present with the Board of Directors of the Upper Gunnison River Water Conservancy District, they approved the form of the attached contract.

This was agreed to only upon the assurance of the Bureau of Reclamation that the use of the attached contract would be an interim measure which would allow continued water resources development within the Upper Gunnison River Basin pending completion of a more accurate survey of available water in said basin and upon the further assurance that upon the completion of said survey the United States will continue to promote future water resources development within the confines of the Upper Gunnison River Basin by waiving its priority for said Upper Basin water users to the use of water under the decrees set out in paragraph 3 of said contract in an amount to be determined by the United States, but in any event, shall allow not less than 60,000 acre feet of depletion above the Blue Mesa Reservoir, including the depletion caused by the Fruitland Mesa Project which is now estimated at 29,000 acre feet of water.

In the event said survey shows that there is sufficient water, the United States shall waive its priority to the above mentioned decrees for the use of water in the Upper Gunnison River Basin above the Blue Mesa Reservoir for an amount in excess of said depletion of 60,000 acre feet of water to the extent water is available without impairing the economic feasibility of the Curecanti Unit of the Upper Colorado River Storage Project.

We would appreciate it if you would confirm the above as acceptable to the United States in writing, addressed to the Upper Gunnison River Water Conservancy District in care of me as attorney, so that we can advise the water users in the basin who are now desirous of obtaining a signed contract.

Very truly yours,

L. Richard Bratton
Attorney for Upper Gunnison River Water
Conservancy District

LRB:abb

dup

United States Department of the Interior

BUREAU OF RECLAMATION
UPPER COLORADO REGION
GRAND JUNCTION PROJECTS OFFICE
P.O. BOX 60340
2764 COMPASS DRIVE
GRAND JUNCTION, COLORADO 81506

TAKE PRIDE IN AMERICA

GJ-700

MAR 19 1992

Mr. Tyler Martineau
Manager, Upper Gunnison River
Water Conservancy District
120 North Boulevard
Gunnison CO 81230

Subject: Summary of February 20, 1992, Meeting Regarding Wayne N. Aspinall Unit Operations (General Correspondence Water Operation)

Dear Mr. Martineau:

Following is a summary of the results of a meeting held in the Upper Gunnison River Water Conservancy District Office, Gunnison, Colorado. An attendance list is enclosed.

The meeting was held to discuss the Bureau of Reclamation's (Reclamation) intent to pursue formal administration of Aspinall Unit water right decrees and present Reclamation's proposed "Substitute Supply Plan" (Plan). As presently contemplated, the Plan would potentially be made up of the following three major components:

1. Protection against Aspinall Unit calls would be provided through a Memorandum of Understanding (MOU) between Reclamation and the Upper Gunnison River Water Conservancy District (UGRWCD). Under the terms of the proposed MOU, Reclamation would agree that all perfected junior water right decrees that were listed in the Plan would be considered equal or senior to the Aspinall Unit water right decrees for purposes of administration. Therefore, their diversions would not be curtailed to the benefit of the Aspinall Unit.

2. Protection for junior domestic, municipal and industrial water right decrees from downstream decrees senior to the Aspinall Unit would be provided through replacement releases of Aspinall Unit storage under the terms of a water service contract with the UGRWCD. Replacement releases would be made from the Aspinall Unit to permit continued out-of-priority diversions by the junior water right decrees when an administrative call from a downstream senior water right is in effect.

3. Protection for irrigation water right decrees would be provided through replacement releases of either Aspinall Unit or Taylor Park refill storage under the terms of a water service contract with the UGRWCD. Again, replacement releases would be made to permit continued out-of-priority diversions by the junior water right decrees when an administrative call from a downstream water right senior to the Aspinall Unit is in effect. Reclamation Reform Act (RRA) compliance provisions would be associated with irrigation replacement releases as part of an Aspinall Unit Contract. RRA requirements associated with Taylor Park refill storage may possibly be waived. This issue is being more fully researched.

The UGRWCD indicated it would solicit input from water users and interested members of the public before making a decision regarding the proposed Plan. The UGRWCD presented a number of reasons why the local community and the Board of Directors feel that it would be difficult to initiate the proposed plan in 1992. However, the UGRWCD expressed the desire to cooperatively work with Reclamation to resolve these issues. Questions or comments regarding this meeting summary or the proposed Plan should be directed to Brent Uilenberg at (303) 248-0641.

Sincerely,

Jim Rooks

for Ronald Johnston
Projects Manager

Enclosure

cc: Mr. Randy Seaholm
Colorado Water Conservation Board
721 State Centennial Building
1313 Sherman Street
Denver CO 80203

Mr. Lee Spann
36781 West Highway 50
Guunison CO 81230

Mr. William Trampe
393 County Road 8
Gunnison CO 81230

Mr. Richard Bratton
P.O. Box 669
Gunnison CO 81230

Mr. Art Cannon
Manager, Tri-County Water
Conservancy District
P.O. Box 347
Montrose CO 81402

Mr. Jim Hokit
Manager, Uncompahgre Valley
Water Users Association
P.O. Box 69
Montrose CO 81402

Mr. Eric Kuhn
Colorado River Water
Conservation District
P.O. Box 1120
Glenwood Springs CO 81602
(each w/encl)

Upper Gunnison Augmentation meeting

2/20/92
8:00 am

Name	Representing	Telephone
Tyler Martinean	Upper Gunnison	641-6065
Fred J. Crabtree	USBR	248-0655
Jim Hokit	U.V.W.U.A	249-3813
BRIAN AHRENS	S.E.O.	866-3581
KEITH KEPLER	"	249-6622
Bill Trempe	UGRWCD	641-0856
Steve McCall	USBR	248 0638
Brent Uilenberg	USBR	248-0641
Randy Seaholm	CWCB	866-3441
Eric Kuhn	CRWCD	945-8522
Mike Gross	CRWCD	" "
RONALD JOHNSTON	USBR	248-0690

OFFICE OF THE SOLICITOR
INTERMOUNTAIN REGION
SUITE 6201, FEDERAL BUILDING
125 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84138-1180

October 26, 1984

Blue Mesa

10/30
11-7
12-26

LBR.IM.0256

Memorandum

To: Regional Director, Bureau of Reclamation

From: Regional Solicitor, Intermountain Region

Subject: Depletion of Water Above Wayne Aspinall Unit (Curecanti)

In your September 21, 1984, memorandum to us you ask our opinion concerning a proposed action wherein Mr. John Hill, Department o Justice, would petition the Colorado District Court to revise certain water decrees assigned to the United States by the Colorado River Water Conservation District dated January 26, 1962.

We have reviewed your file and consulted with Mr. Hill and various members of your staff. We recommend that no action be taken by Mr. Hill in the Colorado courts on behalf of the Bureau of Reclamation in this matter.

The Colorado River Water Conservation District assigned on January 26, 1962, certain water rights to "the United States upo condition that the water rights assigned will be utilized for th development and operation of the Curecanti Unit in a manner consistent with the development of water resources for beneficia use in the natural basin of the Gunnison River." The assignment was transmitted to the Commissioner by memorandum dated February 21, 1962. The Regional Director recognized that the assignment "would provide for upstream development above Curecanti." Your files disclose the intent of the United States at the time it accepted this assignment, and also the intent of the Colorado River Water Conservation District. These file documents taken as a whole show that the United States has an obligation to allow junior appropriators, upstream of the Wayne Aspinall Unit (Curecanti Unit), the use of water in an amount not to exceed 60,000 acre feet. Upstream water development would be exclusively for the Upper Gunnison Basin and no transbasin diversion would be allowed.

Your files contain agreements between the United States and private parties wherein the United States recognized the right upstream water depletions by junior appropriators.

As early as 1959 Congress was advised by the Secretary that depletions in the Gunnison River upstream of the Curecanti Unit in the amount of 60,000 acre feet were contemplated. House Document No. 201, 86th Cong., dated July 15, 1959, p. 15.

We see no reason to initiate any court action in behalf of the Bureau of Reclamation in this matter and so advised Mr. Hill. He agreed to take no further action unless requested. Mr. Hill by letter dated September 13, 1984, advised Dr. Jeris A. Danielson, Colorado State Engineer, that the Bureau of Reclamation did not intend to enforce its rights as against upstream water users. You should contact the State Engineer and inform him that the United States will live up to its obligations in connection with the January 26, 1962, assignment from the Colorado River Water Conservation District. This means that you will fulfill your obligation to allow upstream depletions in an amount not to exceed 60,000 acre feet, that the Bureau of Reclamation does not intend to take any action contrary to these obligations, and that the State Engineer, insofar as the Bureau of Reclamation is concerned, may administer upstream depletions in harmony with this position.

4

W. P. ELLIOTT, JR.
Acting Regional Solicitor

By William Robert McConkie
WILLIAM ROBERT MC CONKIE
Attorney

cc: Mr. John R. Hill, Jr., Esq., Assistant Attorney General, U.S. Department of Justice, Land and Natural Resources Division, Denver Federal Bldg., Drawer 3607, 1961 Stout Street, Denver, Colorado 80294

Flame Control
COATINGS, INC.

P.O. Box 786, 4120 Hyde Park Blvd.
Niagara Falls, N.Y. 14302 USA
(716) 282-1399
FAX: (716) 285-6303

Product Information On:

FLAME CONTROL NO. 10 CLASS "B" (*) CLEAR FIRE RETARDANT PENETRATING WOOD TREATMENT

Product Description:

Flame Control No. 10 fire retardant penetrating wood treatment was developed to meet the requirements for a clear fire retardant treatment for EXTERIOR use, on previously unfinished cedar shakes and shingles. It is very effective in reducing the fire hazard of cedar and other edge grain woods. Flame Control No. 10 contains no water soluble salts, therefore, its fire retarding properties are lasting. Properly treated wood, when subjected to fire, will char.

Application:

Apply two coats by brush, spray or by dipping. Dipping is the most effective method of treatment for shakes and shingles, as all surfaces are treated. Allow 24 to 48 hours drying time between coats. (See CAUTION). When applying the treatment by dipping, allow sufficient time for penetration of the material. Flame Control No. 10 should be applied WITHOUT thinning or dilution.

Coverage:

150 sq.ft./U.S. gallon [3.7 m^2/L], applied in two coats at a rate of 300 sq.ft./U.S. gallon [7.4 m^2/L], per coat. NOTE: The surface area of hand split and rough textured materials is GREATER than the apparent square footage of the area, reduce spreading rate to compensate for greater surface area.

Clean Up: Use Xylol, Toluene or Aromatic 100 for cleaning equipment.

WARNING:

Adequate ventilation must be provided during and after application, until the coating has dried. Avoid breathing vapors or spray mist.

CAUTION:

The liquid coating contains volatile (flammable) solvents. Due care must be exercised during and after application until coating is dry.

Maintenance:

All exterior wood treatments and coatings are subject to deterioration when exposed to weather. In order to insure maximum continued protection, exposed surfaces should be retreated every three to four years. Exposure to strong sunlight will cause the wood to darken due to the nature of the fire retardant ingredients. This darkening in no way affects or impairs the fire retardant qualities of the treatment.

Packaging: Standard packaging, 1 gallon, 5 gallon, and 55 gallon containers.

TEST METHODS: (small scale)

A cedar shingle approximately one foot square was divided in half. One section was treated with two coats of Flame Control No. 10, at a coverage rate of 300 sq.ft./gallon, per coat. Panels were allowed to dry 72 hours, before fire testing. The panels were placed at a 45 angle for an incline fire test. A Fisher high temperature gas burner, having a flame temperature of 1800F, was placed two inches from the panel surface, and the time of flame exposure measured. The flame was removed at 15 and 30 second intervals, and the time in seconds for the panel surface to self extinguish was recorded.

RESULTS

Flame Exposure (Seconds)	No. 10 Treated Shingle Time to Self Extinguish (Seconds)	Control Uncoated Shingles
15	1	4
30	2	continuous burning
60	3	
90	6	
120	15	

Fire Tests: (Full Scale)

Flame Spread Rating: Class "B" (*). When applied to No. 1 grade, RED CEDAR SHINGLES and tested in accordance with ASTM E-84, the treatment obtained the following fire hazard classification.

FIRE HAZARD CLASSIFICATION

System Details	[When applied to Cedar Shingles] Flame Spread	Smoke Developed
Sealer - None Type No. 10 applied in two coats at 300 sq.ft./US gallon per coat [7.4 m^2/L] Topcoat - None	35	690

(*) Class "B" fire retardant rating per NFPA 703, Section 2-2.1.3

4/95

$30 per gal + FREIGHT FROM NEW YORK

— COMES IN 5 gal OR SINGLES (SAME PRICE)

30
20
600

UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT

REGULARLY SCHEDULED BOARD MEETING MINUTES

March 27, 2000

The Board of Directors of the Upper Gunnison River Water Conservancy District conducted a regular board meeting on March 27, 2000 at 1:00 p.m. at the Gunnison County Fairgrounds, Gunnison, Colorado.

Board members present were: Carol Drake, Steve Glazer, Bob Irby, Diane Lothamer, Greg Peterson, Mark Schumacher, Dennis Steckel, George Stowell, Bill Trampe, and Ruth "Scottie" Willey. Board member not present was Bob Drexel.

Others present were:

Butch Clark
Lynn Cudlip
Paul Wayne Foreman, Gunnison Country Times
Lucy High
Kathleen Klein, Manager
Frank Kugel, Division of Water Resources
Tyler Martineau
John McClow, Board attorney
Duane Phelps
Richard Rozman, Water District 59
Steve Schechter, High Country Citizens' Alliance
Jill Steele, Secretary/bookkeeper
Paul Vader

1. CALL TO ORDER

Board President Mark Schumacher called the meeting to order at 1:10 p.m.

2. LEGAL MATTERS

The board read the March 24, 2000 legal status memorandum, which was circulated at the meeting.

Board attorney John McClow said he had a few items he wished to discuss in executive session regarding the District's water rights change case and pending diligence application, but that he had nothing to add to the contents of the memo.

The manager said that April 21 is the negotiation meeting on the Subordination Agreement, and that there will be a final meeting about a month later. She said the board received a copy of the final EA and the draft FONSI (Finding of No Significant Impact), and that while no comment period was mentioned in cover letter, if the board wishes, she will write a letter to the Bureau indicating support or thanks.

Consensus was for the manager to write a letter to the Bureau of Reclamation supporting the draft FONSI.

The manager said that the board received various items relating to Agenda Item 2c, Legislative Matters. She said that Representative Carl Miller and the State of Colorado requested a response to Dave Miller's allegations regarding the Taylor Reservoir refill right. She and John McClow wrote a response together. She added that the CWCB was considering discussing it at their board meeting, but did not.

The manager said there is a memo from Gunnison County Commissioner Marlene Zanetell, dated March 23, 2000, regarding formation of the Colorado Water Partnership on Front Range, spearheaded by Arapahoe County Commissioner and Union Park supporter Marie MacKenzie.

Steve Glazer said that based on Ms. Zanetell's memo, we should reach out to the Northern District, Denver Water, and Douglas County and thank them for not participating in this effort.

The manager said the Colorado Water Congress is working through subcommittees to discuss the state water planning legislation Russell George had proposed. She said the CWC is a good forum for tracking the bill. She added that there is a CWC State Affairs Committee meeting tomorrow which she plans to attend.

Steve Glazer said at the recent CWCB meeting, Patty Wells raised two points: That the water users would feel more comfortable with proposed legislation if they were able to see it in advance of its introduction, and that as a preface to the presentation of a proposed project, the need for the project should be demonstrated. Denver Water doesn't perceive the need for a new project. Eric Kuhn of the CRWCD suggested and encouraged all interested parties to work within the MWSI (Metropolitan Water Supply Investigation) recommendations. He said that the Governor has nominated three candidates to the CWCB: Eric Wilkinson,

Bob Burr, and Keith Catlin, president of the UVWUA, who will represent the Upper Gunnison Basin.

Board consensus was to take no action regarding the Colorado Water Partnership, at this time, but to monitor its activities.

Bill Trampe said that we think we're winding down on Union Park and can now do other work, but the new gorilla is arising and will take our focus away from our own issues, on which we should move forward.

3. BOARD MEMBER ELECTION UPDATE

The manager said that today is the deadline for petitions to be filed in district court in order to receive a court order to conduct elections in Divisions 4 and 8. Joan Brever will begin confirming signatures when petitions are received, each petition in Division 8 will have approximately 500 signatures. Division 4 petitions need 180 valid signatures. The manager said that assuming there are elections, the board will need to adopt election resolutions at a special meeting to be held on April 4 or 5. The resolutions will be provided to the court, laying out the process for the elections including dates, nomination procedures, designated election official, and election judges. She said that since there have been changes in the Election Code, we will try to get instructions from the judge in an order. She said that nomination petitions would be due April 18. The board can choose self-nomination on candidate nomination petitions, which is sufficient for special district elections, or as it was done last year, five signatures on a petition, which was in the election code last year but has since been repealed.

Board consensus was to schedule the special meeting for Tuesday April 4, 2000, at 12:00 p.m.

Steve Glazer said that since the board appointment process is based on self-nomination, he suggested a self-nominating process, based on legal counsel advice, in order to make it as easy as possible for people to participate in the election. Greg Peterson suggested using whichever way provides better protection from legal challenge. Dennis Steckel suggested taking the more conservative route of requiring five signatures on a nomination petition.

