

OFFICE OF THE EXECUTIVE DIRECTOR

Department of Natural Resources
 1313 Sherman Street, Room 718
 Denver, Colorado 80203
 Phone (303) 866-3311
 TDD (303) 866-3543
 Fax (303) 866-2115



DEPARTMENT OF
 NATURAL
 RESOURCES

Bill Owens
 Governor

Greg E. Waicher
 Executive Director

February 29, 2000

The Honorable Ben Nighthorse Campbell
 United States Senate
 380 Russell
 Washington, D.C. 20510

Dear Senator Campbell:

The State of Colorado thanks you for your efforts to create our newest National Park. We particularly appreciate the great care taken to protect Colorado water rights, and the operation of the Aspinall Unit. However, we are extremely concerned with the quantification of the reserved water right for the Black Canyon of the Gunnison National Monument.

There is a move by the National Park Service and the Department of Justice to quantify the water right for the Monument. It is very important to Colorado that this quantification be based on the purposes for which the Monument was established, not the purposes of the Park. Colorado has long encouraged the Park Service to proceed with quantification and now there seems to be political motivation to complete this before a new administration takes office in Washington D.C..

We doubt this is possible, given that any quantification would have to be decreed in the Colorado Water Court, and we want to work with National Park Service towards this end rather than enter protracted litigation. But the Park Service has not discussed the matter with us. In fact, they have declined our invitations to discuss this matter before the Colorado Water Conservation Board—twice.

Meanwhile, the U.S. Bureau of Reclamation is undergoing a Section 7 Consultation with the U.S. Fish and Wildlife Service on the Aspinall Unit. Research for the consultation has been complete and the synthesis report should be available within a month or so. Colorado would like to see these efforts coordinated, but not to the detriment of our water users or to the operations of the Aspinall unit. In order to accomplish this we need information and cooperation from the Park Service. This does not have to be the final decreed quantification, but our need for candor is significant.

Before construction of the three dams that make up the Aspinall Unit, during the irrigation season flows on the Gunnison would drop to as little as 30 cfs. Since the project was completed, the Bureau of Reclamation (BOR) has guaranteed 300 cfs as a minimum flow. The Monument was extremely satisfied and immense environmental

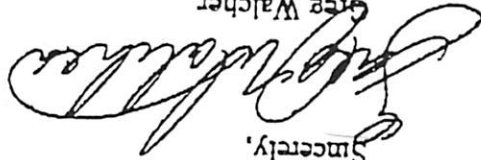
National Park Service has not requested any more additional flows for any purpose. In fact, when the project was being authorized, the economic justification report identified a 100 cfs minimum flow and the Park Service went on record as being satisfied with it. To date, the project has dropped flows to the 300 cfs level only once in its history, to look for a body. With this one exception, flows have typically remained at a minimum of 500-600 cfs.

The State of Colorado took this 300 cfs BOR guarantee and created an in-stream flow right in that amount. Again, Colorado has communicated closely with the Park Service in the past on its work to quantify its right. However, there has been little communication from NPS on this subject in the past year.

Some evidence suggests that the Park Service is claiming the reserved right is needed to preserve the fishery in the Black Canyon--a fishery that did not exist when the monument was established. It is difficult to imagine why the Park Service would wait nearly two decades after its decree granting a reserved right to attempt to quantify that right if there were damage or injury occurring to the Monument (US v. Denver, 1982). Had any Colorado water right holder acted similarly, their water rights would have been abandoned under state law.

Colorado needs to participate in an agreement between BOR, the U.S. Fish and Wildlife Service and the National Park Service that allows the full use of the storage and generating capacity while at the same time protecting the Park. We have a unique opportunity with this combination of facilities, a series of reservoirs that can be operated in conjunction with each other to re-regulate the river. We need your help to ensure that occurs. We appreciate your assistance, as always.

Sincerely,



Greg Walcher
Executive Director

The Hon. Wayne Allard
The Hon. Scott McInnis