

**HOSKIN, FARINA, ALDRICH & KAMPF**  
PROFESSIONAL CORPORATION  
200 GRAND AVENUE, SUITE 400 - Post Office Box 40  
GRAND JUNCTION, COLORADO 81502  
(970) 242-4903  
Fax: (970) 241-3760

## FAX TRANSMISSION

TO: Gerald R. Lain

FAX NO.: (970) 641-0079

FROM: Frederick G. Aldrich

DATE: October 13, 1997

ACCT.: 5710/1001

TIME: 5<sup>12</sup> am. / p.m.

NO. OF PAGES (including this cover sheet): 4

COMMENTS:

The accompanying document(s) are also being delivered via U.S. Mail

If you do not receive all pages or if you need assistance concerning this transmission, please call (970) 242-4903, extension 429

The documents accompanying this facsimile transmission contain information belonging to HOSKIN, FARINA, ALDRICH & KAMPF, PROFESSIONAL CORPORATION which may be confidential and/or legally privileged. This information is only intended for the use of the individual or entity named above. IF YOU ARE NOT THE NAMED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISCLOSURE, COPYING, DISTRIBUTION OR TAKING OF THIS INFORMATION FOR ANY USE WHATSOEVER IS STRICTLY PROHIBITED.

If you have received this facsimile transmission in error, please call this office at (970) 242-4903 to arrange for the return of documents to us.

## SPECIAL REPORT

# Scientists fear onset of Dust Bowl

By Seth Borenstein  
Knight Ridder News Service

**W**ASHINGTON — The nation's Midwestern breadbasket is overdue for another 1930s-style Dust Bowl, and while it's too early to tell for sure, the parched summer of 1998 may have marked the start of one, government weather researchers said Tuesday.

And we could be getting off easy with a Dust Bowl.

A much larger drought could be on the way within the next century or so, researchers say. Using tree rings, submerged tree trunks, archaeological finds, lake sediments and sand dunes, they found that twice in the last 700 years "megadroughts" have struck the area. They have lasted two to four decades, instead of years.

The megadroughts were just one element of a complex cycle of droughts discovered by researchers from the National Oceanic and Atmospheric

Please see **DROUGHT** on 18A

THE DENVER  
POST 12/16/98

18A

# Scientists fear onset of Dust Bowl

**DROUGHT** from Page 2A

Administration. They also found that major Dust Bowl droughts generally hit twice a century and that smaller two-year droughts strike every 20 years or so.

"There's this 20-year periodicity of drought, we're not sure what that is due to, but it seems to be fairly regular," said Connie Woodhouse, a University of Colorado research scientist working at NOAA's National Geophysical Data Center. "So if that's true, we should be expecting another drought, maybe a big drought in the next two years."

This summer's dramatic dry spell along the southern plains and mid-Atlantic states — severe in parts of Texas and Florida — could be the limited beginning of such a drought, she said. But Woodhouse and her colleague, Jonathan Overpeck, head of paleoclimatology for NOAA, said it was still too early to tell.

Other researchers are even more cautious.

Vern Kousky, a NOAA climatologist who monitors El Niño and La Niña warmings and coolings of the central Pacific and is not part of the drought research team, said, "I don't see us in the midst of a great drought right now." But, he said dry conditions in the southern plains will continue through the crucial winter months and the spring and summer growing seasons because of the La Niña weather phenomenon, in which cooler than normal water temperatures in the central Pacific disrupt normal precipitation patterns.

Droughts are expensive. The \$39 billion expense of the one- to two-year drought in 1988-89 was a bigger blow to the U.S. economy than the devastation of Hurricane Andrew, said NOAA official Roger Pulwarty, who joined Woodhouse and Overpeck at a Tuesday news conference in Washington. The current drought already has caused about \$7 billion in damage, NOAA estimates.