4. WATER QUALITY PROGRAM

4a. COORDINATOR PROPOSALS

The manager said she has distributed to the board the background information, advertisement, and proposals we have received from three

people for the Water Quality Program Coordinator. She recommended discussing the proposals in executive session.

Board President Mark Schumacher invited public comment.

Butch Clark said the information should be distributed to the public and should not discussed in executive session.

Board attorney John McClow said there is a distinction between personnel matters and contract negotiation. He said he thinks the board has the discretion to discuss the proposals in executive session as a personnel matter, but that the decision should be made in public session.

The manager advised the board to make a decision today to get a person onboard. She said that two out of the three individuals who applied are very qualified, and it will be a difficult decision. Since the board will be discussing the merits of each proposal, she thinks it is best done in executive session.

Diane Lothamer said that, while it may be uncomfortable, as a matter of principal she is opposed to executive session, and she sees no reason not to discuss it in public. Steve Glazer agreed with Ms. Lothamer

Steve Glazer said the board is lucky to have two such well-qualified applicants (Tyler Martineau and Lynn Cudlip). He suggested thanking Allan Polluck for his application as well. He said that while either applicant would both do an admirable job, he would feel more comfortable having a biologist in this position than an engineer.

Scottie Willey pointed out that Lynn is charging $40 per hour and Tyler $70, even though the total estimated costs are within $150 of each other.

Bill Trampe said he is in favor of Tyler Martineau because his experience is broader. He added that Mr. Martineau also has a biology degree.

Carol Drake said that Tyler's familiarity with what has been going on here probably would make him able to react more quickly to what we need.

Mark Schumacher said that while both applicants are equal in the technical part of it, the reason the board decided to hire someone was so the manager could minimize her involvement. Tyler's experience in the past makes him more able to do this, and he would take up less of Kathleen's time.

The manager said that in looking at the two proposals, Tyler's is the stronger proposal because of his familiarity with the issues. There are many funding issues to be dealt with sensitively, which might be easier for Tyler due to his familiarity with the parties and issues at hand. She said that he showed extra effort in trying to understand exactly what the District needed, and that she would support his proposal.

Dennis Steckel moved to accept Tyler Martineau's proposal. George Stowell seconded the motion. The motion carried.

The manager said the board has two joint funding agreements for approval, for the water monitoring program and the retrospective analysis. She said that the numbers have changed from those on the cover letter because of pass-through money from the County.

Steve Glazer moved to ratify both contracts, for the water monitoring program and the retrospective analysis. Diane Lothamer seconded the motion. The motion carried.

5. BASIN DEPLETION MODEL REFINEMENT MEMORANDUM OF UNDERSTANDING

The manager said that she and Tyler Martineau and Dave Kanzer of the CRWCD have worked to prepare an MOU documenting a procedure for implementing two contracts to complete refinements on the StateCU model, which has evolved from GunnCU. She said that last fall the board discussed a State contribution toward refinements to the model. The $10,000 approved by state has been increased to the $18,750 mentioned in the manager's March 22, 2000 memorandum. She said that the CRWCD has approved their portion and will authorize funds at their April meeting. She recommended that the board authorize the expenditure of $8,525 for work on refinements to the StateCU model.

Steve Glazer said he thought the purpose was to model needs in case of a call by the Gunnison Tunnel, and that the Bureau of Reclamation was satisfied with the model already in terms of reporting requirements of the Subordination Agreement. The manager said it is advisable to obtain a level of accuracy that will stand up in the future especially if we end up in a litigation situation as to what the consumptive uses are. We are going through a series of inexpensive fixes to bring the tool to a good level of accuracy.

Mr. Glazer inquired about additional state funds available for the cost of model refinements. The manager said that the state is bearing most of the project management cost.

Greg Peterson said it is important to move forward with these refinements and that the board needs to approve this work. He requested that the board meet with Tyler to go over the refinements and ask questions.

Steve Glazer said the board needs to avail itself of funds available to us without additional cost to our taxpayers. Mark Schumacher said that some months back, the board asked the manager to find funding for this, and that out of a $35,000 contract, we are only paying $8,000.

Greg Peterson moved that the board authorize execution of the MOA with the ability for legal review and authorize up to 8,525.00 from the General Engineering budget line item. Bob Irby seconded the motion. The motion carried.

6. MISCELLANEOUS MATTERS

The manager said that she has suggested that the Taylor Park local users group meet on April 17 at 3:00 p.m. to discuss the Taylor River flow regime. She said she will report to the board at the April 24 meeting.

The manager said that on March 10 she attended a meeting in Delta, at which Tom Pitts gave a presentation regarding how the endangered fish recovery program might look in this basin. She said it was a basic ESA presentation and was very informative. In her March 21, 2000 memo, she recommends inviting Tom Pitts to come here and give his presentation. She said she received today a draft synthesis report regarding flow recommendations for endangered fish. The time will come to comment on that document and understand what it means to have a programmatic biological opinion or not, in this basin. She asked the board if they want to invite Tom Pitts to come, and if so, do they prefer the week of May 8 or May 22.

Board consensus was to first try for the week of May 22.

The manager referred to a letter written to the board by Gunnison County Manager John DeVore regarding the state's instream flow program. In the letter, Mr. DeVore asked for the board's general views on instream flows and requested a meeting. She said she met with John DeVore, who said that Gunnison County is supportive of having instream flow water rights in the basin, and that they want to keep the issue on the table. She said they discussed the fact that the instream flow issue is not on this board's priority list but is a good topic for the watershed coalition. She said that the board expressed a desire to get public input on the instream flow issue during its last discussion of the matter. It

would be possible to communicate the board's and public's opinions to the CWCB late this year or early next year so that there would be some Gunnison basin flows in their 2001 work plan.

Scottie Willey moved to place instream flow issues on the District's priority list for 2000, giving it a priority of 1A or 2B. Steve Glazer seconded the motion.

Bill Trampe said he had grave concerns about putting instream flow development at the top of the District's priority list and giving it precedence over other issues that are of vital concern to the community as a whole. He said that there is a lot of agricultural use of water that is not adequately protected today, and that until that is protected, he is opposed to any further instream flows appropriations on main streams.

Steve Glazer said that while putting instream flow protection on the District's priority list is worthwhile, he is uncomfortable with the words in the motion and is unsure where it should go on list.

Dennis Steckel and Diane Lothamer both spoke against the motion.

Steve Glazer encouraged Ms. Willey to amend her motion, making it more general.

Scottie Willey amended her motion to put instream flow protection on the District's priority list, without specifying its place on the list.

Steve Glazer said that at the March CWCB meeting, under the 2000 work plan agenda item, the staff presented a rating system of priorities, weighting different issues in order to help the board develop priorities. It would be helpful for us to look at this list in the future and see how any items on the list affect any stream segments in our basin.

Greg Peterson said he feels it is not an appropriate time to change the priorities list, and also that the potential impact of an instream flow on moving points of diversion concerns him.

The motion failed.

7. UNSCHEDULED CITIZENS

Steve Schechter said that petitions requesting board member elections in Divisions 8 and 4 had been submitted to District Court. He urged the

board to make the election process easier when the District reorganizes in the future.

Duane Phelps said that he is comfortable with the makeup of board and feels they do a good job. He said he feels that some members of the public speak for too long and abuse freedom of speech and public input.

Butch Clark asked if the District had received the CRWCD's study on water consumption downstream of Blue Mesa Reservoir. The manager said the study has not yet been released. Mr. Clark asked if one of the contracts mentioned in subordination agreement is within the area between Blue Mesa and Crystal Dams. John McClow said all four contracts are within UGRWCD.

Mr. Clark said that Gunnison County Commissioner Marlene Zanetell raised an issue before the County Commissioners regarding a contemplated standing committee on water. He said the West Slope should come forward with a plan cheaper than Representative George's plan, and which provides more water and protection, such as CARP.

8. CONSIDERATION OF FEB. 28 MINUTES

The manager said on page 10, in the last paragraph, "and a June 20 election date" should be inserted after, "June 26 annual meeting date", so that the sentence reads: "She said that March 27 is the petition deadline, based on the June 26 annual meeting date and a June 20 election date".

Scottie Willey moved to approve the February 28, 2000 minutes, as amended. Greg Peterson seconded the motion.

Steve Glazer thanked the staff for making the discussions so clear in the minutes.

The motion carried.

9. CONSIDERATION OF OPERATIONAL EXPENSES PAID

Dennis Steckel moved approval of Operational Expenses Paid. Diane Lothamer seconded the motion. The motion carried.

10. CONSIDERATION OF OPERATIONAL AND OTHER EXPENSES PAYABLE

Dennis Steckel moved approval of Operational and Other Expenses Payable. Scottie Willey seconded the motion. The motion carried.

11. MONTHLY BUDGET REPORT

Board Treasurer Diane Lothamer said that, as last year, the specific ownership tax is higher than expected.

12. FUTURE MEETINGS

The manager said the board has scheduled a special meeting on April 4, 2000, at 12:00 to adopt election resolutions. April 24 at 7:00 p.m. is the next regular meeting. March 30 at 6:45 p.m. is the next watershed planing coalition meeting.

Greg Peterson asked if the May 22 board meeting will be held in Lake City as it was last year.

Dennis Steckel moved that the board conduct its May 22, 2000 regular board meeting in Lake City, if the facilities are available. Diane Lothamer seconded the motion. The motion carried.

13. POSSIBLE EXECUTIVE SESSION

Mark Schumacher said the attorneys have recommended discussing in executive session matters relating to Ernest Cockrell's private instream flow water right and the Taylor Reservoir second fill, and the U.S. Forest Service stipulation in the District's water rights transfer case.

Dennis Steckel asked if action is anticipated. John McClow said no.

Greg Peterson moved and Dennis Steckel seconded to adjourn into executive session to discuss matters relating to Ernest Cockrell's private instream flow water right and the Taylor Reservoir second fill, and the U.S. Forest Service stipulation in the District's water rights transfer case. The motion carried.

The board took no action as a result of the executive session.

14. ADJOURNMENT

Board President Mark Schumacher adjourned the March 27, 2000 meeting at 4:50 p.m.

Respectfully submitted,

Carol Drake, Secretary

APPROVED:

Mark Schumacher, President

AGENDA
UPPER GUNNISON RIVER WATERSHED COALITION MEETING

Thursday, May 25, 2000
Gunnison County Multi-Purpose Building (Upstairs)
275 South Spruce Street
Gunnison, CO
6:00 p.m. - 9:00 p.m.

NOTE: The change in time and length was decided on at the April meeting. All work at this meeting will be done as a "committee-of-the-whole".

6:00 - 7:00 p.m. **Revisit the content discussion of the "diversion" topic/issue which took place at the April meeting (see the preview below and the enclosed summary), adding, deleting and revising as necessary.** We will take as much time as is necessary on this item, but we anticipate that an hour will be sufficient.

7:00 - 8:00 p.m. **Discussion of the process to be followed by the group at future meetings. This will involve a number of sub-topics:**

(1) Reaction to the two statements prepared by the facilitators--especially the one dealing with STEPS IN THE PROCESS, emphasizing Steps 4 - 7. These statements were distributed at the April meeting and are being mailed herewith to other participants.

2) Discussion of the best approach to accomplishing needed tasks; for example, the use of small working committees (in which case their composition, how members will be selected, charges, time lines & method of reporting to the "committee-of-the-whole" will need to be discussed). Perhaps this will lead to deciding that at least one such committee should be chosen and charged.

3) With the two previous matters having been resolved, it will be appropriate to review and prioritize the remaining topics/issues.

The importance of these matters will lead us, again, to take as much time as is necessary to get them resolved.

8:00 - 8:45 p.m. **As time permits, we will begin work on the topic/issue that was given top priority, at least getting a start on bringing it to the point where we began work on the "diversion" topic/issue at the start of this meeting.**

8:45 - 9:00 p.m. **Housekeeping: TWO JUNE MEETINGS--LENGTH AND OTHER DETAILS**

[OVER]

PREVIEW OF THE COALITION MEETING THURSDAY, MAY 25, 2000

As the agenda for this meeting indicates, a number of aspects of the discussion of the "diversion" topic/issue at the April meeting require further consideration. The enclosed detailed summary of the results of that meeting will serve as the basis for that renewed discussion. **It is especially the case that participants who were not at the April meeting need to provide their in-put on what was agreed to on this matter.** Our intention is to carry this topic/issue to the point of the **"working consensus"** described in Step 5 of our STEPS document. This will provide the group with a clearer sense of how the overall process would develop in the future, which puts it in a good position to deal with the next agenda item.

A variety of circumstances make it appropriate at this point to deal very specifically with the process questions described in the second item of the agenda Only after decisions have been made about the direction the group wishes to take and the way it expects to get there does it make sense to prioritize (and, if necessary, revise) the remaining issues/topics.

And that task needs to be accomplished before work of the "committee-of-the-whole" begins on the next topic/issue, which we will do as time permits.

The sense that the group is moving too slowly, which was expressed at the April meeting, led to the increased length of this scheduled meeting. Having now had one such longer meeting, and the suggestion having been made that we should meet twice in June--on Thursday, June 15 and the previously scheduled, "regular" June meeting on the 29th, the group needs to decide if two meetings in June would be appropriate in view of the urgency of some matters and, if so, whether those dates are acceptable and what length should be planned for the June meetings.

For additional information, or to be placed on the mailing list, please contact Kathleen Klein, 970-641-6065, or email us at ugrwcd@westelk.com. Thank you.

UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT

SPECIAL BOARD MEETING MINUTES

March 9, 2000

The Board of Directors of the Upper Gunnison River Water Conservancy District conducted a special board meeting on March 9, 2000 at 7:00 p.m. at the Gunnison County Fairgrounds, Gunnison, Colorado.

Board members present were: Carol Drake, Bob Drexel, Steve Glazer, Bob Irby, Diane Lothamer, Greg Peterson, Mark Schumacher, George Stowell, and Ruth "Scottie" Willey. Board members not present were Dennis Steckel and Bill Trampe.

Others present were:

1. CALL TO ORDER

Board President Mark Schumacher called the meeting to order at 7:03 p.m.

2. PROPOSED WATER SUPPLY LEGISLATION

The manager said that Representative Russell George is considering carrying a bill to identify and build a transmountain diversion project, from water divisions 4 or 5, using state funds. She said she attended a Colorado Water Congress meeting Monday, March 6 at which a subcommittee was formed. The CWC will be working on revising the language. At the March 6 meeting, she spoke out against the bill. She said that she and John McClow plan to alternate attending subcommittee meetings. The next one is tomorrow at 10:00, and John McClow will attend.

Greg Peterson asked what kinds of revisions to the bill are being considered. Mr. McClow said objection to the current proposed language was nearly universal, and that Colorado Springs and the town of Thornton were its only supporters.

The manager said the District has been coordinating with Gunnison County, who will also be represented at the meeting tomorrow.

Mark Schumacher asked if the board wants the manager to write a letter to Representative Russell George regarding the bill.

Board consensus was for the manager to write a letter to Representative George expressing the District's opposition to the proposed bill.

Steve Glazer suggested that if this moves forward, the proponents be reminded that all other funding for any other project would be foreclosed if the CWCB's loan fund were totally committed to this project.

3. EXECUTIVE SESSION - UPPER GUNNISON PROJECT LITIGATION

Mark Schumacher said he does not anticipate the board taking action after the executive session.

Bob Irby moved and George Stowell seconded to adjourn into executive session to discuss matters relating to the Upper Gunnison Project litigation. The motion carried.

The board took no action as a result of the executive session.

Board President Mark Schumacher adjourned the March 9, 2000 meeting at 9:37 p.m.

Respectfully submitted,

Carol M. Drake

Carol Drake, Secretary

APPROVED:

Mark Schumacher, President

To the Editor: 6-14-00

From on-going, acrimonious controversies over water that have grown like larkspur in the meadows and fields of the American West, two truths have flowered: 1. Transporting water out of one valley to enable growth in another valley or region almost always does irreparable damage to the first valley. 2. To provide themselves with enough water to irrigate their fields or to meet domestic needs, water users must constantly protect themselves from the demands of other users who in dry years have the legal right to use exclusively for themselves what little water there is.

From its inception in 1990, POWER has been committed to helping Gunnison Valley citizens avoid losses inherent in these two truths. Accordingly, we have opposed by whatever means are legal further trans-mountain diversion of Gunnison Valley water east to the Front Range. We have also tried to use whatever means are legal to help Gunnison Valley citizens achieve call protection from the Bureau of Reclamation against senior down-stream users such as the Uncompahgre Water Users and the Redlands Canal by releasing stored water from the Aspinall Unit.

Shortly after its formation in 1990, POWER mounted a campaign to convince the U.S. government that it had made a promise during the 1950s to our valley's citizens-- a promise that in exchange for their approval to build the three dams of the Aspinall Unit, Gunnison Valley citizens would be given 60,000 acre feet of call protection against the calls of senior down-stream users. POWER believes that had it not been for these efforts, Judge Brown would not have included the 60,000 acre feet in his judgments about the availability of water in the Union Park case and the current subordination agreement between the UGRWCD and the BOR would not have been written.

Unfortunately, the promise that POWER believes the U.S. government made to the people of the Gunnison Valley concerning call protection never reached the finality of a written contract. And now it appears that the Upper Gunnison River Water Conservancy District does not wish to pursue the possibility of securing down-stream call protection by reminding the U.S. government of past promises.

