

FAXED

October 30, 1998

Mr. Randy Seaholm
Chief, Interstate Streams Investigations
Colorado Water Conservation Board
Department of Natural Resources
721 Centennial Building
1313 Sherman Street
Denver, CO 80203

VIA FACSIMILE

Dear Randy:

I have your fax of October 22, 1998 providing me with tables showing historic Colorado River water flow at Lee Ferry. You state the material you sent discloses that the Upper Basin States have no trouble meeting the delivery obligations to the Lower Basin States. You also evidence impatience with me for not agreeing with this statement. I have analyzed those papers carefully and I disagree with the statement that the Upper Basin States have no trouble meeting their delivery obligations. I believe and state firmly that although they do meet their obligation to provide 7,500,000 acre feet per annum, and the 75,000,000 acre feet in a ten year moving average, they would fail to meet the obligation if and when the Lower Basin States call for the additional 1,000,000 acre feet the Lower Basin States have the right to call for under Article III (b) of the Compact, in addition to the 750,000 acre feet which the country of Mexico could call for from the Upper Basin States, from time to time, under paragraph (c) of that Article. I submit that Colorado is in the same position as it was some 20 odd years ago when someone in the Arkansas River Valley no doubt stated to the State Engineer that Colorado shouldn't be using more water than it was entitled to use under its agreement with Kansas. Apparently the water powers that be in Colorado said then not to worry, that Kansas would never call on their water entitlement. Sure enough, however, Kansas did so call, and now Colorado is in a position of not only having to pay back to Kansas what it was entitled to, but also making up either additional water or money for the water that it took unlawfully. Colorado should not continue to make the same mistake in the Colorado River.

Specifically, you have stated that the Lower Basin States are not entitled to an additional 1,000,000 acre feet of water per year under Article III (b) of the Compact, but rather that the 1,000,000 acre feet stated is included in the 7,500,000 acre feet described in paragraph (a). To come to this conclusion the words "In addition" at the beginning of the paragraph must be ignored. I won't belabor the point that "in addition" means on top of, or more than, the previous amount discussed. Using the figure contained in your table 4, "Historic Flow at Lee Ferry", a copy of which I have written upon and am enclosing, you will see that when the 1,000,000 acre feet is considered, only 4 years in the past 10 years has the obligation been met. From the years 1988 to 1994 it wasn't met even once. Needless to say, if Mexico calls on the amount they have

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a right to call for if they are shorted, the Upper Basin States are even less able to meet their requirements and would be even deeper in debt.

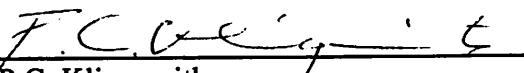
Further, I would point out that although water can be accumulated to meet the requirements of the Compact requirement of Article III(d), there is no benefit redounding to the Upper Basin States to accumulate in high flow years their annual obligation to provide 7,500,000 acre feet and the other annual requirements.

You have indicated to me that you believe Colorado can benefit from the diversions of the Virgin, Paria and the Gila Rivers and other streams which flow into the Colorado river below Lee Ferry. You believe that if those flows are considered, the Lower Basin States receive more than an ample supply to fulfill the Upper Basin States' obligation to provide 7,500,000 acre feet and any other quantity they may owe. You apparently rely on this belief by virtue of the wording in Article II (g) of the Compact. I would point out however, that the purport of Article II is to describe the geological area and features of the Compact. Sub-paragraph (g) particularly describes what regions comprise the Lower Basin States. That paragraph, nor any provision of the Compact, indicate that flows into the Colorado River of streams below Lee Ferry can be relied upon by the Upper Basin States as fulfilling their water delivery obligations.

It is most clear that the measuring point is Lee Ferry. Although "Lee Ferry" is not mentioned in paragraphs (a) & (b) of Article III, it is mentioned in paragraph (c) and summarized in paragraph (d) as the only measuring point described in the Compact. It is at that point that the annual and continuing obligations of the Upper Basin States to the Lower Basin States is to be determined. To think that water production of lower streams can help the Upper Basin States in fulfilling this water deliver requirement is wishful thinking, at best.

Accordingly, I reiterate that there should be a state wide agreement in Colorado that no additional trans-mountain diversions of water from the Colorado River and its tributaries in Colorado should be made unless a reapportionment of the Colorado River system is made under the provisions of Article III (g), or unless the Compact is terminated under the provisions of Article X. Even termination in itself, might not take Colorado off the hook. When one considers the upcoming conveyance of 27,000 acres of Federal land in and around Las Vegas to private interests, the pressure to deliver every acre foot of water Nevada is entitled to will become severe.

Sincerely yours,


P.C. Klingsmith

PCK:hjp
Enclosure