"The droughts that we've had in this century are relatively minor in perspective of the last 2,000 years," Overpeck said. He said the 16th century megadrought, which was heavy in the Great Plains and the West Coast, lasted 20 to 30 years, he said.

## SPECIAL REPORT

# Scientists fear onset of Dust Bowl

By Seth Borenstein  
Knight Ridder News Service

**W**ASHINGTON — The nation's Midwestern breadbasket is overdue for another 1930s-style Dust Bowl, and while it's too early to tell for sure, the parched summer of 1998 may have marked the start of one, government weather researchers said Tuesday.

And we could be getting off easy with a Dust Bowl.

A much larger drought could be on the way within the next century or so, researchers say. Using tree rings, submerged tree trunks, archaeological finds, lake sediments and sand dunes, they found that twice in the last 700 years "megadroughts" have struck the area. They have lasted two to four decades, instead of years.

The megadroughts were just one element of a complex cycle of droughts discovered by researchers from the National Oceanic and Atmospheric

Please see **DROUGHT** on 18A

THE DENVER  
POST 12/16/98

18A

# Scientists fear onset of Dust Bowl

**DROUGHT** from Page 2A

Administration. They also found that major Dust Bowl droughts generally hit twice a century and that smaller two-year droughts strike every 20 years or so.

"There's this 20-year periodicity of drought, we're not sure what that is due to, but it seems to be fairly regular," said Connie Woodhouse, a University of Colorado research scientist working at NOAA's National Geophysical Data Center. "So if that's true, we should be expecting another drought, maybe a big drought in the next two years."

This summer's dramatic dry spell along the southern plains and mid-Atlantic states — severe in parts of Texas and Florida — could be the limited beginning of such a drought, she said. But Woodhouse and her colleague, Jonathan Overpeck, head of paleoclimatology for NOAA, said it was still too early to tell.

Other researchers are even more cautious.

Vern Kousky, a NOAA climatologist who monitors El Niño and La Niña warmings and coolings of the central Pacific and is not part of the drought research team, said, "I don't see us in the midst of a great drought right now." But, he said dry conditions in the southern plains will continue through the crucial winter months and the spring and summer growing seasons because of the La Niña weather phenomenon, in which cooler than normal water temperatures in the central Pacific disrupt normal precipitation patterns.

Droughts are expensive. The \$39 billion expense of the one- to two-year drought in 1988-89 was a bigger blow to the U.S. economy than the devastation of Hurricane Andrew, said NOAA official Roger Pulwarty, who joined Woodhouse and Overpeck at a Tuesday news conference in Washington. The current drought already has caused about \$7 billion in damage, NOAA estimates.

"The droughts that we've had in this century are relatively minor in perspective of the last 2,000 years," Overpeck said. He said the 16th century megadrought, which was heavy in the Great Plains and the West Coast, lasted 20 to 30 years, he said.

**HOSKIN, FARINA, ALDRICH & KAMPF  
PROFESSIONAL CORPORATION**

200 GRAND AVENUE, SUITE 400 - Post Office Box 40  
GRAND JUNCTION, COLORADO 81502  
(970) 242-4903  
Fax: (970) 241-3760

**FAX TRANSMISSION**

TO: Gerald R. Lain

FAX NO.: (970) 641-0079

FROM: Frederick G. Aldrich

DATE: October 13, 1997

ACCT.: 5710/1001

TIME: 5<sup>12</sup> ~~am~~ / p.m.

NO. OF PAGES (including this cover sheet): 4

COMMENTS:

 The accompanying document(s) are also being delivered via U.S. Mail

If you do not receive all pages or if you need assistance  
concerning this transmission, please call (970) 242-4903, extension 429

The documents accompanying this facsimile transmission contain information belonging to  
HOSKIN, FARINA, ALDRICH & KAMPF, PROFESSIONAL CORPORATION  
which may be confidential and/or legally privileged. This information is only intended for the  
use of the individual or entity named above. IF YOU ARE NOT THE NAMED RECIPIENT,  
YOU ARE HEREBY NOTIFIED THAT ANY DISCLOSURE, COPYING, DISTRIBUTION OR TAKING  
OF THIS INFORMATION FOR ANY USE WHATSOEVER IS STRICTLY PROHIBITED.