Regardless of the strategy to be used for obtaining the down-stream call protection which is missing in the current subordination agreement--either by continuing to remind the U.S. government of past promises, or by acquiescing to the argument that no such promises were made because no formal contract was written--POWER insists that permanent call protection for Gunnison Valley users by the BOR is the most important unresolved issue facing the valley today. POWER ardently hopes that the UGRWCD will not abandon the issue of call protection under the banner of the soon-to-be-signed subordination agreement with the BOR.

Sincerely,
John Cope

Vice-Chair
POWER
Steering Committee

BUTCH

Making Opportunities In Fulfilling A Promise - Part 1 DRAFT

Two weeks ago in a letter to the editor, officials of the Upper Gunnison River Water Conservancy District asked POWER to show proof of promises made to this community for call protection. A call can require a more junior water right to stop using water when the supply to a more senior right is short. The Gunnison Tunnel to the Uncompahgre Valley from just above the Black Canyon is a very large downstream water right and is senior to most in the Upper Gunnison Basin. Calls from it and large senior rights downstream were a major problem in the past and remain a threat now.

The history of water development in the West makes clear it featured local hopes and political promises to deal with such problems. While our Upper Gunnison Basin community has long been wary of promises concerning water, this doesn't mean that once given, they shouldn't be kept. Below are some promises - political ones to obtain local support of water development proejcts.

In 1938 a big dam was proposed at the head of the Black Canyon. Its promise was to end the threat of transmountain diversion at the cost of losing 20 miles of world class stream fishing. Basin residents were skeptical of this and of other, "More or less chimerical promises for something which has been labeled and called 'compensatory reservoirs' ... but which are of doubtful utility [for call protection]." (Gunnison New Champion, July 14)

In 1951 the Upper Gunnison community learned of an even larger dam proposal to store 2,500,000 acre-feet of water. This enormous reservoir would be part of the Colorado River Storage Project. It was promised to prevent local water use being curtailed by Colorado's delivery obligations to downstream states and by local obligations to deliver water to the Uncompahgre Project and others downstream on the Gunnison River. In return, our basin would lose economic activity and tax revenues as ranches, resorts, and stores were flooded and would lose 30 miles of stream fishing. Officials said, "The people of Gunnison had to weigh the relative merit of losing 30 miles of stream fishing against complete safety in the supply of their irrigating water as they always had used it ...." (Minutes of Colorado River District meeting, April 4)

The promise of complete safety in supply (call protection) was attractive. Yet the community baulked. The proposal was downsized by half to the present Aspinall Unit. Strings, however, were attached to the promise. Those wanting call protection would have to pay for it, though only about 15% of its actual cost, and the "160 acre limitation" of reclamation law would apply. The latter meant safety was limited to coverage for irrigating 160 acres. Locally, most ranchers irrigated more land. They wanted a waiver of this law placed in the Colorado River Storage Project Act (report to Colorado Water Conservation Board, April 1952). That didn't happen. Yet again in 1959, the senior Colorado water official promised the big reservoir would "mean that no Gunnison Area decrees would ever have to be curtailed in their water use because of senior rights to the downstream flow." (Gunnison Courier, May 4).

Blue Mesa Reservoir began operating in 1965. Since then, the promise of protection from downstream calls has been successfully kept - though informally. Still, calls were seen as a threat. In the early and mid-1990's, many in our community asked for formal continuation of call protection. Finally, in 1995 the Bureau of Reclamation acknowledged that, "It was certainly contemplated that such indirect benefits [call protection] would result from the project [the Aspinall Unit], but we have not yet reached a legal conclusion as to whether there is a legal obligation to supply water to these benefits when other water contracts would conflict ..." (Memorandum, January 5). Later that year the Bureau did contract to provide call protection as long as Blue Mesa Reservoir held more that 400,000 acre-feet in storage - but only for five years with a possible extension.

To answer the recent letter by officials of the Upper Gunnison River Water Conservancy District, yes there was a promise of call protection. Yes, it was a political promise. Still, it is not formalized. That is the point. Long ago the District should have helped the Bureau conclude it remains a legal obligation and can be fulfilled in a way that makes economic, environmental, and practical sense. Part 2 will explain why call protection is so important and outline ways to sensibly achieve it.

Gunnison Basin POWER
People Opposing Water Export Raids

June 12,2000

The Editor
The Gunnison County Times
Gunnison, Colorado 81230

DearSir:

In response to the diatribe contradicting POWER'S claim that the Bureau of Reclamation promised the water users of the Upper Gunnison River Basin call protection, which was published inthe Times on May 25,2000, we would submit the following:

Lawyer MwClow and manager Klein for the Upper Gunnison River Water Conservancy District asserted that:

> "Even speculation about a promise should have a basis in some document, statement or hypothetical musing by the party alledged to have made it; the U.S. Government. We, POWER and others have searched for it. There is nothing. It did not happen, and to continue to speculate that it did is reprehensible."

As a public service POWER wishes to cause to be publishedin its entirety a Memorandum dated October 28,1984 which POWER dug out of the River District's files, and to which it has called the District's attorneys attention on several occasions. This memo speaks elequanty and decisively as to the Government's promise to provide call protection to junior decree holders in the Gunnison valley above Blue Mesa Resevoir

P O W E R

by _____
Its Executive Committee

P.O. Box 174
Gunnison, CO 8123

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JUN 16 1986
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WATER RESOURCES STATE ENGINEER COLO.
Colorado Water Resources Power Development Authority

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LBR.IM.0256

Memorandum

To: Regional Director, Bureau of Reclamation

From: Regional Solicitor, Intermountain Region

Subject: Depletion of Water Above Wayne Aspinall Unit (Curecanti)

In your September 21, 1984, memorandum to us you ask our opinion concerning a proposed action wherein Mr. John Hill, Department of Justice, would petition the Colorado District Court to revise certain water decrees assigned to the United States by the Colorado River Water Conservation District dated January 26, 1962.

We have reviewed your file and consulted with Mr. Hill and various members of your staff. We recommend that no action be taken by Mr. Hill in the Colorado courts on behalf of the Bureau of Reclamation in this matter.

The Colorado River Water Conservation District assigned on January 26, 1962, certain water rights to "the United States upon condition that the water rights assigned will be utilized for the development and operation of the Curecanti Unit in a manner consistent with the development of water resources for beneficial use in the natural basin of the Gunnison River." The assignment was transmitted to the Commissioner by memorandum dated February 21, 1962. The Regional Director recognized that the assignment "would provide for upstream development above Curecanti." Your files disclose the intent of the United States at the time it accepted this assignment, and also the intent of the Colorado River Water Conservation District. These file documents taken as a whole show that the United States has an obligation to allow junior appropriators, upstream of the Wayne Aspinall Unit (Curecanti Unit), the use of water in an amount not to exceed 60,000 acre feet. Upstream water development would be exclusively for the Upper Gunnison Basin and no transbasin diversion would be allowed.

Your files contain agreements between the United States and private parties wherein the United States recognized the right upstream water depletions by junior appropriators.

As early as 1959 Congress was advised by the Secretary that depletions in the Gunnison River upstream of the Curecanti Unit in the amount of 60,000 acre feet were contemplated. House Document No. 201, 86th Cong., dated July 15, 1959, p. 15.

We see no reason to initiate any court action in behalf of the Bureau of Reclamation in this matter and so advised Mr. Hill. He agreed to take no further action unless requested. Mr. Hill by letter dated September 13, 1984, advised Dr. Jeris A. Danielson, Colorado State Engineer, that the Bureau of Reclamation did not intend to enforce its rights as against upstream water users. You should contact the State Engineer and inform him that the United States will live up to its obligations in connection with the January 26, 1962, assignment from the Colorado River Water Conservation District. This means that you will fulfill your obligation to allow upstream depletions in an amount not to exceed 60,000 acre feet, that the Bureau of Reclamation does not intend to take any action contrary to these obligations, and that the State Engineer, insofar as the Bureau of Reclamation is concerned, may administer upstream depletions in harmony with this position.

W. P. ELLIOTT, JR.
Acting Regional Solicitor

By William Robert McConkie
WILLIAM ROBERT MC CONKIE
Attorney

cc: Mr. John R. Hill, Jr., Esq., Assistant Attorney General, U.S. Department of Justice, Land and Natural Resources Division, Denver Federal Bldg., Drawer 3607, 1961 Stout Street, Denver, Colorado 80294

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MINUTES OF THE SECOND MEETING

POLICY AND REVIEW COMMITTEE-GUNNISON RIVER STORAGE

December 14, 1951

Attendance

1. The Policy and Review Committee held its Second Meeting (executive session) on December 14, 1951, in the Conference Room of the Colorado Water Conservation Board, Denver, Colorado. The Chairman called the meeting to order at 10:40 a.m. The following members, Federal representatives attending as observers, and others were present:

Members of Committee

Clifford H. Stone, Chairman--Director, Colorado Water Conservation Board, Denver, Colorado
George Cory--Montrose, Colorado, representing Montrose County
F. M. Peterson--Delta, Colorado, representing Delta County
Ed L. Dutcher--Gunnison, Colorado, representing Gunnison County
Silmon Smith--Grand Junction, Colorado, representing the Colorado River Water Conservation District Board
R. M. Gildersleeve--Chief Engineer, Colorado Water Conservation Board, Denver, Colorado
Jean S. Breitenstein--Attorney, Colorado Water Conservation Board Denver, Colorado

Absent:

C. N. Feast--Director, Colorado Game and Fish Commission, Denver, Colorado
Royce J. Tipton--Consulting Engineer, Colorado Water Conservation Board, Denver, Colorado

Secretary

Leon F. Maca--Hydrology Branch, Project Planning Division, Bureau of Reclamation, Denver, Colorado

Federal Observers

Bureau of Reclamation

C. B. Jacobson--Engineer in charge of Colorado River Storage Project investigations, Region 4, Salt Lake City, Utah
R. W. Jennings--Area Engineer, Region 4, Grand Junction, Colorado
L. E. Holmes--Region 4, Salt Lake City, Utah

Fish and Wildlife Service

A. B. Eustis--Denver, Colorado

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March 24, 1952

Hon. Clifford H. Stone
Director of Water Conservation Board
State Office Building
Denver, Colorado

Dear Judge Stone:

I am in receipt of your memorandum under the date of March 20, addressed to all the members of the Policy and Review Committee, and with which you enclosed a copy of the preliminary draft of the report of the Policy and Review Committee of the Gunnison River Storage.

I have spent some little time examining the report and I want to compliment you very highly for the tremendous amount of time that you have spent and the consideration you have given in preparing the report. It is an excellent piece of work. However, there are several matters in the report to which I would like to call your attention. These are as follows:

1. I am sure you will recall that before any agreement was reached concerning the size and location of the dams and the capacity of the reservoirs that unanimous approval was given to my motion to the effect that any agreement must be predicated upon the premises that there will not be any material change in the size or location of the dams or the capacity of the reservoirs as agreed upon by the Committee. The only reference to this motion that I observed in the report is the last paragraph on Page 28 wherein it is stated that the Committee "recommends" that should any material change be made then the matter should be rereferred to the Committee. I believe that the report should include a positive statement at the beginning that any agreement of the Committee is predicated upon the proposition that there will be no material change in the size or location of the Crystal or Curecanti Dams, or in the capacity of the reservoirs as may be finally approved by the Committee. A mere recommendation to the Colorado Water Board that in the event there should

#3: Hon. Clifford H. Stone

potential development of the Gunnison River Basin for domestic, agricultural, industrial, recreational and fish and wildlife purposes. I am sure that you will agree that this is an important matter so far as the people in Western Colorado are concerned, and I think the report should include a positive statement that there will be included in the Curecanti and Crystal Reservoirs 425,000 acre feet of water for such potential development in the Gunnison River basin and that amount of water and that amount of storage be reserved for those purposes.

7. In sub-paragraph (d) on Page 15, reference is made to 5,049 acres of land estimated by the Bureau as land being presently irrigated which would be inundated in Gunnison County by the 2,500,000 ft. reservoir. It is my understanding that such a figure 5,049 was the figure estimated by the Bureau of Reclamation under its old survey of irrigated lands in the areas affected, and that since the old survey was made the Bureau found an additional 1,219 acres in that area, making a total of 6,268 acres of irrigated land that would be inundated by the 2,500,000 acre ft. reservoir, and if this latter figure is used, it would mean about 33% of the presently irrigated land would be inundated by the 940,000 acre ft. reservoir. The 5,049 figure was also used in the latter part of the paragraph and perhaps this also should be corrected.

8. In sub-paragraph (e) on Page 16 and in the last part of paragraph 22, reference is made that the 940,000 acre ft. reservoir would result in an estimated reduction of the loss in tax returns to Gunnison County of at least "46%". No where in my file could I find any reference to this 46%. I am wondering whether your staff computed this figure subsequent to our last meeting. If the computation has been made by your staff, it is undoubtedly accurate and I am merely calling this matter to your attention.

9. I think the next to the last item in sub-paragraph (g) Page 17 concerning the "slight inundation of presently cultivated and irrigated land" refers to cultivated lands in the Cimarron Valley. Don't you think the four words "in the Cimarron Valley" should be at the end of that sentence? This would clarify the paragraph considerably.

#4: Hon. Clifford H. Stone

10. Under paragraph 9 in the next to the last paragraph on Page 20, reference is made to the operation and use of the Taylor Park Reservoir. You will recall that in accepting Plan E, I insisted upon a strong recommendation being made by our Committee that the Upper Gunnison River Basin people have the right to use the Taylor Park Reservoir, the water stored therein, and the storage rights, and then you suggested that such use by the Gunnison County people be integrated with the operation of the Curecanti and Crystal Reservoirs. This was to be done under an agreement with the Uncomphagre Water Users Association, the government and the Gunnison County people. The way the report reads, it appears to me that we are stressing the fact that the operation of the reservoirs be integrated with that of Curecanti and Crystal Reservoirs instead of stressing the use of the reservoirs, the water stored therein and the storage rights by the Upper Gunnison River Basin people. May I suggest that this paragraph be changed and clarified along the lines herein mentioned.

11. In paragraph 10 on Page 21, it appears to me from the present language used in the report that the initial authorization should include the 940,000 and 510,000 acre feet reservoirs and that the same initial authorization be limited to the storage of that amount of water. I think the intention is that there should be included in the initial authorization the 940,000 and 510,000 acre feet reservoirs but that the Colorado River Storage Plan should forever limit the storage in the Upper Gunnison River to the 940,000 and 510,000 acre feet reservoirs, respectively, in so far as those two reservoirs are concerned. In other words, we do not want to give the impression that the Curecanti and Crystal Reservoirs are limited only by the initial authorization to 940,000 acre feet and 510,000 acre feet, respectively, and later on they may be increased in size. In the last sentence of that same paragraph, you refer to the Curecanti Reservoir as being "740,000" acre feet. Of course, this should be changed to 940,000.

12. I am wondering if the last sentence in paragraph 11 on Page 22 accurately expresses the intention of the members of the Committee wherein it is stated that "It is generally believed" that the railroad will be abandoned. I know that this is the argument of Corey and Petersen. My argument was that the railroad may possibly be abandoned but we have no way of determining

#7: Hon. Clifford H. Stone

20. Appendix P was very awkwardly worded and in several respects entirely inaccurate, so I have re-written this Appendix to more clearly express my thoughts and I enclose herewith the Appendix as it is re-written which I wish you would incorporate in the report in lieu of the other one. Personally, I see no reason why there should be another meeting of the Committee if the report is changed substantially along the lines above mentioned. Of course, the other members ~~might~~ have some suggestions, too. As I have said before, I think you have done an excellent job in preparing the report and I hasten to submit my suggestions so that the final report will not be further delayed. If for any reason you should ~~not feel~~ inclined to accept my suggestions, then, of course, I would like another opportunity to be heard before submitting the final report to the Colorado Water Conservation Board.

With kindest personal regards, I am

Yours very truly,

DUTCHER AND SERAPHINE

by:

FLD/amp

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THE COLORADO RIVER
WATER CONSERVATION DISTRICT

Grand Junction, Colo.
9 April 1951.

Ed. L. Dutcher, Esq., Chairman,
Gunnison Watershed Conservation Committee,
Gunnison, Colorado,

My Dear Mr. Dutcher:

Understanding that you are the Chairman of a Committee with the name as above, to which has been delegated the task of compiling the comment and the decision of Gunnison County regarding the Gunnison River Project and Colorado River Storage Project Reports, I am writing you to bring to your attention and that of the Committee some things which, because of circumstances I will later detail, have not been made known to Gunnison folks. I feel that these things are so important that they should be made known to them and I want to propose a way in which this can be done. If you are not the Chairman of this Committee or if I have the wrong name for it I wish you would correct me and tell me how I can get in touch with the Committee and its Chairman.

While the details of Jex' 'Basin Report' on Gunnison river, and the broad outline and expectations of the Colorado River Storage Project were completely aired at the recent meeting in Gunnison, and some of us tried to bring into the discussion the effect these projects would have on Gunnison County, there was one subject that was not discussed — trans-basin diversion. Since several folks from PUeblo were present it must appear that this is still a very live subject.

