

2-22-99

COLORADO RIVER WATER CONSERVATION DISTRICT

February 19, 1999

Board of Directors
Upper Gunnison River Water Conservancy District
275 South Spruce Street
Gunnison CO 81230

RE: POSITION OF "POWER" CONCERNING COLORADO RIVER COMPACT INTERPRETATIONS

Dear Directors:

This letter responds to your request for the River District's position on the issues raised by "Gunnison Basin People Opposing Water Export Raids" ("POWER") in their November 18, 1998 correspondence to you and their supplements to that correspondence.

We agree with POWER that there are uncertainties about the long-term reliability of the Colorado River as a supply to meet Lower Basin water demands because of unquantified Indian entitlements and potential severe, sustained droughts. We also recognize the existing and growing political power of the Lower Basin, particularly that of California, and that the Lower Basin's supply uncertainties coupled with the political dynamic present unique political and legal challenges to the Upper Basin states. We believe, however, that those uncertainties are not reasons to misconstrue the provisions of the Colorado River Compact and thereby enlarge the State of Colorado's delivery obligation or minimize its perpetual legal entitlement to use Colorado River water.

We have had the benefit of reviewing the detailed position responses provided to you by the Upper Colorado River Commission ("UCRC") in its letter dated January 8, 1999 and by the Colorado Water Conservation Board ("CWCB") in its letter dated January 25, 1999. We agree with the interpretations presented by both UCRC and CWCB in their detailed analyses and are grateful that their staffs put in the substantial effort needed to present those positions. The core problem with POWER's position is its refusal to interpret Article III of the Compact based upon its clear language and the supporting history, including the U. S. Supreme Court's analysis in *Arizona v. California*, 373 U. S. 546 (1963). POWER's misinterpretation of Article III and its strained assertions of "ambiguities" in key Compact provisions have been thoroughly exposed and refuted by both UCRC and CWCB.

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There is little but redundancy that we could add to this discussion, and we believe that presenting a third detailed response to POWER would be a waste of public resources. Far more important matters, in terms of expending our collective effort, are the unanswered question of the intrastate allocation of Colorado's Compact entitlement and the critical effort to reduce California's use of Colorado River water to its 4.4 MAF entitlement.

We do not mean by this short response to minimize the importance of proper interpretation of the Compact to the State and the Upper Basin. To the contrary, as an entity specifically chartered and empowered to protect the State's Compact entitlement, we believe that a clear and strong defense of the Compact is at the heart of our mission. POWER's arguments are at odds with our mission and contrary to the best interests of the State. We understand that POWER and many others within the Gunnison Basin are concerned about the potential for transmountain diversions and that they may view favorably any argument that could be used to block transmountain diversions. However, we do not believe that utilizing the argument that Colorado is over-using its Compact entitlement is either legally or politically tenable.

Sincerely,



R. Eric Kuhn
General Manager

DCH:sk
pc: CRWCD Directors
Peter H. Evans
James S. Lochhead
Wayne E. Cook
Gunnison County Board of Commissioners
Hinsdale County Board of Commissioners
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