If you have received this facsimile transmission in error,  
please call this office at (970) 242-4903 to arrange for the return of documents to us.

U S v Kelly and C St Dennis  
Colo 1982, 656 P2d 11

Copyright © US 426 US 128 96 SC 2002

US v. N. M. 438 US 696, 98 S Ct 3012  
(1978)

Final  
**DRAFT**

February 8, 1999

The Board of Directors  
Upper Gunnison River Water Conservancy District  
275 S. Spruce  
Gunnison, CO 81230

The Board of County Commissioners  
The County of Gunnison  
200 East Virginia  
Gunnison, CO 81230

The Board of County Commissioners  
The County of Hinsdale  
Courthouse  
Lake City, CO 81235

The Board of County Commissioners  
The County of Saguache  
Courthouse  
Saguache, CO 81149

Ladies & Gentlemen:

In response to Wayne S. Cook's letter to Ms. Klein of January 8, 1999, permit POWER to comment as follows: The business of measuring, allocating and distributing water efficiently from streams is complicated, and in connection with a river system as vast as the Colorado, it borders on the impossible. Similarly, the wording of the Compact is complicated and ambagious and may need to be clarified (See appendix "A"). Mr. Cook and other Colorado water managers should be hesitant to criticize those who question their interpretation and judgment because if they prove to be wrong, which POWER believes they are as to certain aspects of the Colorado River's administration, great unnecessary expense, inconvenience and trouble could follow. Referring to each other as being guilty of misrepresenting the compact, disregarding facts and making seriously flawed choices is not helpful in arriving at the correct interpretation of the Compact and inccorrectly, properly and fairly representing water users in Colorado and the Upper Basin States.

We have numbered each paragraph and sub-paragraph of Mr. Cook's letter attached hereto as Appendix "B", from 1 through 13, and will comment on each in order.

As to paragraph 1 through 4: we have no further comment.

As to paragraph 5: the first sentence is accurate. Whether the tributaries below Lee Ferry will produce 2 million acre feet of water per annum available after prior claims to satisfy Lower Basin and Mexican requirements in the future is doubtful. The diminishing effects of drought, the calls of the Indian tribes and the prior calls upon such waters by early users protected by the first sentence of Article III of the Compact makes such an optimistic guess unreliable and unrealistic.

As to paragraph 6: this wording is Article III (c) of the Compact, and it is ambiguous - if "over

to UGRWCID 2/2/99

PLK background

6 attempts each heard

POWERS AARS

FOUR letters, 7/2/94, no time to prepare answers

Lockheed & Evans claim POWERS major argument is over III(B) its an argument only.

our main argument is there is not enough water in the Colo R NO to satisfy the L.B. states. See Sealabue 2-13-88 Fontinos p92

We think III (a) (b) and ~~as~~(c) require Lee Ferry delivery

We are not trying to open the Compact, on the contrary we urge against greedy attempts to take more water than is available to induce Calif. to do so

TRASP





December 18, 1998

DRAFT

Kathleen Klein, Manager  
Upper Gunnison River Water Conservancy District  
275 S. Spruce St.  
Gunnison, CO 81230

Re: Colorado River Water Entitlements and Mr. Kune's letter

Dear Kathleen:

Thank you for providing us with a copy of Mr. Kune's letter to you of December 8, 1998. Mr. Seaholm argues the same interpretation of the compact as does Mr. Kune in his initial staff review. If their interpretation of Article III (b) is accurate, the waters of the Lower Basin tributaries could also be claimed by the Upper Basin as a credit on their 7,500,000 acre foot annual obligation at Lee Ferry under Article III (a). However, we doubt that the Colorado River Water Conservation District will agree with our letter to the Upper Gunnison River Water Conservancy District letter of November 18, 1998 and we therefore offer the following.