I had reduced the things I was prepared to say to writing, and a large part of that writing had to do with trans-basin diversion, as you can see from the copy I am sending you. After arriving at Gunnison I was requested not to mention that subject in my talk — and did not do so as you will remember. The same folks who asked me not to mention diversion then, could see no harm in bringing it to the attention of the Gunnison County people at a subsequent meeting, when no outsiders were present. The District Board feels, I believe, and I know I do very strongly, that the effect of some of these things on trans-basin diversion is something the Gunnison people ought to know about, before they make any decision. With this in mind the District Board planned, even before the meeting Thursday, to come to Gunnison the day before their regular meeting and on April 16th, to meet either with the Committee or Gunnison people generally to point out how the building of Curecanti reservoir would practically prevent diversion from Gunnison river. At the worst it would reduce any such diversion to a nominal amount.

When I mentioned in my talk that we Western Colorado folks could not hold a meeting about our own affairs without California or Eastern Colorado looking

over ourrshoulders, it was somewhat in a spirit of raillery, but there was some rancor in it too. If we had talked about the effect of Curecanti on diversion, the Arkansas valley folks would have rushed home and raised up that whole valley to fight the Storage Project, which not only Western Colorado, but the whole Upper Basin desperately needs. If we do not raise this issue publicly in the open, however, perhaps those folks will not fight the Storage Project and Colorado will appear at least, to be solidly for it, which is not only higly desirable but something we owe the other Upper Division states. As a matter of fact the Eastern Colorado people who have diversions now or expec-t to have them cannot, in their own interest, oppose the Storage Project, because the safety of their own diversions, as of our water rights, depends upon the ability to make the necessary deliveries to the Lower Basin without curtailing some of our later and all of our future water rights.

IN all the hours of explanation about the purpose and features of the Storage Project, there was not one word said about how it would affect Gunnison County, which is what you people want to know. Some of that information I tried to supply and I want now to complete it by talking about the one thing I could not talk about at the recent meeting — trans-basin diversion.

According to the record of flow at Iola (1938-1948) there has been during the irrigation season (May 16--August 15) an annual average of 357,200 acre-feet, plus the consumptive use in Gunnison County, out of an annual average flow, after that consumptive use,of 667,000 acre-feet. (Annual average flow for the period 1920-1948, after consumptive use, was 712,000 acre-feet). For the non-irrigation season average flow of 309,800 acre-feet, it does not seem likely Gunnison County can develop any use, but Curecanti reservoir would be such a use and would go far to prevent the diversion of this water. No study of Gunnison County irrigation has ever been made, beyond a few yearly studies on Tomichi creek, that I made years ago. Assuming, as is virtually true, that 60,000 acres is irrigated for hay and some pasture, at and above Gunnison, it seems probable that water is applied to this 60,000 acres at an average rate of 4.00 acre-feet per acre, even in the short irrigation season of 92 days, with a consumptive use of 60,000 acre-feet. Actually the season varies in length, and is often shorter, but only varies by a few days either way.

If this assumption is correct, of the 240,000 acre-feet applied, some 180,000 acre-feet appears at Iola as return flow the rate of which is known to be high for this type of use. This means that during the irrigation season, from the average flow of 357,200 acre-feet, 177,200 acre-feet is never diverted or used in Gunnison County at all, and that 60,000 acre-feet is all that is actually consumed there. Now if all the projects proposed by Mr. Jex' report are built, but nobody has demonstrated that they are either needed or desired, 121,000 acre-feet of demand water will have to be stored or diverted and consumptive use in Gunnison County might approach or somewhat exceed 100,000 acre-feet and irrigation demand would approach 360,000 acre-feet, both yearly, which is just about what the river flows during the irrigation season. Of course, the reservoirs Mr. Jex proposed would have to be, and would be, filled to a

Mr. Dutcher 9 April 1951

large extent from non-irrigation season flow.

Now any attempted diversion must be built so that it will operate the year round, since almost half the water flows during the non-irrigation season. It would, however, be aimed primarily at the high flood flows during the irrigation season and the water of those flows which is not now a part of your irrigation demand and use. If people can be found who want the new lands, and are willing to settle on them and pay for the new projects reported by Mr. Jex, this would practically wipe out the excess flood water that is not now being used. If this is not done the Arkansas people will be after at least 150,000 acre-feet out of the flood and all the non-irrigation season water they can secure, unless we put that water to use by building Curecanti reservoir

If Curecanti and the participating projects are built this is about what will happen:

	1938-1948 acre-feet
Unused in Gunnison County	56,000 a.f.
Return flow from present use	180,000 a.f.
Return flow from additional use	81,000 a.f.
Non-irrigation season flow	309,800 a.f.
Total flow at Iola	626,800 a.f.
Inflow below Iola	321,000 a.f.
Total inflow to Curecanti reservoir	947,800 a.f.

If we build the participating projects but not Curecanti reservoir, we are immediately in trouble with priorities down the river, and at the same time subject to large diversions, while if we build neither this situation is simply made worse.

From the inflow to Curecanti reservoir tabulated above it is hard to see how any item can be eliminated or lessened without seriously interfering with the utility of that reservoir for the purpose for which it is proposed. There has to be supplied from it, water needed by the Uncompahgre Project, water for several canals near Delta and the Redland Water & Power Company near Grand Junction. A rough estimate of the annual draft of these several rights is that they will take 500,000 acre-feet of the inflow while Curecanti is filling, but will be fully supplied by power releases as long as it can be kept full.

And the intention, of course, is to keep Curecanti reservoir full, except in extreme emergency, because water can be stored there with less evaporation loss than anywhere else in the reservoir system. Once the reservoir is filled, the Arkansas people would probably say that now the reservoir was filled that left water they could divert, but the answer is that we must have not only a reservoir full of water, but the means of filling it again when we have to empty it. Thus it would appear that by building Curecanti reservoir we could provide a use for all the water that might otherwise flow, unused, out of Gunnison County. This use, the payment of our Lower Basin obligation, is just as real a use as any of our own water rights and must be so recognized by both

Mr. Dutcher 9 April 1951

their principal means of livelihood are greater than any disadvantages to their incidental means of income.

I do not like the idea of filling this reservoir with water any better than any of them do, but I know that we cannot have growth and improvement without change and it appears also that in this case we cannot even have safety in our water rights without some change.

Because of the short time in which a decision has to be made, and also because the proposed meeting with the District Board comes so late in that short time, it has seemed wise to lay out for you the general outline of what we can expect with regard to trans-basin diversion in this letter, even at the risk of making it too long. It hardly seems necessary to say to you that for the same reasons of policy that prevented me from talking about this subject at the last meeting, the less publicity this thing gets the better it will be for us all. Finally, I hope that, no matter what their decision may be on their own particular problem the Committee will give their assent to the Storage Project as a general proposition, having in mind that while they may not want to avail themselves of the good things it would do for them, the rest ofus want and greatly need it.

I hope your Committee will agree to meet with the District Board on the 16th for I am sure they will learn things there that they need to know. Will you write me your ideas about this thing?

SIncerely yours,

F. C. Merriell
Secretary

cc-Frank Delaney Esq.,
Glenwood Springs, Colo.
Hume S. White, Esq.,
Eagle, Colorado
Hon. Dan H. Hughes,
Montrose, Colo
Hon. Clifford H. Stone,
Denver, Colo.

where is Plan E?

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APPENDIX P

SUMMARY STATEMENT BY ED L. DUTCHER, GUNNISON COUNTY REPRESENTATIVE, PRESENTED TO THE POLICY AND REVIEW COMMITTEE ON MARCH 3, 1952

After the meeting on February 23, I went home for the purpose of thinking this matter over by myself. I have found in my experience over a period of years that sometimes a person has an opportunity to think things out a little more clearly and a little more satisfactorily if he is given a little more time and when he is by himself. For approximately three days I thought this matter over before consulting with the Executive Committee of the Gunnison Watershed Conservation Committee.

My conclusion was simply this--that looking at it purely from a selfish standpoint as a representative of the people in the Upper Gunnison River Basin, it would probably be better to delay any kind of an agreement at the present tim rather than to enter into an amicable settlement under Plan E. However, I felt that my responsibility as a member of the Policy and Review Committee did not stop there. I felt that we should look at it in two ways, namely, what would be for the best interests of Western Colorado, including the Upper Gunnison Rive Basin, and at the same time provide as much protection as is reasonably possible under the circumstances for Gunnison County.

In problems of this kind, it is impossible for one area to obtain all of the things that it would like to have--it is purely a matter of give and take. I sincerely concluded that under all of the circumstances and looking at it from a very broad standpoint and also in more or less of an altruistic way, as far as the people in the Upper Gunnison River Basin are concerned, that it would be advisable to go along with Plan E if we were given assurances of certain protective measures for the Upper Gunnison River Basin.

As a result, I called a meeting of the Executive Committee of the Gunnison Watershed Conservation Committee which represents all the various organizations and people which would be affected either directly or indirectly by the proposed project in the Upper Gunnison River Basin. The large committee was established and set up approximately fifteen years ago. It is the only agency which purport to speak for the Upper Gunnison River Basin and its tributaries in these importa water matters. The Executive Committee was organized about a year ago for the purpose of acting for the big committee and for the Gunnison County people. At a meeting of the Executive Committee, held on the 26th of February, 1952, for the purpose of discussing this matter, all of the members of the Executive committee were present with the exception of three. I had an opportunity to tal with two of the three absent members. One of the absent members with whom I talked agreed to go along with the action of the Executive Committee. The other member was opposed to any plan or project that would inundate the Iola Basin. The Executive Committee discussed this matter from about 8:00 o'clock at night until well into the next morning. The subject was discussed pro and con. At the conclusion of the meeting, the Executive Committee agreed that it would be

to the best interests of Western Colorado, as well as Gunnison County, if it went along with Plan E, which would likely afford the greatest amount of protection for the Upper Gunnison River Basin. The members of the committee also felt that a majority of the people in Gunnison County, after they were fully advised and informed, would perhaps go along with the plan. Obviously, it would be impossible to have unanimity of thought in the Upper Gunnison River Basin. I personally feel that if and when this plan is fully presented to the people in the Upper Gunnison River Basin and after those people are advised what the situation might be if no agreement was reached, that a majority of the people in Gunnison County would then go along with the Plan E.

Consequently, as a member of this Committee, I am now ready to state that I will go along with Plan E, provided, and this must be in the record, that there are certain protective measures agreed upon for the areas affected, particularly Montrose and Gunnison. I have no doubt that such protective measures, which I consider of minor importance comparable to the agreement on the size, capacity and location of the reservoirs, can be agreed upon. I cannot give my unequivocal agreement to Plan E until we see what we can do about these protective measures consisting particularly of the following:

1. That the road be changed, that it continue to be designated as U. S. Highway No. 50, and that it continue to run through the Cities of Montrose and Gunnison.

2. That the government make certain arrangements and provide certain facilities to take care of the influx of school children who will be in the affected areas during the construction period.

3. That some arrangement be made with the Upper Gunnison River Basin people concerning the transfer of the Taylor Park Reservoir. water rights and storage rights to them.

4. That Montrose and Gunnison Counties be reimbursed for their tax loss during their construction period and thereafter either by the Bureau of Reclamation or some other federal agency.

5. That some definite agreement be made with the Game and Fish Department and the Fish and Wildlife Service to regulate the flow of the Gunnison River below the Taylor Park Reservoir and to regulate the draw-down of the Crystal and Curecanti Reservoirs so as to cause as little damage to the fish and wildlife as is possible.

6. That if a committee is selected for that purpose, some representative of Gunnison County be appointed and selected to serve on the committee.

7. That the people who are dispossessed by reason of the acquisition of lands for the construction of the reservoirs, either ranchers or resort owners, be given some kind of priority to locate on public lands elsewhere in that area or if they so desire, around the shores of the reservoirs.

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April 1, 1951

Mr. F. C. Merriell, Secretary
Colorado River Water Conservation District
Grand Junction, Colorado

Dear Mr. Merriell:

I have your letter of the 9th, with the enclosures which you have entitled, "The Case for Curecanti Reservoir". I have read your letter and your arguments very carefully.

Many of the arguments that you proposed are substantially in accord with my own convictions in the matter, particularly the one with respect to the trans-mountain diversion of water. However, these arguments are not very impressive with the local people as they are not close enough to the over-all water picture to understand them.

Maybe, if I explain to you a little more in detail what I mean, you will understand. First of all, no one can honestly or conscientiously argue that the damages and disadvantages that will result by the construction of the Curecanti Dam far outweigh the benefits that might accrue to the people in the upper part of the Gunnison River basin. It is folly to argue otherwise, so let's be honest with ourselves and proceed on that premise first.

Now, secondly, it is the local people whose lands are going to be inundated and who are being told that they have to move off. It has taken a lifetime to build each one of these ranches. Without a doubt, they are the best or as good as the best ranches in the State of Colorado. Most of the people who live on them are too old to start from scratch and take a piece of bare sage brush land and develop it into a ranch, and why should they be subjected to all of that worry, work and grief in the first place. Why should they give up their excellent priorities for water that will be provided under a reclamation project and for which they and their heirs will have to pay for years and years to come. These people are not selfish; they are good, ordinary, intelligent people but they are doing the same you or anyone else would do, and that is thinking of their own future and the future of their own children. They want western Colorado to grow and prosper but they don't want to be shoved off of the face of the earth themselves.

Your first argument, that the construction of the Curecanti Dam will take care of our debts to the lower basin, will not impress

the local people at all for the simple reasons that, first; they don't understand it and, second; they are thinking of their own future.

Your second argument, that it will remove the fear that the Uncompahgre project can ever exercise its priority against them, is wholly unimpressive for the reason that there is only one year in fifteen or twenty that there is not enough water in the Gunnison River for the use of the ranchmen in the upper part of the basin as well as the filling of the priority of the Uncompahgre Water Users Association.

The third argument, that it will provide a new and modern highway, means nothing to these people when it is a choice between a new highway and losing their ranches.

Your argument that the local people will get electricity in such quantities as they may demand, carries no force whatsoever for the simple reason that a contract has already been let for the construction of a transmission line over the Continental Divide to bring the power from the Green Mountain Dam to this area and in such quantities as our people may demand.

Your next argument, that the local people can have twice as many acres of new land as will be lost in the Curecanti Reservoir, is likewise unimpressive for the reasons above stated. Why should these people, who have the best ranches in Colorado, be told that they can take some sage brush land at higher elevations, where the snow is deeper, where the roads are inadequate and inaccessible and where they will have to labor and toil for many, many years to develop and improve these lands, lose their own priorities, take subsequent priorities under a Government project and pay for the water, as a substitute for the ranches that they are now losing.

Your next argument, that it will probably prevent the Arkansas diversion, is a good, strong argument and I, for one, am in complete accord with it. However, for the reasons above stated, this is not the controlling factor with the local people. They answer such an argument this way: What difference does it make to them, if they are kicked off their own lands, whether the water is taken east or west, as they will be unable to use it anyway.

The argument, that the storage projects should help pay for the more expensive of the new projects, was not answered by the Bureau officials exactly as you have stated in your letter. You will

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OFFICIAL COMMENTS AND RECOMMENDATIONS

of the

STATE OF COLORADO

on the

COLORADO RIVER STORAGE PROJECT AND PARTICIPATING PROJECTS REPORT
Upper Colorado River Basin

(Project Planning Report No. 4-8a.81-1, December 1950)

June 12, 1950

The Secretary of the Interior

Sir:

On behalf of the State of Colorado, and pursuant to Section 1 of the Act of December 17, 1944 (58 Stat. 887), there are herewith transmitted the comments, views and recommendations of the State of Colorado concerning Project Planning Report No. 4-8a.81-1, Bureau of Reclamation, Department of the Interior, dated December, 1950, and entitled "Colorado River Storage Project and Participating Projects. Upper Colorado River Basin." These comments, views and recommendations are submitted by the Colorado Water Conservation Board under the authority granted to that Board by Chapter 265, Session Laws of Colorado of 1937, as amended, and in accordance with the designation of such Board by the Governor of the State of Colorado as the official state agency to act in such matters.

Preliminary Statement

The report is vitally important to Colorado because it deals with the only remaining unused major source of water in the state. It has

General Comments

The general plan set forth in the report is acceptable to and approved by Colorado. Upper Basin hold-over storage must be provided to equate the Lee Ferry flows so that the Upper Basin may utilize the water apportioned to it by the 1922 Compact without the Upper Division States violating their obligation not to deplete the Lee Ferry flow below the quantity required by that Compact. The necessity for such storage was recognized by the nogotiators of the 1922 Compact and from time to time has been recognized by all basin states. Reservoirs which provide such hold-over will also fill the important role of retaining silt so that the usefulness of the great Lower Basin reservoirs may be prolonged. It is indeed fortunate that the cost of these reservoirs may be financed through the generation and sale of hydroelectric power which is needed in ever increasing quantities.

Colorado wholeheartedly supports the plan to use a portion of the power revenues to support irrigation projects. In this regard Colorado approves the plan of the basin account and of the participating projects. Such plan will permit the construction of many desirable consumptive use projects which, without the aid from power revenues through the basin account, might not be possible of construction. It is gratifying that this aid may be obtained and at the same time a reasonable rate be set for the sale of power.

In connection with the participating projects Colorado gives general approval of the criteria established by the report for the determination of the right of a project to qualify for aid from the revenues made available

Colorado is most vitally interested in securing the development of the Gunnison River. The report contemplates three units, as a part of the storage plan, on this stream. The Bridgeport is recommended for initial authorization and construction. The Curecanti and Crystal are recommended for later action.

Colorado believes that full study has not been given to these Gunnison River potentials. Many local problems are presented. Colorado most respectfully requests that it be given opportunity at a later date to state its position with regard to the Gunnison River storage. To this end, it requests that the Bridgeport unit should not be included within the initial list and that further study and consideration should be given to the location of storage units on the Gunnison River which develop, as far as possible under all of the conditions, the full power potential of that stream, permit the early construction of participating irrigation projects, and provide hold-over storage, all with the least possible disruption of the local economy. Colorado desires that a unit of the storage plan located on the Gunnison River be included in the initial authorizing legislation. It is anticipated that the re-study herein urged and further comments of the State will be made in due time so as to accomplish this purpose. Colorado pledges its full cooperation with the Bureau of Reclamation in the formulation of an acceptable Gunnison River plan.

Participating Projects

The participating projects listed in paragraph (b) of the Commissioner's letter of December 22, 1950, are all approved by Colorado. The early construction of these projects is urged.

Colorado specifically requests that the La Plata Project, heretofore recommended by the State and not appearing in the list, should be included

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MINUTES OF THE FIRST MEETING
POLICY AND REVIEW COMMITTEE-GUNNISON RIVER STORAGE

September 28, 1951

Attendance

1. The Policy and Review Committee held its First Meeting (executive session) on September 28, 1951, in Room 243, State Capitol Building, Denver, Colorado. The Chairman called the meeting to order at 10:20 a.m. and introduced those in attendance. The following members, Federal representatives attending as observers, and others were present:

Members of Committee

Clifford H. Stone, Chairman--Director, Colorado Water Conservation Board, Denver, Colorado
George Cory--Montrose, Colorado, representing Montrose County
F. M. Peterson--Delta, Colorado, representing Delta County
Ed L. Dutcher--Gunnison, Colorado, representing Gunnison County
Silmon Smith--Grand Junction, Colorado, representing the Colorado River Water Conservation District Board
C. N. Feast--Director, Colorado Game and Fish Commission, Denver, Colorado
R. M. Gildersleeve--Chief Engineer, Colorado Water Conservation Board, Denver, Colorado
Jean S. Breitenstein--Attorney, Colorado Water Conservation Board, Denver, Colorado
Royce J. Tipton--Consulting engineer, Colorado Water Conservation Board, Denver (afternoon session only)

Federal Observers

Bureau of Reclamation

A. A. Batson--Regional Director, Region 7, Denver, Colorado
C. B. Jacobson--Engineer in charge of Colorado River Storage Project Investigations, Region 4, Salt Lake City, Utah
C. H. Jex--Area Planning Engineer, Region 4, Grand Junction, Colorado
L. E. Holmes--Region 4, Salt Lake City, Utah
Leon F. Maca--Temporary Secretary--Hydrology Branch, Project Planning Division, Denver, Colorado

Fish and Wildlife Service

R. A. Schmidt--Albuquerque, New Mexico
A. H. Mustis--Denver, Colorado

Others Present

F. C. Merriell--Colorado River Water Conservation District, Grand Junction, Colorado
W. A. Groom--Presicent, Redlands Water and Power Company, Grand Junction, Colorado

Introductions

2. The Chairman introduced representatives of the Bureau of Reclamation who, together with the Upper Colorado River Commission, had been invited by him to attend as observers. Judge Stone also introduced representatives of the Fish and Wildlife Service who had been invited following a request by that agency that it be represented at the meeting, and the others present who were interested in submitting statements to the Committee.

Purpose of the Committee

3. By reference to the Minutes of the June 11-12, 1951 meeting of the Colorado Water Conservation Board, Judge Stone explained, clarified and emphasized the purpose of this Committee. He stated that if it is to make a constructive approach to the problem the Committee, as a review and study group rather than a "debating society," has a major task in ascertaining whether a plan can be worked out for storage on the Gunnison River which will preserve the best water development in Colorado, protect the potential consumptive use of waters in the area, envision other benefits, as well as detriments, and at the same time alleviate or avoid objections which have been offered to the Bureau's present plan for storage of water in the Gunnison River Basin. Judge Stone also explained work accomplished on the storage problem by the Steering Committee, Blue-South Platte and Gunnison-Arkansas Projects, ar recent affirmative action taken by the Upper Colorado River Commission on a proposed draft of authorizing legislation for the Colorado River Storage Projec

holdover storage. Judge Stone pointed out that such requirements for the items brought out in Mr. Cory's summary are vital and that the first thing to be determined is the storage required to secure maximum benefit for the State of Colorado through use of its allocated water, and in that connection the Steering Committee had performed some studies. The Chairman expressed sincere appreciation for himself and the Committee for the work and report prepared by Messrs. Cory and Peterson.

8. Mr. Dutcher reported that he had no formal statement to make other than those presented at the June 11-12,1951 meeting of the Colorado Water Conservation Board which are a matter of record. However, in making his position clear, he stated that the people of Gunnison County are not opposing any developments on the Gunnison River but are interested in having storage placed on the stream so as not to have the deleterious effect of the proposed Curecanti Reservoir. In reply to Mr. Dutcher's question whether anything has been done to determine other feasible reservoir sites, the Chairman answered that the Bureau studies performed for the Steering Committee would not be made available for this meeting. He stated that he had heard of the Cory-Peterson studies and believed it desirable to get them first for study by the Committee. The Chairman concluded by stating that the statements presented b the Gunnison County representatives at the June 11-12 meeting of the Water Board are by reference made a part of the record of this Committee and are available for Committee use.

9. Mr. Feast stated that in his field of interest and in looking at the basic problem of the Upper Gunnison River Basin he could not help but be concerned in the relationship of Curecanti Reservoir with proposed trans-basin diversions to the Eastern Slope such as the ultimate Gunnison-Arkansas Project, especially with respect to reservoir inundation in the

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April 15, 1952 E L Dutcher to CHS

Hon. Clifford H. Stone, Director
Colorado Water Conservation Board
State Office Building
Denver, Colorado

Re Pol. & Reuler Comm
Gun R. Storage

Dear Judge:

I was in Denver from Thursday to Sunday of last week, consequently did not have an opportunity to examine and study your letter of the 8th, or the final report, until yesterday.

I spent some time yesterday and last evening going over the report. The last draft that you prepared greatly improved the tentative report. In fact, both of them were good, but the last one was even better. However, there are still several matters which I want to call to your attention and trust that the same can be straightened out to our mutual satisfaction in order that the report can be modified and approved by all of the members of the committee. These matters are as follows:

1. In my letter to you under the date of March 24, I called your attention to Paragraph 9 on Page 20 of the tentative report. Then you rewrote this paragraph, but in doing so apparently you did not get the point that I was stressing in my letter, namely, that the people in the Upper Gunnison River Basin should be permitted to use the Taylor Park Reservoir, the water stored therein, and the storage rights under some kind of an agreement between those users, the Uncomphagre Valley Water Users Association, and the Government, with the understanding, however, that the decree on the Taylor Park Reservoir water be retained by the Uncomphagre Valley Water Users Association.

In the final report, you included a clause that with respect to the operation of Taylor Park Reservoir and the release of water therefrom, the local interests in Gunnison County should be given a voice. That is very good and we certainly want to retain this provision in the report, but the Gunnison County people are vitally interested in having the right to use the Taylor Park water, reservoir and storage rights. No where in the report has that recommendation been made. You will recall that even in my statement which was attached to the report as Appendix P under Paragraph 3 on the second page, reference was made to the use of the reservoir, etc. by the Gunnison people. Even Corey and Peterson were willing that this be done. So Paragraph 9 on Page 16 of the final draft should be amended to include a strong recommendation

with respect to this matter, and sub-paragraph (a) on Page 20 should be changed to include this understanding. That part of the second section of Paragraph 9 on Page 16 which gives the local people a voice in the operation of Taylor Park Reservoir and release of water therefrom should be retained.

2. In your letter of April 8, 1952, you stated that you could not follow me in my suggestions under Paragraph 14 of my letter. My contention is simply this: We do not want a heavy draw-down one day and a light draw-down the next day in either the Crystal or the Curecanti Reservoirs during the height of the fishing season. That kind of artificial fluctuation in the water level ruins fishing. We want the draw-down to be a steady, gradual draw-down and in this matter the Gunnison people want a voice. You covered this situation so far as the draw-down in the Taylor Reservoir was concerned. That covered the Taylor Reservoir and the Taylor and Gunnison Rivers, but it did not cover the two large reservoirs. According to the Bureau officials, both the Crystal and the Curecanti Reservoirs, particularly the latter, will attract many fishermen from all over the United States and we want to keep this fishing as good as possible under the circumstances, and any great fluctuation in the water level is detrimental to good fishing. That is common knowledge, and the Gunnison people, by working with the Bureau officials, might make some suggestions so far as the draw-down is concerned that would be very beneficial; anyway, they want a voice in the regulation of the water in these two reservoirs.

I think this matter can be well taken care of by adding another paragraph and designated as sub-paragraph 4 under paragraph (c) on Page 19. The new paragraph should be substantially as follows: That the Gunnison County people shall have a voice in the regulation of the waters, particularly with respect to the draw-down, in both the Crystal and Curecanti Reservoirs.

3. Apparently my suggestion concerning the modification of the present 160 acre limitation law to correspond with local conditions is causing the most trouble. I thought this matter was ironed out to the satisfaction of the entire Committee the last day of our meeting. I realize that the application to this 160 acre tract limitation applies to participating projects only, and I also realize that in all probabilit the Curecanti and Crystal dams might be well under construction before that question ever arises. In other words, the consideration of the participating projects by Congress, the actual approval of the projects and the appropriation of the money for the projects will follow the approval of the Crystal and Curecanti Reservoirs and the appropriation of money for the construction of the two reservoirs, but my point is simply this: I don't want the Gunnison people to be bound by any

agreement of the Policy and Review Committee if we cannot get a modification of the 160 acre tract limitation when the time comes for such modification, and I don't want anyone to accuse us of exercising bad faith by going back to Washington and fighting this thing with everything at our command. I want to be in a position to fight the Curecanti and Crystal Reservoirs if they are not already constructed at that time. Certainly, we are entitled to this. The modification of the 160 acre tract limitation law is vital so far as the Gunnison people are concerned. A recommendation that the law be changed is not enough. Now your argument to the effect that it would leave a doubt as to whether any agreement has been reached and that the committee would seem to have reached only a conditional agreement was brought up at the last meeting. It was then thoroughly considered and discussed.

After receiving your letter, I called Silmon Smith and he remembered distinctly that we came to the agreement substantially as I have outlined it. I am not insisting that the condition which I am now stressing should be included in the Colorado Water Conservation Board's Comments. It should be omitted from that report. But I want the record to show somewhere that the Gunnison County people shall be relieved from any commitments that I might make in the event that we might have to fight this 160 acre tract limitation through. Possibly, it can be done by a separate and distinct agreement signed by all of the members of the Policy and Review Committee, but it must be somewhere in the record. You and I and the other members of the Committee may be gone when this vital question comes up and I don't want to bind the Gunnison people to the point that they can't fight for a matter of such vital importance if the occasion so requires. If we are not protected in this manner now, we will have absolutely nothing to rely upon to help us in the future.

I think that if the report is finally amended or corrected to include the three important matters above mentioned, I will be in a position to approve it and I sincerely trust that the amendments can be made without another meeting. In my opinion, another meeting will do nothing more than precipitate another argument which we all want to prevent. I am just as anxious to get this matter settled as anyone, but I think it should be settled for the best interests of all parties and all areas. We have made some real concessions and I think the agreement that was reached by the committee, as I understand the agreement, is sound. Believe me, I regret very much to cause you and your assistants all of this additional trouble, but we in Gunnison are the ones who are vitally affected and it is my sincere desire to protect these people to the best of my ability, consistent with what I believe to be the understanding of the committee. Time is an important factor, but in my opinion, it is not nearly so important as obtaining a satisfactory report.

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JOHN B. BARNARD
DUANE L. BARNARD

BARNARD AND BARNARD
ATTORNEYS AT LAW
GRANBY, COLORADO
TUCKER 7-3362

March 15, 1962

Mr. L. Richard Bratton
Attorney at Law
Gunnison, Colorado

Dear Dick:

Mr. Robert W. Jennings telephoned me on Tuesday and told me that he had been advised that the Secretary of the Interior has agreed to accept the assignment of conditional decrees to the Curecanti Unit as executed by the Colorado River Water Conservation District. He tells me that the Secretary has agreed that negotiations should be carried forward with your people in the Gunnison Basin, the effect of which would be to subordinate the Curecanti rights, represented by these decrees, to the consumptive use requirements of the private projects with which you and others are concerned. I understand that all of the formalities involved in the acceptance of the assignment have not yet been complied with, and no one knows when such formalities will be completed.

In our conversation, I asked Mr. Jennings whether or not the Secretary wished that you and I present proof of diligence in connection with the Curecanti Units on April 16; and he stated that he felt that such would be the case. Those proofs will, of course, closely parallel the proof we presented at Montrose in Water District No. 62. However, as to the other projects which form units of the Upper Gunnison Basin Project, the Upper Gunnison River District must present that proof; and I have previously told you that I would help you if you so desired. In presenting that proof, it will be necessary for Mr. Philip Smith to be present, and also Mr. Morrell, representing the Colorado Water Conservation Board. Their presence is required in view of the studies now being made by the Colorado Water Conservation Board, the Bureau of Reclamation and the Colorado River Water Conservation District in connection with those projects.

Sometime ago I submitted an affidavit to the Secretary of the necessity of having Mr. Jennings attend and testify at numerous diligence hearings, including the one at Gunnison, Permission has been granted him in line with that affidavit. However, it will be necessary for you to have the Clerk of the District Court issue a subpoena for Mr. Jennings and deliver it to him when he appears to give his testimony. This is a formality which is required by the Department of the Interior, although I fail to see any sense in it.

With regard to the agreement to be negotiated with your clients pertaining to privately financed projects, it would be my suggestion that those negotiations include only such as are now rather firmly planned. It would appear to me to be unwise to attempt to consumate such agreements in connection with projects which are merely dreams or possibilities. You understand that this is my own personal suggestion. I can see some element of danger in attempting to cover the entire field of possible privately financed projects at this time. Agreements relating to such schemes can be worked out as the plans are finalized.

If you have any questions or suggestions, I would be glad to hear from you.

Yours very truly,

John B. Barnard

John B. Barnard
For BARNARD AND BARNARD

JBB:jb

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JOHN B. BARNARD
DUANE L. BARNARD

BARNARD AND BARNARD
ATTORNEYS AT LAW
GRANBY, COLORADO
TUCKER 7-3362

March 15, 1962

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If you have any questions or suggestions, I would be glad to hear from you.

Yours very truly,

John B. Barnard

John B. Barnard
For BARNARD AND BARNARD

JBB:jb

June 2000

Editor
Gunnison Country Times

Dear Sir:

POWER has been urging the Upper Gunnison River Water Conservation Board (Board) for many years to enter into a formal agreement with the Bureau of Reclamation (BOR) requiring the BOR to subordinate its instream flow rights and its stored water rights to the upper Gunnison basin's water users, to the extent of 60,000 ac ft per annum, consumptive use. The Board has dragged its feet on this project for over 35 years. It has now, through the efforts of many of us, plublicly announced that the BOR never promised call protection requiring it to release stored water to staisfy river calls by downstream seniors. They state that any further effort on POWER's part, to obtain sucha protection for water users in this area, is 'reprehensible'.

(1) In fact, however, the BOR agreed, as early as the 1950's, to so protect the upper Gunnison water users;

(2) the people of this region relied on such a promise to permit the construction of the Aspinall unit; and

(3) BOR officials have acknowledged down the years that the promise did exist.

The early water managers were not simpletons when discussing water matters and advising Gunnison citizens to what they are entitled, and what they could expect. Mr. John Bernard, president of (attorney for) the Upper Colorado Water Conservation District wrote, in 1957, that

stored water in the Curencanti reservoir would be released to meet senior downstream demands to protect upstream junior water users (Bernard to Porter, 7/22/57). Justice Felix Sparks, president of the Colorado Water Conservation Board, stated, to 200 Gunnison residents at a C of C meeting, chaired by Marty Hatcher ~~of POWER,~~ a member of POWER on May, 1959, that storage of water in the Curecanti Project would ~~take care~~ offset ?? of Uncompaghre water users' calls and that "no Gunnison Area decree would ever have to be curtailed because of senior rights to downstream flow". ~~(reference)~~

(2) There men holding important state water jobs were not blowing smoke; they were reporting what they knew the BOR ~~manager~~ representatives had told them, and had intended. The people of this community gave up what they considered valuable rights in order to allow the reservoirs to be built, based on their belief that Gunnison (?) i.e. Upstream junior water decrees would be protected. This community gave up 30 miles of the finest trout fishing stream in the country - based on the BOR's reported promise to protect upstream rights. They gave up the existence of seven large ranches and the tax revenues generated by these units, as well as the businesses which were inundated by the waters of the reservoir. To say, as the present Board attorney and manager have said, that the residents of Gunnison gave these assets up for no consideration than that the BOR would not call up any future upstream decrees is ludicrous. ~~(Refer to Bratton & McClow letter of 11/3/95)~~

(3) The Board attorney and manager have written that no U.S. official or agency ever communicated or, in any fashion, made any promise in exchange for upstream protection. POWER has, on two occasions, furnished the ~~se people~~ Board with written and ~~the most~~ persuasive proof such promises were made. POWER fails to understand why the very agency charged with the duty to protect Gunnison water persists most strongly denying such protection is available.