A simple solution to the controversy would be this: (1) obtain from the Lower Basin states' water managers written a resolution stating that a claim will never be made by such states to more than 7,500,000 acre feet of water per annum or more than 75,000,000 acre feet of water on a ten year moving average at Lee Ferry, (2) that the water entitlement referred to in Article III section (b) of the Compact will be obtained wholly from the Colorado River tributaries below Lee Ferry, and (3) that the Lower Basin states under the compact agree to only call upon the Upper Basin states for water to supply the requirements to Mexico only after all the waters of the Colorado River system below Lee Ferry have been exhausted. (4) The Lower Basin states should also be asked to fulfill the future water needs of the Indian Tribes below Lee Ferry, if the Indians living in that area should ask that their claims to Colorado River water be quantified. If the Lower Basin states will enter into such an agreement, then we believe that it is certainly possible that additional water would be available to transmountain diversion, but otherwise not.

If the suggestions made here are not acceptable, then we will ask that we be scheduled to debate the issues we have raised, with Mr. Seaholm, before its District Board.

86/82/21

Wally Blair  
Sh didn't meet with the  
State water board

Jim Lockhead - state of Co.  
rep on the Upper Co. R. Comm  
will be sponsor.

Scotty Wilby  
Several discussion re Upper  
Lower Basin - affairs.

TRAP

-6727-

take precedence over any of the rights enumerated in the first eight amendments or in the original Constitution. However, the Ninth should not receive precedence merely because of its position, but rather because of the meaning of its words.

I do not presume by this brief treatise to oversimplify the difficulty faced by the Supreme Court in its efforts to solve the myriad problems raised by its attempts to settle the disputes created by people claiming their conduct is protected by and justiciable under the Bill of Rights. Its instructions to the lower courts and the people, however, should instruct concerning broad and general principals and leave the picayunish details of deciding the effect of the particular conduct to the triers of fact and law.

Some issues such as those raised by Employment Division v. Smith, supra, are not easily decided, even by the Supreme Court. However, juries, given proper instructions as to the law, can be trusted to resolve questions as to whether the law and the facts of a case entitle a person to relief from the adverse effect of harmful conduct, by the protection afforded by the first eight amendments, or whether such conduct is impermissible because of its harmful effect, as prohibited by the Ninth Amendments protection against the denial or disparagement of the litigants of ~~the~~ <sup>either</sup> rights. The Supreme Court may still deem it necessary in a specific case to determine whether the harmful conduct disclosed by the evidence should be permitted if no compelling governmental interest is raised by banning the conduct<sup>37</sup>, or if a person's or the people's interest of the highest order is called

---

<sup>37</sup> Cantwell vs. Connecticut, 310 U.S. 296 (1940); Sherbert vs Veruer, 374 U.S. 398 (1963);

12/24/98

mike Peterson

See Ant III(d) is E. Slope a part of upper  
basin? wd appears so  
see Mike's analysis.

Dick Bratton - think more info will be  
available. Maybe we should just  
let it go and attack E. Slope efforts  
as they occur.

12-11-98

# COLORADO RIVER WATER CONSERVATION DISTRICT

December 8, 1998

Kathleen Klein, Manager  
Upper Gunnison River Water Conservancy District  
275 S. Spruce St.  
Gunnison, CO 81230

**Subject: Your Letter Concerning the Colorado River Compact**

Dear Kathleen:

I have received your letter attaching the Colorado River Compact analysis by POWER. For your information, the subject of the POWER letter will be an agenda item for the River District's January 19-20, 1999 Board Meeting.

I would like the River District Board to formally address this matter, but our initial staff view is that the POWER analysis is based on the basic misconception that the lower basin tributaries are not included in the Compact's definition of the Colorado River.

After the Board discusses the matter, we will provide you with a more detailed response.

Sincerely,



R. Eric Kuhn  
Secretary/General Manager

REK/vms

cc: Bill Trampe  
David Hallford  
Randy Seaholm

# Upper Gunnison River Water Conservancy District

December 3, 1998

Mr. Wayne Cook, Executive Director  
Upper Colorado River Commission  
355 South, 400 East  
Salt Lake City, Utah 84111

Dear Mr. Cook,

I am writing on behalf of the Upper Gunnison River Water Conservancy District board of directors regarding correspondence the board recently received from P.C. Klingsmith, president of People Opposing Water Export Raids (POWER). I have enclosed a letter from POWER to the District board dated November 18, 1998, along with an amendment to the letter received on December 3, 1998. The board requested that I forward Mr. Klingsmith's letter to you for an opinion regarding its contents.

Representatives of POWER are concerned about water availability in the State of Colorado, and based on their interpretation of the Colorado River Compact, have identified specific issues regarding the need for delivery of water to Lower Basin states. In their November 18, 1998 letter, they request action on the part of the District board in response to their concerns. The Upper Gunnison District board of directors would like to receive an opinion from your office regarding the position put forth by POWER.

I was also asked to forward POWER's correspondence to the Colorado River Water Conservation District and the Colorado Water Conservation Board for an opinion. The board appreciates your consideration of this request, and looks forward to your response.

Very truly yours,



Kathleen C. Klein  
Manager

Cc: Mark Schumacher  
L. Richard Bratton  
P.C. Klingsmith ✓

# Upper Gunnison River Water Conservancy District

December 3, 1998

Mr. Peter Evans  
Colorado Water Conservation Board  
1313 Sherman Street, Room 721  
Denver, CO 80203

Dear Peter,

I am writing on behalf of the Upper Gunnison River Water Conservancy District board of directors regarding correspondence the board recently received from P.C. Klingsmith, president of People Opposing Water Export Raids (POWER). I have enclosed a letter from POWER to the District board dated November 18, 1998, along with an amendment to the letter received on December 3, 1998. The board requested that I forward Mr. Klingsmith's letter to you for an opinion regarding its contents.

As you know, Mr. Klingsmith has had previous written and verbal correspondence with Randy Seaholm of your staff. The representatives of POWER continue to be concerned about interpretation of the Colorado River Compact, and have identified specific issues regarding the need for delivery of water to Lower Basin states. In their November 18, 1998 letter to the District, they request action on the part of the board based on their reading of the Compact. The board would like to receive an opinion from your office regarding the position put forth by POWER.

I was also asked to forward POWER's correspondence to the Colorado River Water Conservation District and the Upper Colorado River Commission for an opinion. The board appreciates your consideration of this request, and looks forward to your response.

Very truly yours,



Kathleen C. Klein  
Manager

Cc: Mark Schumacher  
L. Richard Bratton  
P.C. Klingsmith ✓

# Upper Gunnison River Water Conservancy District

December 3, 1998

Mr. Eric Kuhn, General Manager  
Colorado River Water Conservation District  
P.O. Box 1120  
Glenwood Springs, CO 81602

Dear Eric,

I am writing on behalf of the Upper Gunnison River Water Conservancy District board of directors regarding correspondence the board recently received from P.C. Klingsmith, president of People Opposing Water Export Raids (POWER). I have enclosed a letter from POWER to the District board dated November 18, 1998, along with an amendment to the letter received on December 3, 1998. The board requested that I forward Mr. Klingsmith's letter to you for an opinion regarding its contents.

Representatives of POWER are concerned about water availability in the State of Colorado, and based on their interpretation of the Colorado River Compact, have identified specific issues regarding the need for delivery of water to Lower Basin states. In their November 18, 1998 letter, they request action on the part of the District board in response to their concerns. The Upper Gunnison District board of directors would like to receive an opinion from your office regarding the position put forth by POWER.