The letter from the U.S. official, to which we refer, where ?, was written by the Regional solicitor of the U.S. Dept. of Interior to the Regional Director of the BOR on 10/26/84. In that letter, ~~W. P. Elliott, acting Regional~~ it was Solicitor, stated, "These file documents taken as a whole show that the United States has an obligation (emphasis added) to allow junior appropriators, upstream of the Wayne Aspinall Unit (Curecanti Unit) the use of the water in an amount not to exceed 60,000 acre feet."

Most lawyers, having in hand such a promise, would fight like a tiger to obtain for their clients the right it seeks. Why hasn't the Board lawyer and manager done so? Who are they working for? Why don't they want call formal protection ~~protection~~ provided by the BOR in the amount of 60,000 ac ft, consumptive, on an annual basis? They will not answer POWER's questions. Maybe ~~they will answer the water users inquiries.~~ these refusals explain why a second citizens' group has demanded election of Board members.

The BOR has ackowledged the need and promise to provide subordinated water, including call protection, as clearly and plainly as can be. It has actually provided such protection for each and every year since the Blue Mesa Reservoir filled. The U.S. Government did what it agreed to do, what it said it would do, but our water representatives and their manager and attorney have dropped the ball in obtaining a formalized agreement thereof.

If any of the water users in the upper Gunnison valley are comfortable with the way this business has been handled and wants the Board to continue in this manner, they are shooting ~~t~~ themsleves in the foot.

Sincerely,

refer to Lineccante subordination?

POWER POWER

by: _____

Chairman, ~~Executive~~ ExCo--------???

To the Editor: 6-2-00

From on-going, acrimonious controversies over water that have grown like larkspur in the meadows and fields of the American West, two truths have flowered: 1. Transporting water out of one valley to enable growth in another valley or region almost always does irreparable damage to the first valley. 2. To provide themselves with enough water to irrigate their fields or to meet municipal needs, water users have had to protect themselves from the demands of other users who in dry years have the legal right to use what little water there is exclusively for themselves.

From its inception in 1990, POWER has been committed to helping Gunnison Valley citizens avoid losses inherent in these two truths. Accordingly, we have opposed by whatever means are legal further trans-mountain diversion of Gunnison Valley water east to the Front Range. We have also tried to use whatever means are legal to help Gunnison Valley citizens achieve call protection against senior down-stream users such as the Uncompahgre Water Users and the Redlands Canal.

Shortly after its formation in 1990, POWER mounted a campaign to convince the U.S. government that it had made a promise during the 1950s to our valley's citizens-- a promise that in exchange for their approval to build the three dams of the Aspinall Unit, Gunnison Valley citizens would be given 60,000 acre feet of call protection against the calls of senior down-stream users. POWER believes that had it not been for these efforts, Judge Brown would not have included the 60,000 acre feet in his judgments about the availability of water in the Union Park case and that the current subordination agreement between the UGRWCD and the BOR would not have been written.

Unfortunately, the promise that POWER believes the U.S. government made to the people of the Gunnison Valley never reached the finality of a written contract. And now it appears that the Upper Gunnison River Water Conservancy District does not wish to pursue the possibility of securing down-stream call protection by reminding the U.S. government of past promises.

Regardless of the strategy to be used for obtaining the down-stream call protection which is missing in the current subordination agreement--either by continuing to remind the U.S. government of past promises, or by acquiescing to the argument that no such promises were made because no formal contract was written--POWER insists that permanent call protection for Gunnison Valley users is the most important unresolved issue facing the valley today. POWER ardently hopes that the UGRWCD will not abandon the issue of call protection under the banner of the soon-to-be-signed subordination agreement with the BOR.

Sincerely,
POWER

Gunnison Basin POWER
People Opposing Water Export Raids

June 12,2000

The Editor
The Gunnison County Times
Gunnison, Colorado 81230

DearSir:

In response to the diatribe contradicting POWER'S claim that the Bureau of Reclamation promised the water users os the Upper Gunnison River Basin call protection, which was published inthe Times on May 25,2000, we would submit the following:

Lawyer MwClow and manager Klein for the Upper Gunnison River Water Conservansy District asserted that:

> "Even speculation about a promise should have a basis in some document, statement or hypothetical musing by the party alledged to have made it; the U.S. Government. We, POWER and others have searched for it. There is nothing. It did not happen, and to continue to speculate that it did is reprehensible."

As a public service POWER wishes to cause to be publishedin its entirety a Memorandum dated October 28,1984 which POWER dug out of the River District's files, and to which it has called's the District's attorneys attention ~~to~~ on several occasions. This memo speaks elequanty and decisively as to the Government's promise to provide call protection to junior decree holders in the Gunnison valley above Blue Mesa Resevoir

P O W E R

by _____
Its Executive Committee

P.O. Box 1742
Gunnison, CO 81230

RECEIVED
JUN 16 1986
Colorado Water Resources
Power Development Authority

OFFICE OF THE SOLICITOR
INTERMOUNTAIN REGION
SUITE 6201, FEDERAL BUILDING
125 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84138-1180

RECEIVED
NOV 09 1984
WATER RESOURCES
STATE ENGINEER
COLO.

October 26, 1984

Blue Mesa

10/30
11-7
12-3

LBR.IM.0256

Memorandum

To: Regional Director, Bureau of Reclamation

From: Regional Solicitor, Intermountain Region

Subject: Depletion of Water Above Wayne Aspinall Unit (Curecanti)

In your September 21, 1984, memorandum to us you ask our opinion concerning a proposed action wherein Mr. John Hill, Department of Justice, would petition the Colorado District Court to revise certain water decrees assigned to the United States by the Colorado River Water Conservation District dated January 26, 1962.

We have reviewed your file and consulted with Mr. Hill and various members of your staff. We recommend that no action be taken by Mr. Hill in the Colorado courts on behalf of the Bureau of Reclamation in this matter.

The Colorado River Water Conservation District assigned on January 26, 1962, certain water rights to "the United States upon condition that the water rights assigned will be utilized for the development and operation of the Curecanti Unit in a manner consistent with the development of water resources for beneficial use in the natural basin of the Gunnison River." The assignment was transmitted to the Commissioner by memorandum dated February 21, 1962. The Regional Director recognized that the assignment "would provide for upstream development above Curecanti." Your files disclose the intent of the United States at the time it accepted this assignment, and also the intent of the Colorado River Water Conservation District. These file documents taken as a whole show that the United States has an obligation to allow junior appropriators, upstream of the Wayne Aspinall Unit (Curecanti Unit), the use of water in an amount not to exceed 60,000 acre feet. Upstream water development would be exclusively for the Upper Gunnison Basin and no transbasin diversion would be allowed.

Your files contain agreements between the United States and private parties wherein the United States recognized the right upstream water depletions by junior appropriators.

As early as 1959 Congress was advised by the Secretary that depletions in the Gunnison River upstream of the Curecanti Unit in the amount of 60,000 acre feet were contemplated. House Document No. 201, 86th Cong., dated July 15, 1959, p. 15.

We see no reason to initiate any court action in behalf of the Bureau of Reclamation in this matter and so advised Mr. Hill. He agreed to take no further action unless requested. Mr. Hill by letter dated September 13, 1984, advised Dr. Jeris A. Danielson, Colorado State Engineer, that the Bureau of Reclamation did not intend to enforce its rights as against upstream water users. You should contact the State Engineer and inform him that the United States will live up to its obligations in connection with the January 26, 1962, assignment from the Colorado River Water Conservation District. This means that you will fulfill your obligation to allow upstream depletions in an amount not to exceed 60,000 acre feet, that the Bureau of Reclamation does not intend to take any action contrary to these obligations; and that the State Engineer, insofar as the Bureau of Reclamation is concerned, may administer upstream depletions in harmony with this position.

W. P. ELLIOTT, JR.
Acting Regional Solicitor

By William Robert McConkie
WILLIAM ROBERT MC CONKIE
Attorney

cc: Mr. John R. Hill, Jr., Esq., Assistant Attorney General, U.S. Department of Justice, Land and Natural Resources Division, Denver Federal Bldg., Drawer 3607, 1961 Stout Street, Denver, Colorado 80294

To the Editor: 6-2-00

From on-going, acrimonious controversies over water that have grown like larkspur in the meadows and fields of the American West, two truths have flowered: 1. Transporting water out of one valley to enable growth in another valley or region almost always does irreparable damage to the first valley. 2. To provide themselves with enough water to irrigate their fields or to meet municipal needs, water users have had to protect themselves from the demands of other users who in dry years have the legal right to use what little water there is exclusively for themselves.

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Sincerely,
POWER

September 20, 2001
Meeting with Opposers to the National Park Service's Application for a Water Right for the Black Canyon of the Gunnison
Handout

Initial goal of the Upper Gunnison River Water Conservancy District is to negotiate a settlement that would protect existing and future water uses from a call from the Black Canyon.

- Protect existing uses with a priority date between 1933 and 1957 by requiring that the National Park Service adopt a 1957 priority date equal to that of the Aspinall Unit.

- Protect water rights with a priority date between 1957 and the present by requiring that the National Park Service water right be administered in accordance with the terms of the Aspinall Subordination Agreement. This term would allow up to 40,000 acre feet of depletion to occur under local water rights with a priority date between 1957 and the present.

- Protect future uses by requiring that the National Park Service water right be administered in accordance with the terms of the Aspinall Subordination Agreement. This term would allow up to 40,000 acre feet of depletion to occur under local water rights junior to 1957.

- Honor other existing federal commitments including the 1975 Taylor Reservoir Exchange Agreement, and agreements relating to use of the Taylor second fill water right.

Current Activities of the District:

- Coordinate with other opposers in the case, including pro se objectors.

- Resolve the venue issue.

- Develop and propose conditions for a stay of litigation.

- Develop technical information supporting the District's position, participate in other technical discussions.

- Engage in negotiations to accomplish the above goals.

- Litigate the basis of the claim if negotiations are not successful.

Upper Gunnison River Water Conservancy District
Position Statement Regarding
Black Canyon of the Gunnison National Park
Water Right Quantification
Adopted June 25, 2001

The Upper Gunnison River Water Conservancy District opposes the claim filed in January, 2001 by the United States quantifying a reserved water right for the Black Canyon of the Gunnison National Park. The application seeks flows that would be detrimental to existing water uses in the Upper Gunnison River basin. The United States is claiming a March 2, 1933 priority date. Water users in the Upper Gunnison basin are dependent on water rights junior to March 2, 1933. Curtailment of upper basin diversions in order to meet the demands of the United State's claim would significantly reduce water availability for irrigation and other uses. A significant percentage of the water used in the basin would be curtailed under administration of the water right.

Preliminary engineering analysis of the proposed claim indicates that the reserved water right could result in a 1933 call being placed on the upper basin for a significant portion of the irrigation season, depending on the hydrologic conditions present. Physical shortages at the time that a call is occurring could range from 10,000 – 60,000 acre feet per year. The proposed claim would also impact the ability to store water in the upper basin. Because the reserved right is senior to both the first and second fill water rights for Taylor Reservoir, the fishery, recreation and irrigation benefits afforded to the District under current reservoir operations would be jeopardized.

The District supports a negotiated settlement with the United States and/or legal challenge that would provide protection for existing and future uses in the basin. Such protection should occur in the form of an agreement that would result in administration of the right as junior to historic uses in the basin. The objective of the settlement would be to protect existing uses and future uses and allow for full development of water in accordance with the terms of the Aspinall Subordination Agreement.

The District supports committing the necessary legal and technical resources to pursue actively a negotiated and/or legal settlement, and to support efforts to challenge the basis of the claim.

7/16/00

Butch no answer.

Scottie - Butch does think call protection exists but we don't have sufficient evi. of it.
- PCR says conduct & performance is such good evi.
Scottie says GI can't be held to this rule, per the Upper Gum Rd. PCRs, find out what their authority is and advise us.

7/17/00

to Montrose to CWCB meeting.
Didn't learn much but then I didn't teach much either. Met Seetolm and had a friendly chat w/ neither of us convincing the other he was wrong.
Call protection to the upper Gunnison region was not mentioned and the whole meeting was inconclusive and not worth much.

PCH

FACSIMILE TRANSMISSION

KLINGSMITH & ASSOCIATES, P.C.
234 North Main, Suite 2A
P.O. Box 59
Gunnison, CO 81230

Phone: (970) 641-1334 Fax: (970) 641-1331

FAXED

To: Jim Yale

From: P.C. Klingsmith

Date: September 17, 1997

Time: 9:15 a.m. Mountain Standard Time

Fax Number: (970) 876-2937

Re: attached

Total Pages (including cover sheet): 2

Original to follow by mail: Yes ____ No _X_

Comments:

If not transmitted correctly, please call the above phone number.

Anna and Paul Vader
4042 County Road 76
Parlin, CO 81239

August 11, 2000

Gunnison-Country Times
218 North Wisconsin
Gunnison, CO 81230

Attn: Editor

Dear Sir:

Concerning Mark Schumacher's response to our letter of August 1, regarding subordination of the Bureau of Reclamation's water rights to protect Upper Basin water levels, permit us to clarify the matter. The Bureau promised to subordinate its rights to protect Upper Basin rights in the early 1960's. The Water District's Board slept on this promise for more than 30 years which we considered to be the same as denying it existed.

The agreement which the Bureau finally did sign does <u>not protect a single</u> Upper Basin water right from the call of a downstream senior decree, excepting only a call by the Bureau itself. The Board's attorneys have admitted this is true. What the Water Board must do to protect the users in the Upper Basin is to obtain from the Bureau a <u>permanent</u>, <u>written</u> agreement to subordinate up to 60,000 acre feet of its stored water, annually, to satisfy down stream calls, by releasing such water.

After all, the Bureau must release much more than 60,000 acre feet of water annually in any event, but it should do so, as it has every year since its dams were built, at such times as a senior call is placed on the river which needs to be satisfied by more water flowing into its head gate.

It is this duty of the Bureau which the Board's President and attorneys have denied existed; and they are wrong.

Sincerely,

Anne + Paul Vader

Anne and Paul Vader

by PCK

Letter

classes. I hope that when you see them on the street or at the store, you will make an effort to make them feel like a part of our community, say hello, smile or even try speaking their language. If anyone has questions about the program or would like to make a donation, please feel free to call me at 641-7684.

Mary Burt
Gunnison County
Literacy Action Program

Schoolhouse sale set for Saturday

To the Editor:

The Upper Tomichi Historical and Community Association is having a huge schoolhouse sale at the Sargents Schoolhouse, at Sargents, on Saturday, Aug. 12 from 10 a.m.-3 p.m. Many families have donated items for this sale.

The large auditorium is full and running over with clean, usable items such as World War II memorabilia including a parachute and naval items. Children's clothes, Van Briggle pottery, enamelware, old and new glassware, craft items and several hundred other items are also included. We have a nice display case for $135 as well. Hot dogs, popcorn and cold drinks will be available.

Proceeds from this sale will help the Historical Association restore grave sites at the White Pine Cemetery as well as build a handicapped ramp at the historic Sargents Schoolhouse.

The Historical Association has recently published a booklet on all the known graves in the cemetery. Many are unmarked or the wooden markers have been lost, but we have discovered several names that were not known before our research. A copy of the booklet is in the library at Gunnison. We would like to hear from anyone who might have information on anyone buried in the cemetery. Some graves date back to the 1800's.

Margaret Esslinger

Subordination clarification

To the Editor:

I am writing to correct a statement that was submitted in the form of a letter to the editor from Anne and Paul Vader last week. In their letter, they stated that both Dick Bratton and I had tried in the past to convince POWER that there was never an agreement by the Bureau of Reclamation to protect 60,000 acre feet of junior depletions in the basin from a call by the Aspinall Unit. No statement could be further from the truth. I have been on the Upper Gunnison District Board of Directors since 1992 and have never stated to members of POWER that the Subordination Agreement was not feasible. The same statement is true of Dick Bratton. In fact, as a member of POWER's steering committee, I have promoted the merits of the Subordination Agreement with POWER members who didn't whole-heartedly support the signing of the agreement.

Mark Schumacher
President, UGRWCD

Prairie dogs' plight saddens readers

To the Editor:

I was saddened to hear that Gunnison's remaining prairie dog colony is being decimated in order to make way for a Comfort Inn, a Wells Fargo Bank, and a True Value Hardware, among other construction projects. As you may be aware, Wells Fargo and True Value have expressed a willingness to relocate the prairie dogs but there is currently no place for these animals to go. Unlike deer or other mammals, prairie dogs can't just run to a new location to escape man's encroachment. However, the Bureau of Land Management (BLM) has land located nearby, where the prairie dogs could be relocated, but it is dragging its feet and making hollow excuses. BLM Manager, Barry Tollefson has it within his power to issue a categorical exclusion to legally relocate the prairie dogs to BLM land. You may reach Mr. Tollefson at (970) 641-0471.