I was also asked to forward POWER's correspondence to the Upper Colorado River Commission and the Colorado Water Conservation Board for an opinion. The board appreciates your consideration of this request, and looks forward to your response.

Very truly yours,



Kathleen C. Klein  
Manager

Cc: Mark Schumacher  
L. Richard Bratton  
P.C. Klingsmith ✓



# Upper Gunnison River Water Conservancy District

## **BOARD OF DIRECTORS**

Monday, December 21, 1998  
Gunnison County Community Building  
County Fairgrounds  
Gunnison, Colorado

## **AGENDA**

### **REGULARLY SCHEDULED MEETING**

- |            |     |   |
|------------|-----|---|
| 7:00 p.m.  | 1.  | Possible Executive Session                                  |
| 7:30 p.m.  | 2.  | Legal Matters   |
|            | a.  | Aspinall Subordination Agreement                            |
|            | b.  | Intergovernmental Agreement                                 |
| 8:00 p.m.  | 3.  | Proposed Revision to Employee Leave and Benefit Policy      |
| 8:05 p.m.  | 4.  | Approval of Revised 1999 Budget                             |
| 8:10 p.m.  | 5.  | Approval of Resolution to Adopt Revised Budget for 1999     |
|            | 6.  | Approval of Revised Resolution to Set Mill Levy             |
|            | 7.  | Approval of Revised Resolution to Appropriate Sums of Money |
| 8:15 p.m.  | 8.  | Upper Gunnison Basin Watershed Planning Initiative          |
| 9:10 p.m.  | 9.  | Miscellaneous Matters                                       |
| 9:20 p.m.  | 10. | Unscheduled Citizens  |
| 9:30 p.m.  | 11. | Consideration of November 16, 1998 Meeting Minutes          |
| 9:35 p.m.  | 12. | Consideration of November 23, 1998 Meeting Minutes          |
| 9:40 p.m.  | 13. | Consideration of Operational Expenses Paid                  |
| 9:45 p.m.  | 14. | Consideration of Other Expenses Payable                     |
| 9:50 p.m.  | 15. | Monthly Budget Report                                       |
| 9:55 p.m.  | 16. | Approval of Auditor for the 1998 Audit                      |
| 10:00 p.m. | 17. | 1999 Meeting Schedule                                       |
| 10:05 p.m. | 18. | Adjournment   |

Persons with special needs due to a disability are requested to call the District at 641-6065 at least 24 hours prior to the meeting. The board may address individual agenda items at any time or in any order to accommodate the needs of the board and the audience.

# Upper Gunnison River Water Conservancy District

## 1999 Meeting Dates - UGRWCD

All meetings listed below are scheduled for 7:00 p.m., in the upstairs meeting room at the Gunnison County Multipurpose Building.

January 25

February 22

March 22

April 26

May 24

June 28

July 26

August 23

September 27

October 25

November 22

December 27

POWER STEERING COMMITTEE

DRAFT

Minutes November 23, 1998

234 North Main Atrium

Gunnison, Colorado 81230

The November meeting of the Power Steering Committee meet at 4:00 p.m. at the atrium of the Main Place building 234 North Main Street. Those present were Butch Clark, Paul Vader, ~~PEP~~<sup>TE</sup> Klingsmith, John Cope, Joe Hershey and Ramon Reed. The meeting was called early in order to enable the members to discuss problems they may want to raise at the Upper Gunnison Water Gunnison Conservancy District meeting to be held at 7:00 p.m. Some members such as Butch and Scottie will not be able to attend this meeting or the Upper Gunnison meeting.