I think it is critical for your newspaper to alert your readers to this ongoing tragedy, especially in light of the fact that there is a viable solution to stopping the prairie dog slaughter if only the community and the new retailers are educated on the issue, and willing to work together to save this important watershed species. Please do not ignore this opportunity to do the right thing for your community. I thank you in advance for your consideration.

Sincerely,
Missy and John Villapudua

Thanks for wonderful reunion

To the Editor:

I would like to thank the City of Gunnison and all of the sponsors who made the 100th Cattlemen's Days and the "Past Royalty Reunion" so wonderful for all of us. A special thank you to the Cattlemen's Days Committee and Wendy Irby for the time and effort put into all of the festivities. It was great to go back "home" again and see so many old friends and relatives. That weekend will be a cherished memory for a long time. Thanks everyone!

Joanna Eilebrecht Simmons
Miss Cattlemen's Days 1968

Pitkin Days Thank You

To the Editor:

The Pitkin Historical and Community Association would like to thank all those who donated their time and energy to planning working, performing and cooking, for those who donated supplies, money, talents and gifts and for all those who participated by enjoying the activities and having fun. We thank you all.

Natalie Zook

Letter

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Natalie Zook

People & Happenings

Education program needs sponsors

The Black Canyon Audubon Society is beginning its Audubon Adventures campaign for 2000-2001. Audubon Adventures is an environmental science education program designed by the National Audubon Society to interest elementary students in grades 4-6. There is no cost to the students or the teacher. As the topics change each year, children in those grades have exposure to several different programs.

Last year's topics: "Alaska," "People and Wildlife Sharing the Earth," "The Everglades," and "Forests," will still be available. New programs include: "Oceans" and "Fruits and Seeds." Others are still being selected. The programs are also available in Spanish.

The Black Canyon Audubon Society is looking for sponsors for the program. The tax deductible cost to sponsor one class of 32 students and one teacher is $40.95. For more in-formation about the program call (970) 527-5365, To sponsor a classroom, make a check payable to BCAS and send it to Marge Oliver, 1425A 4100 Rd., Paonia, CO 81428.

Bennett graduates

Kelsey Bennett, daughter of Bill and Carol Bennett, graduated in May with a Liberal Arts degree from St. John's College in Santa Fe. She was honored at graduation for her senior essay.

ADDRESS CHANGE
gtimes@uswest.net.
is our new email address
Use it for all of your
communication needs.

Dear Pete,
Hope this is OK.
Paul

Aug. 1, 2000

Dear Editor,

What good news for us to read of the formalization of the Aspinall subordination agreement in the Gunnison Country Times and C.B. Chronicle issues of July 27th and 28th respectivily.

However, we find it ironic to see your picture, Dick Bratton, attending the press conference on the Gunnison River.

Please refresh all of our memories, Dick, wasn't it you, along with Mark Schumacher, (president of UGRWCD) who tried to convince POWER (People Opposing Water Export Raids) that there was never such an agreement to set aside 60,000 A/F subordination for our protection ?

Quoting from the Times; Carol De Angelis, BOR's regional area manager, said: "It feels good for me to stand here today and say we've kept our promise. There was a... promise and a handshake."

We quote again from the Times: "Even though the subordination agreement had yet to be formalized, Brown recognized that the BOR had lived up to its promise. The BOR never had used the Aspinall's 1957 water rights to call junior ~~rights~~ rights holders within the Upper Gunnison Basin."

So Judge Robert Brown is also due credit for furthering the formalization of the Aspinall agreement.

POWER has urged the UGRWCD several times of its conviction that it was necessary and important to get a formal agreement signed by the BOR, and it finally happened.

So we give due credit and many thanks to the UGRWCD for its accomplishment.

Also we give due credit and many thanks to the BOR for formalization of the Aspinall subordination agreement.

But this is only the first step. There is more work to be done to further insure this basin from downstream calls...

Sincerely,

Anne + Paul Vader

Anne & Paul Vader

Butch believes that this shows in the early days the interest lay in preventing trans mount diversion, not protecting vs downstream calls 8/1/00

PAGE 38

Watershed Defense Committee Holds Important Meet

★ ★

A called meeting of the Gunnison Watershed Conservation Committee held in Municipal Building last Friday, July 8, at 2 p.m., was attended by well over a majority quorum and evidenced the fact that members of that committee are alive to the threats against our valley and community in the attempts of the eastern slope and of various bureaus and commissions to take away from us the waters of the Gunnison watershed. When a group of busy ranchmen, business men and others will take two or three hours away from their work to spend in the interest of the common good, it means something.

Reports of various committees were heard, also initial report of the field man, P. C. Boyles, up to that time. This report showed, among other things that in the three districts comprising the Gunnison and tributary valleys there are included something over six hundred waterright decrees. From this may be gleaned some idea of the magnitude of what this committee is undertaking in attempting to make even a cursory survey with the comparatively small funds which will be available for that purpose. It may be borne in mind that the Colorado Water Conservancy Board has asked an allotment of $225,000 of WPA funds to make their survey.

The work so far has consisted of compiling such initial data and information from the files of the District Engineer's office as will be necessary to supply in small part the information requested by Congressman Taylor in his determined fight against any further diversions of water from the western slope.

However, the fight is on and it might be well for some of our citizens to try and look ahead twenty-five or thirty years and vision what our town and fair valley will be like should the evident present plans of the bureaus and commissions be carried out and a storage reservoir be made of the entire lower end of the Gunnison valley by construction of a dam at the head of the Black Canon just below the Lake Fork, which of course will destroy eighteen or twenty miles of the best trout fishing in the United States, if not in the world. Besides what else it will do to our county and community. Altogether the project will annihilate all the BIG WATER fishing in the valleys.

Since irrigation period is about over for this season with the exception of fall meadow flooding, the activities in the field will necessarily be somewhat restricted for the present. There are, however, available records in the offices having charge of making such records an immense amount of data which may be compiled preliminary to the actual field work. The Reclamation Bureau has these records as the result of several years of survey and field work. It is questionable, however, whether this committee would be allowed access to such records and data.

More or less chimerical promises are made of something which has been labeled and called "compensatory reservoirs" which were also promised in the upper Colorado river section but which are of doubtful utility. Sentiment expressed by private citizens in Grand Junction some weeks ago, was to the effect that in some sections of the Colorado river valley the people are beginning to wonder what they have done to themselves.

It seems absolutely essential that a showing be made, on the record, that there are available additional lands in Gunnison, Montrose, Delta and Mesa counties to make useful application of every inch of water originating in the Gunnison watershed whether it be spring run-off, summer floods or regular flow. This can be done and it must be done.

From information compiled so far the records indicate that in District No. 28 for instance, for a total acreage amounting to 37,323 acres under irrigation, the present decrees total but 586.25 second feet of water and in District No. 59 the total acreage under irrigation, 41,387, for which the water decrees total 1,019.98 second feet. It will be well for the water users to bear these figures in mind. As to what effect diversion of the waters of the Gunnison will have on recreational values of the valley will have to be left in other hands more interested in that angle of the question.

At the meeting above referred to the need for ready funds was stressed and the committee having that in charge is making a diligent effort to secure such funds as are absolutely necessary.

Further meetings of the Committee will be called from time to time and it is felt that all members will find it interesting and enlightening to attend these meetings and hear the discussions from the various angles of the matter.

Local Happenings

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Tony Tovatt of LaJunta is a house guest at the Owen O'Fallon home.

Van Sunderlin and George Cummings transacted business in Denver recently.

Mr. and Mrs. C. S. Pynch and children spent the week-end at the Warren Brown home. They left Monday evening for San Francisco, where they will make their home. Mr. Pynch is a son of Mrs. Brown.

Dr. and Mrs. M. R. Blackstock of Spartansburg, S. C., arrived Saturday and will visit with the former's father, Jos. Backstock, and family. They came during the mid-summer celebration to take in all the festivities.

Addison Hockett and Grant Taylor of Gypsum were in Gunnison Friday. They visited with Mr. Hockett's daughter, Mrs. Bill Robischaud, and Mr. Robischaud, who are attending summer school here, and with Mrs. A. G. Danielson and E. L. Strows.

Mr. and Mrs. Howard Weston and children came from Denver last week. Mr. Weston returned to the capital city, but his family will remain here until the first of August with Mrs. Weston's parents, Mr. and Mrs. Ellis Bates.

C. R. Walker and family drove to Grand Junction Saturday to spend the week-end with Mrs. Walker's parents, Rev. and Mrs. J. E. Bryant. They report very hot weather in the lower valley town, the theromoter going to 92 and 94 degrees in the two days they were there.

John McEwen and wife are here from Fort Worth, Texas, for their usual summer outing with Elmer Mullin, brother of Mrs. McEwen. They never fail to be on hand for the Homecoming of Pioneer Day and other festivities of the summer celebration.

Mrs. Eston Royse enjoyed a visit last week from her nephew, Bobby Jennings of Pueblo. On Saturday Mrs. Royse and Bobby accompanied Mrs. Carl Purceil and son, Chas., to Montrose. Bobby went on to Ridgway to visit relatives, while Mrs. Royse and Mrs. Purceil spent the week end with their husbands who are working on the train out of Montrose. Mr. and Mrs. Royse

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June 4, 2001

CONFIDENTIAL
PRIVILEGE) ORNEY-CLIENT COMMUNICATION

Scottie Willey
222 E. Gothic Ave
Gunnison, Colorado 81230

Re: Draft Engineering ep
UGRWCD Plan foAmentation

Dear Scottie:

I have enclosed the first draftofe engineering report prepared by Helton and Williamson to support a principal element of a basn-de plan for augmentation. This information is privileged and confidential because it involves a ner which will be litigated by the District. Before we file the plan for approval by the Water Courthis analysis will require refinement, and perhaps some changes following your review and discssion. Once you are satisfied with a plan, I believe it is imperative that we review and discuss tl proposed plan with Uncompahgre Valley Water Users Association and the Bureau of Reclamion and obtain their input and, hopefully, approval. I therefore recommend that we should not ake the proposed plan public until we have finalized our analysis and at least discussed it with UWUA and the Bureau.

Duane Helton, Jim Slattery, Katleen and I will review ths information with you at the Special Board Meeting on June 9, answeryour questions and addres any concerns.

Sincerely,

John H. McClow

JHM/ck
Enclosure

Letters

Part of a promise

To the Editor:

In an environment in which the Upper Gunnison River Water Conservancy District is finally being held accountable for its actions and in which elections for seats on the UGRWCD board are becoming the accepted norm, it is very important for Gunnison Valley citizens to learn about important water issues and, as they do, to insist that their representatives on the Water Board act in their constituents' best interest.

The article in last Thursday's Times about the UGRWCD's signing of a subordination agreement with the Bureau of Reclamation falls considerably short of furnishing Gunnison Valley citizens with the kind of knowledge they need to make informed judgments of the Water Board's actions and to hold their representatives on the Board accountable for what they have or have not done.

To assist in furnishing information about the subordination agreement, POWER wishes to explain five facts about the Gunnison Valley's relationship with the Bureau of Reclamation.

1. The Aspinall Unit would not have been built without the support of Gunnison Valley citizens. The three dams which comprise the Unit could not have been constructed if Wayne Aspinall and other Colorado representatives to the U.S. Congress during the '50s and '60s had not given their approval of the project. And without the Gunnison Valley citizens' approval, Colorado's congressional delegation made it clear that they would veto the project.

2. To secure the approval of citizens of the Gunnison Valley - many of whom had been forced to shut off irrigation water before the end of the growing season because of calls from senior down-stream users - the federal government promised them 60,000 acre feet of water for consumptive use as a way of protecting their existing and future water rights. This 60,000 acre feet would protect Gunnison Valley users from the kind of senior downstream calls that had previously been made by the Uncompahgre Water Users and the Redlands Canal and it would also protect them from calls which the Aspinall Unit itself might make under its 1957 decrees.

3. Since construction of the Blue Mesa Reservoir in 1962, first of the three dams of the Aspinall Unit to be built, the BOR has managed the flow of water downstream in a manner to protect Gunnison Valley users from any and all downstream calls.

4. The current subordination agreement between the UGRWCD and the Bureau of Reclamation covers only a minor part of the original water protection agreement - an agreement in which the BOR promised not to call on water users with priorities junior to 1957 and to release stored water as a way of protecting Upper Gunnison water users with decrees junior to 1908 (the date of the Uncompahgre Water Users' decree).

The current subordination agreement does not provide any Gunnison Valley users whose rights are later than 1908 (approximately 80 percent) with call protection against senior downstream users such as the Uncompahgre Water Users and the Redlands Canal. Furthermore, it offers nothing to guarantee that the managers of the Aspinall Unit will continue to release stored water to satisfy downstream calls and, in the process, to continue to protect Upper Gunnison junior decrees - as they have done from 1962 to the present.

5. What the current subordination agreement does offer, is 40,000 rather than 60,000 acre feet of protection against calls from the Aspinall Unit itself - a very minor part of the federal government's original promise to our valley.

Gunnison Valley citizens need to know little-known facts. Otherwise, we may fall short of knowledge that makes it possible for us to encourage the UGRWCD to continue efforts to protect the water rights of Gunnison Valley.

P.C. Klingsmith
President, POWER

Subordination clarification

To the Editor:

I am writing just to clarify a statement made in last week's article regarding the Aspinall Subordination Agreement. Upper Gunnison River Water Conservancy District President Mark Schumacher's comments regarding the agreement were mis-interpreted when it was reported that once signed, the Agreement would provide coverage for water rights holders that would allow them to apply for a portion of the subordination by contacting the District, without having to go through the water court process.

Actually, the agreement does not call for any sort of application process to the District, for either new or existing junior water rights. People interested in applying for a new water right would still have to go through the normal water court procedures. What the agreement does do, is allow for individual water users that have depletions associated with water rights junior to 1957 to benefit from the subordination because they will be listed in the report that the District is required to submit to the Bureau of Reclamation on an annual basis. The report will tabulate all water users that benefit from the subordination, i.e. there is no need for individual applications or contracts between users and either the BOR or the District in order to benefit from the subordination.

I hope this provides some assistance to your readers in understanding this fairly complicated agreement. Let me know if you have any questions or need more information. Thank you!

Kathleen Klein
UGRWCD Manager

In the event that downstream senior water rights such as the Gunnison Tunnel and the Redlands Power Canal place a call on the river, a source of augmentation water would be needed to prevent curtailment of depletions under junior irrigation water rights downstream of Blue Mesa Reservoir and any irrigation depletions upstream of Blue Mesa Reservoir which exceed the replacement capacity of the Taylor Park Reservoir refill.

* The parties would develop a source of augmentation that is feasible for irrigation use.

* Aspinall Unit water management so as to provide augmentation against downstream senior calls would be carried out at a cost to be negotiated by the parties.

* Such augmentation may be achieved through use of Upper Gunnison Project water diverted and stored in Blue Mesa Reservoir.

* The Colorado River Water Conservation District and the Upper Gunnison River Water Conservancy District would seek and the other parties would agree to support the water court's approval of a plan for augmentation which would protect in-basin junior irrigation depletions against downstream senior calls.

Taylor Park Water Management

In the event that downstream senior water rights such as the Gunnison Tunnel and the Redlands Power Canal place a call on the river, a source of augmentation water would be needed to prevent curtailment of diversions under junior irrigation water rights upstream of Blue Mesa Reservoir.

* The augmentation source for irrigation rights would be 19,200 acre-feet of irrigation use decreed in the Taylor Park Reservoir Refill.

* The Bureau of Reclamation, the Colorado River Water Conservation District, the Uncompahgre Valley Water Users' Association, and the Upper Gunnison River Water Conservancy District would conclude negotiations and implement the Taylor Park Water Management Agreement.

* The management of Taylor Park Reservoir would be carried out at a cost to be negotiated by the parties ($10,000 per year initially per prior negotiations).

* The Upper Gunnison River Water Conservancy District would seek and the other parties would agree to support the water court's approval of a plan for augmentation which would protect in-basin junior irrigation depletions against downstream senior calls.

* In order to benefit from the augmentation plan, individual water users would be required to enter into contracts with the Upper Gunnison River Water Conservancy District.

* Water rights needing to be augmented may be junior or senior to the Aspinall Unit.

* The cost to individual beneficiaries would not exceed their proportional share of the overall costs paid for water supply management, development, and operations for all beneficiaries of the same type by the Upper Gunnison River Water Conservancy District plus reasonable administrative (overhead) cost recovery approved by the Bureau of Reclamation.

* Allocation of benefits would be based upon terms and conditions administrable by the division engineer.

* Additional Issues to be resolved by the parties:
  Priority as between beneficiaries of Taylor Park Reservoir augmentation

Blue Mesa Water Service

In the event that downstream senior water rights such as the Gunnison Tunnel and the Redlands Power Canal place a call on the river, a source of augmentation water would be needed to prevent curtailment of diversions under junior domestic water rights in the Gunnison Basin.

* The augmentation source for domestic rights would be Blue Mesa Reservoir. The cost of water service would be negotiated by the parties.

* Water rights needing to be augmented may be upstream or downstream of, and junior or senior to the Aspinall Unit.

* The Upper Gunnison River Water Conservancy District and the Colorado River Water Conservation District would seek and the other parties would agree to support the water court's approval of a plan for augmentation which would protect in-basin junior domestic depletions against downstream senior calls.