Butch stated that he had several matters that he would take up with the District and had written a letter to the District concerning some of these. His concerns were regarding the projects that the District has indicated that intended to develop for diligence; basically he did not believe that any of them would ~~bare proof~~<sup>proceed</sup>, but the main purpose is to persuade Judge Brown that the District is acting diligently to continuation of its conditional decree. Further, he wanted to discuss further with the District how ~~he~~<sup>it</sup> intended to pay for the projects and workers. A further concern of Butch's was the tax problem. He has written the District a letter calling in the question of its validity of its proposed tax increases. He has told the District the Attorney General's opinion <sup>is</sup> that the tax increase may be invalid. Finally, he wanted to discuss what the Board's condemnation <sup>(is)</sup> accomendation policy and he has written to the Board acondemation <sup>for relief from</sup> for a dam site on his ranching property. He feels the Board has the condemnation powers but they should be exercised with the consent on the land owner. These letters are attached.

# 27,000 acres of public land near Las Vegas up for sale

By The New York Times

CARSON CITY, Nev. — The federal government is preparing to auction 27,000 acres of public land near Las Vegas estimated to be worth \$500 million to \$1 billion, with almost all of the proceeds to stay in Nevada instead of going to the Treasury.

Like many cities in the West, Las Vegas is surrounded by public land managed by the Interior Department.

The Bureau of Land Management has designated 55,000 acres of desert within a 460-square-mile zone around the city for eventual disposal to developers and local governments.

The government has been reluctant to sell public land in the past, because the proceeds went to the Treasury and neither the Interior Department nor Nevada gained anything.

Previously, the government

traded developable public land near Las Vegas to developers in exchange for environmentally sensitive private lands elsewhere in Nevada.

But these exchanges have become mired in controversy, with federal audits finding that the government received far less than equal value in many exchanges.

Rep. John Ensign, a Republican, has said the government lost nearly \$40 million in the last two years in land trades with developers.

Now, under a bill enacted by Congress and signed by President Clinton, the government will sell the public land at auction. Eighty-five percent of the proceeds will go to acquire environmentally sensitive private land in Nevada and to improve parks and recreation areas around Las Vegas; 10 percent to the Southern Nevada Water Authority to build drinking-water pipelines; and 5 percent to schools

in Nevada.

The Las Vegas office of the Bureau of Land Management is already fielding calls from potential bidders, said a public affairs officer, Phillip Guerrero.

Under the legislation, the airport authority in Las Vegas is picking up about 5,000 acres in its noise-abatement area at no cost.

Local governments can also acquire parks and rights-of-way for water, sewage and flood-control projects at no cost. And more than 20,000 acres are expected to be sold to local governments for only \$10 an acre for other purposes.

That leaves as much as 27,000 acres of public land that is expected to be auctioned to developers for \$18,000 to \$37,000 per acre. The land will be sold in parcels of five to 2,500 acres.

Each parcel will be offered with minimum bids set by a government-approved appraisal.

DRAFT 1/20/92

Position of Upper Gunnison River Water Conservancy District  
Concerning Projects Authorized by Congress To Be Built  
Concurrently with the Central Arizona Project, but Currently  
Threatened by De-authorization.

1. The Upper Gunnison District is opposed to de-authorization for the following reasons:

a. The U.S. Bureau of Reclamation made commitments to help build small projects in the Upper Gunnison basin. These commitments have not been fulfilled to date. The Upper Gunnison District, the Colorado River Water Conservation District, and the USBR have expended substantial funds over the past 30 years to advance the development of these small projects and to maintain diligence on the Upper Gunnison District's water rights associated with the projects.

b. In order to provide water needed in the future to meet both economic and environmental objectives additional development of water resources in the upper basin and the West Slope will be required. The authorized projects and the Upper Gunnison projects are essential elements in achieving the maximum beneficial use of water in the region.

2. If it becomes impossible to avoid de-authorization the Upper Gunnison District would seek legislation that would:

a. Furnish to the Upper Gunnison District and others a designated pool of water in Blue Mesa Reservoir and Taylor Park Reservoir. The legislation would make water from such a pool available to the Upper Gunnison basin for exchange or direct use for irrigation, municipal, industrial, recreational, and environmental purposes. Water obtained from the pool would be provided free of cost by the Federal government except for O&M charges. Water obtained under this legislation would not be subject to the provisions of the Reclamation Reform Act of 1982.

b. Authorize the 1975 Taylor Park Reservoir Operation and Storage Exchange Agreement as a part of Federal law.