Environmental Compliance and Section 7 Requirements

The parties to the agreement would define and agree to carry out their respective responsibilities for meeting environmental compliance and Section 7 requirements related to the agreement.

Background

During 1950's and 1960's when the Curecanti Unit (now the Wayne N. Aspinall Unit) of the Colorado River Storage Project was conceived, authorized and constructed, local water user support for the project was based upon the informal recognition by local, state, and federal project proponents of two principles concerning the effect that the Aspinall Unit would have on water rights in the Gunnison basin.

60,000 Acre-Foot Depletion Allowance (Subordination)

The first principle was that the Aspinall Unit would be operated in such a way that the presence and operation of the Aspinall Unit by itself would not cause the future upstream development of water resources for in-basin purposes to be unreasonably limited. In a practical sense this meant that the Aspinall Unit would not use its water rights to prevent up to a certain amount of in-basin depletions under upstream junior water rights

In February, 1959 the Bureau of Reclamation released a report titled "Curecanti Unit of the Colorado River Storage Project, Economic Justification Report," which demonstrated the economic feasibility of the Curecanti Unit. The study assumed that after the Curecanti Unit was completed, an additional depletion of 60,000 acre-feet of water by irrigation in the Gunnison River Basin upstream of Crystal Dam would be developed: 40,000 acre-feet above Blue Mesa Dam, 10,000 acre-feet between Blue Mesa and Morrow Point Dams, and 10,000 acre-feet between Crystal and Morrow Point Dams.

The United States holds state adjudicated storage and direct flow water rights for the Aspinall Unit which were obtained and subsequently assigned to it by the Colorado River Water Conservation District in January, 1962. The rights enjoy a 1957 administrative priority, a priority that is senior to many upstream water rights. The Colorado River Water Conservation District obtained conditional water rights for the Upper Gunnison Project at the same time as the Aspinall Rights. The Upper Gunnison Project includes storage reservoirs and canals which would be built to provide water supplies for multiple purposes in the headwaters of Gunnison River tributaries above Blue Mesa Reservoir. A major use of the water would be for irrigation. The Upper Gunnison Project water rights were assigned by the Colorado River Water Conservation District to the Upper Gunnison River Water Conservancy District and enjoy the same identical priority as the Aspinall rights. It was contemplated that depletions by the Upper Gunnison Project would be accounted for within the 60,000 acre-foot depletion allowance.

In a letter dated June 28, 1963 from the Commissioner of Reclamation to the Regional Director, Salt Lake City, the Bureau of Reclamation approved a form of contract to be executed with individual upstream water users (contractors) which would provide protection against a call of the Aspinall Unit. The contract recognized that the water rights of the Aspinall Unit would be utilized "in such a manner and pursuant to operating

criteria that will permit future upstream water depletions by projects constructed for use of water in the Upper Gunnison Basin in the aggregate amount to be determined by the United States even though such projects divert under priorities subsequent in time to the priorities of the Curecanti Unit water rights." In the contract the Bureau of Reclamation agreed that, "irrespective of priority dates, the diversion, storage, distribution, and use of water under the Curecanti Unit water rights will not be made in any manner that will reduce diversions of the Contractor on the Upper Gunnison River Basin water shed under the water rights obtained for use on the project to be constructed, operated, and maintained by the Contractor". Subsequently five small contracts were executed by the Bureau of Reclamation with private water users.

In a letter dated February 16, 1984 from the Regional Director, Upper Colorado Regional Office to the U. S. Department of Justice, the Bureau of Reclamation reaffirmed its intention to subordinate the Curecanti Unit to junior appropriators in an amount not to exceed 60,000 acre-feet. Correspondence from the Regional Solicitor to the Regional Director, Bureau of Reclamation dated October 26, 1984 advised the Bureau of Reclamation to fulfill its "obligation to allow upstream depletions in an amount not to exceed 60,000 acre-feet". The correspondence also stated "that the Bureau of Reclamation does not intend to take any action contrary to these obligations; and that the State Engineer, insofar as the Bureau of Reclamation is concerned, may administer upstream depletions in harmony with this position".

In a letter dated August 8, 1996 to the Director of the Colorado Water Conservation Board, the Regional Director of the Bureau of Reclamation, Upper Colorado Regional Office stated: "I have checked with our Solicitor's Office and with the Area Office in Grand Junction and can now confirm that our position has not changed. We agreed to subordinate 40,000 acre feet above Blue Mesa Reservoir, and 10,000 acre feet each above Morrow Point and Crystal Reservoirs for a total of 60,000 acre feet. That figure is reflected in economic justification report for the Aspinall Unit (formerly the Curecanti Unit) and has been reiterated in correspondence and subordination contracts since the 1060s."

Protection Against Downstream Senior Calls

The second principle was that releases of water from the Aspinall Unit made as an incidental result of power operations would increase and stabilize the flow downstream in the Gunnison River in many months of the year and thus improve the supply of water which could be diverted by downstream senior water users such as the Gunnison Tunnel and Redlands Power Canal. This would reduce if not eliminate the need for downstream senior calls which in the past had been frequently put on the river and had resulted in curtailment of junior irrigation rights throughout the Gunnison Basin. Many water users in the Upper Gunnison Basin can remember local hay crops drying up for lack of water when direct flow rights were curtailed by the downstream senior calls prior to the construction of Blue Mesa Reservoir.

This principle was recognized early in the planning of the Aspinall Unit. The water rights decreed in Case No. 6981, dated March 30, 1960, for the Blue Mesa Power Plant include the statement: "That said power use being a non-consumptive use, said released water after passing through said power plant, as well as any water released over the spillway of said Crystal Reservoir dam, will immediately enter the channel of the said Gunnison River, and provide a constant year round flow in said river below said reservoir greatly in excess of the normal flow therein after the spring flood water season, greatly improving and stabilizing the supply available for existing decreed rights, and probably providing water for all potential uses and purposes hereinabove mentioned and described."

A Bureau of Reclamation Staff Information letter dated October 3, 1960 entitled "Information Summary of Curecanti Unit" stated: "Flows of the Gunnison River will be largely controlled by Blue Mesa Reservoir, which will provide the greater part of the capacity for the Curecanti Unit. Water released through the Blue Mesa Power Plant together with minor downstream inflows, will receive short-term regulation at the smaller Morrow Point Reservoir. Releases through the Morrow Point Dam and Powerplant will be relatively uniform during the irrigation season to maintain flows needed for downstream water rights. These rights will not be adversely affected by operation of the Curecanti Unit."

In the water rights decree in Case No. 5782 dated October 21, 1965 in Water District 59 for the first enlargement of the Gunnison River Reservoir System the court found that one of three purposes for the filing of the statement of claim was: "To effect a more perfect harmonization and correlation of the three principal units of the Upper Gunnison Basin Project or Gunnison River Reservoir System, to-wit: the Blue Mesa Reservoir, the Morrow Point Reservoir and the Crystal Reservoir and the releases therefrom through their respective power plant conduits, for the production of the ultimate amount of electrical energy in the three separate but correlated power plants connected therewith consonant with the final release of said stored, as well as direct flow water, into the channel of the Gunnison River below said project at a constant rate sufficient in quantity to fill all prior decreed priorities therefrom when commingled with the natural accretions therein." With respect to Crystal Reservoir in the same decree the court found: "That the releases from said reservoir, whether through the Crystal Reservoir Power Plant Conduit, or over the spillway of the dam shall, insofar as available, be in such quantity as will satisfy at all times prior decrees from said Gunnison River below Crystal Reservoir Dam when commingled with the natural accretions in the channel of said river."

In the 1960's it was recognized by the involved parties that while releases of water from the Aspinall Unit as an incidental result of power operations would normally satisfy the downstream senior rights, under some conditions such as drought, the downstream senior rights might not be fully satisfied. In such a situation it was recognized that the downstream senior rights might place a call on the river, and that upstream juniors would need to acquire a source of replacement water to use by exchange if they wanted to

continue to divert. In April, 1967 the Bureau of Reclamation and the Upper Gunnison River Water Conservancy District entered into a contract for annual rental of Curecanti Unit storage water for replacement of diversions in the Upper Gunnison Basin. The contract was for 500 acre feet of water. The Bureau of Reclamation and the district entered into similar contracts over the next 15 years, following which the contracts were discontinued. During the 15 year period the contract water was never used to provide replacement, because water rights in the Upper Gunnison basin were never actually called out by downstream seniors.

For thirty years since Blue Mesa Reservoir was completed the two principles described above have been executed successfully through cooperation between the Bureau of Reclamation and Gunnison basin water users. The United States has not taken action to cause curtailment of in-basin depletions under water rights which are junior to the water rights of the Aspinall Unit. In addition, the United States has managed releases of water from the Aspinall Unit such that the diversion requirements of downstream senior water rights holders on the Gunnison River have been nearly always been satisfied. As a result since the completion of Blue Mesa Reservoir downstream users have rarely had to place a call on the river and request curtailment of upstream juniors.

Why the Proposal Should Be Implemented At This Time

In recent years new water demands have begun to appear, such that the informal arrangements of the past will need to be supplemented in the future by more formal agreements. For example, in connection with the application for water rights by Arapahoe County in Case No. 88-CW-178, Water Court Judge Robert A. Brown, in pretrial orders dated September 14, 1990, issued the following ruling concerning the subordination of Aspinall Unit water rights: "It is clear from an analysis of the Colorado River Storage Project Act and related reclamation laws that the Bureau of Reclamation may dispose of water only through a written contract. The Bureau of Reclamation has no discretion or authority to dispose of water in any other manner. The Court is satisfied that the Bureau cannot subordinate its water rights by a simple oral declaration of its officials, and that a more formal, written contract will be necessary to express said decision." Following Judge Brown's ruling the Bureau of Reclamation indicated on several occasions to Gunnison Basin water users that it would place a call with the water rights of the Aspinall Unit in the near future. For example, in letters dated November 21, 1991, and March 19, 1992 to the Upper Gunnison River Water Conservancy District, the Bureau of Reclamation stated its intent to pursue administration of water rights in the Gunnison Basin, and offered to enter into agreements to prevent injury to junior in-basin water rights.

Judge Brown's ruling makes it clear that a contract is needed between the Bureau of Reclamation, the Colorado River Water Conservation District and the Upper Gunnison River Water Conservancy District which will provide for in-basin depletions under water rights junior to the Aspinall Unit to take place and be accounted for during the time that the Aspinall Unit is placing a call on the Upper Gunnison Basin.

In a letter to the Carol DeAngelis, Western Colorado Area Manager, Bureau of Reclamation, dated April 13, 1996, the Upper Gunnison River Water Conservancy District stated: "In the light of the Water Court's ruling we believe that the State Engineer will require a written agreement in the future in order for the Bureau of Reclamation to continue to protect upstream in-basin junior water rights from a call of the Aspinall Unit. As soon as it is convenient for you the Upper Gunnison River Water Conservancy District would like to begin to develop such an agreement with the Bureau of Reclamation." The intent of the Upper Gunnison River Water Conservancy District and the Colorado River Water Conservation District to enter into an agreement with the Bureau of Reclamation was reaffirmed in a letter to the Area Manager of the Western Colorado Area Office of the Bureau of Reclamation dated July 8, 1997.

It has become increasingly likely that calls will be placed by downstream senior rights such as the Gunnison Tunnel or Redlands in the future. In January, 1988 the Recovery Program for the Endangered Fish Species in the Upper Colorado River Basin was implemented which provides a framework upon which the recovery of four species of endangered fish is to be based. In 1992 the U. S. Fish & Wildlife Service and the Bureau of Reclamation began a program of test flows from the Aspinall Unit. The test program was intended to provide data concerning the effects that the operation of the Aspinall Unit would have on flow conditions and endangered fish species in the lower Gunnison River. The data was collected in anticipation of the preparation of a Biological Opinion by the Fish & Wildlife Service on the operation of the Aspinall Unit. In 1991 and 1992 the Bureau of Reclamation stated that it might not always be able to make releases from the Aspinall Unit in a way that would satisfy downstream senior rights and keep their senior calls off the river. Water users in the Gunnison Basin were told to anticipate that the Bureau of Reclamation would enter into a contract with the Fish & Wildlife Service to provide contract deliveries of stored water from the Aspinall Unit for delivery to endangered fish in the Gunnison River below the Redlands diversion dam. Such contract water would not be divertable by Redlands, and would therefore possibly force Redlands and other downstream seniors to place a call on the river. This would be a change in the historic use of the Aspinall Unit's water rights in that water delivered under contract to the endangered fish would no longer be available for diversion by downstream senior water rights as has been done since the Aspinall Unit was completed. In early 1992 the Bureau of Reclamation offered to negotiate an Aspinall Unit water service contract that would provide a source of augmentation water and thus provide protection to Upper Gunnison Basin irrigators and domestic water users from the downstream calls. The costs associated with the Aspinall water service contract proved to be prohibitive for irrigation. Continued discussions led in 1993 to the negotiation of the Taylor Park Water Management Agreement. Parties to the negotiation included the Bureau of Reclamation, the Colorado River Water Conservation District, the Uncompahgre Valley Water Users' Association, and the Upper Gunnison River Water Conservancy District. The agreement was developed in recognition of the need to provide the Upper Gunnison Basin with an affordable source of replacement water which could be used to augment irrigation depletions during the time that a downstream senior call was placed on the Gunnison

River. The source of augmentation would be the 19,200 acre-feet of the Taylor Park Reservoir refill decreed for irrigation in Case No. 86CW203. The agreement was found to be acceptable in principle to all the parties involved but was not executed pending completion of environmental compliance requirements.

In a letter dated January 5, 1995 to the Area Manager, Bureau of Reclamation, Grand Junction, CO, the Regional Solicitor, Intermountain Region concluded with respect to downstream senior rights on the Gunnison River: "You have the flexibility, given the federal authorizations and existing state decrees, and assuming an adequate water supply, to continue to provide water to these indirect benefits in consequence of your power operations in addition to whatever arrangements you make with the U. S. Fish and Wildlife Service to supply water to the fish ladder around the Redlands diversion and to the reach from this diversion to the confluence with the Colorado River."

On August 16, 1995 the Bureau of Reclamation, the U. S. Fish & Wildlife Service, and the Colorado Water Conservation Board entered into a memorandum of understanding for furnishing water from the Aspinall Unit for the benefit of endangered fishes. The MOA, which will be in effect for no more than five years, provides that the Aspinall Unit will be operated to "completely remove the need for administrative calls by downstream Gunnison River mainstem users senior in priority to the Aspinall Unit, unless such plan would cause Blue Mesa Reservoir to drop below the 400,000 acre-foot total storage level at the end of the current calendar year. In such event, the parties jointly agree to reduce the 300 cfs release amount otherwise protected pursuant to this MOA in order to minimize the administrative calls which would occur from water rights downstream and senior to the Aspinall Unit and its decrees."

In order to formalize protection of Gunnison Basin water users from downstream senior calls, a long term agreement is needed that will provide: 1) For the Bureau of Reclamation to continue to operate the Aspinall Unit to the extent possible such that releases of stored water from the Aspinall Unit continue to incidentally satisfy water rights senior to the Aspinall Unit which divert from the lower Gunnison River, and 2) for the Bureau of Reclamation, the Colorado River Water Conservation District and the Upper Gunnison River Water Conservancy District to develop a plan for augmentation which will utilize the Taylor Park Reservoir Refill, Blue Mesa Reservoir and other storage facilities as replacement sources of water. The plan for augmentation will provide for releases to be made from the replacement reservoirs so that water can continue to be diverted in the Gunnison basin under upstream junior water rights when otherwise the diversions would be curtailed by downstream senior water rights on the lower Gunnison River.

Upper Gunnison River Water Conservancy District
Position Statement Regarding
Black Canyon of the Gunnison National Park
Water Right Quantification
Adopted June 25, 2001

The Upper Gunnison River Water Conservancy District opposes the claim filed in January, 2001 by the United States quantifying a reserved water right for the Black Canyon of the Gunnison National Park. The application seeks flows that would be detrimental to existing water uses in the Upper Gunnison River basin. The United States is claiming a March 2, 1933 priority date. Water users in the Upper Gunnison basin are dependent on water rights junior to March 2, 1933. Curtailment of upper basin diversions in order to meet the demands of the United State's claim would significantly reduce water availability for irrigation and other uses. A significant percentage of the water used in the basin would be curtailed under administration of the water right.

Preliminary engineering analysis of the proposed claim indicates that the reserved water right could result in a 1933 call being placed on the upper basin for a significant portion of the irrigation season, depending on the hydrologic conditions present. Physical shortages at the time that a call is occurring could range from 10,000 – 60,000 acre feet per year. The proposed claim would also impact the ability to store water in the upper basin. Because the reserved right is senior to both the first and second fill water rights for Taylor Reservoir, the fishery, recreation and irrigation benefits afforded to the District under current reservoir operations would be jeopardized.

The District supports a negotiated settlement with the United States and/or legal challenge that would provide protection for existing and future uses in the basin. Such protection should occur in the form of an agreement that would result in administration of the right as junior to historic uses in the basin. The objective of the settlement would be to protect existing uses and future uses and allow for full development of water in accordance with the terms of the Aspinall Subordination Agreement.

The District supports committing the necessary legal and technical resources to pursue actively a negotiated and/or legal settlement, and to support efforts to challenge the basis of the claim.