Isn't this what was agreed to in 1962?

Property Description

A tract of land within the W1/2NW1/4SW1/4 of Section 10, Township 49 North, Range 1 West, New Mexico Principal Meridian, Gunnison County, Colorado; said tract being more particularly described as follows:

commencing at the west quarter corner of said Section 10, (as marked by a USGLO brass cap monument), thence South 04° 25' 08" East 438.93 feet to the northwest corner of the Blacksmith & Co. property, (as described in Book 742 at page 481 of the records of Gunnison County); to a point thence the following courses:

South 64° 45' 31" East 112.56 feet along the northerly boundary of said Blacksmith & Co. property;

North 67° 01' 30" East 198.32 feet along said boundary;

South 36° 00' 35" East 14.25 feet along said boundary;

South 68° 41' 20" East 24.82 feet along said boundary to the northeast corner of said Blacksmith & Co. property;

South 00° 30' 00" East 405.37 feet along the east boundary of said Blacksmith & Co. property to the point of beginning of the tract herein described, thence;

1. South 60° 39' 46" West 248.35 feet to a point on the westerly boundary of said Blacksmith & Co. property thence;
2. South 31° 08' 00" East 620.10 feet thence; 426.76
3. North 00° 30' 00" West 487.17 to the point of beginning.

to Jessie  
5/12/99

Corrected pro-  
perty description  
to Warranty Deed  
dated April 23  
1999 bearing  
reception #493345  
Blacksmith & Co.  
by  
P. C. Kellogg, President

Exhibit "A"

*[Faint, illegible handwritten notes in a rectangular box]*

*[Faint, illegible handwritten notes]*

*[Faint, illegible handwritten notes]*

Felet Sparks May 59  
News paper - Chamber of Commerce



The U.S. part (3 in all) provides in  
stream & storage etc are substantial.  
to waterways etc, even those parties to  
west rights

# Corn Belt wilts as drought persists

By Becky Bohrer  
The Associated Press

WINTERSET, Iowa — Each day, Jody Milligan decides which is most important: taking a shower, doing the laundry or watering her two horses. Her well is drying up.

The same thing is happening to Russell Faux's well: The 71-year-old farmer drives 11 miles to Winterset every week or two for 325 gallons of water so he and his wife can bathe, cook and water the cattle.

"It was bad last year," Milligan said, "but this year it's ridiculous."

Drought is choking the Midwest — particularly the Corn Belt. A severe drought zone extends from Nebraska and Iowa across parts of Missouri, Illinois and Indiana and into Ohio. Since last July, rainfall in the severe drought zone has been 6 to 9 inches below normal.

"You see things greening on the surface, but it's a ticking time bomb below the surface," said Michael Palecki, a climatologist with the Midwestern Regional Climate Center in Champaign, Ill.

While there is enough moisture now at the surface for crops to sprout, the soil is dry a foot or two down. And long-range forecasts suggest it will be drier and warmer than normal through much of the region from May through July, a critical part of the growing season.

Little of the nation's corn crop is planted now,

and things could still turn around. But a continued dry spell could mean higher prices for corn and soybeans and financial ruin for farmers.

John Dittrich, who irrigates two-thirds of his corn and soybeans near Tilden, Neb., is worried about the odds.

"It makes Las Vegas look stable," he said.

Already, creeks in cow pastures are drying up. Shorelines and tree roots are exposed as rivers recede.

Both Milligan and Faux have shallow wells — which are less than 100 feet and rely on soil moisture rather than deep underground water sources — but they never ran into problems until last summer.

Nowadays, Milligan and her husband, Steve, often shower at her pet grooming business in Adel, 30 miles from home, to conserve water. If they water horses one day, they put off washing dishes or doing a load of laundry until the next day.

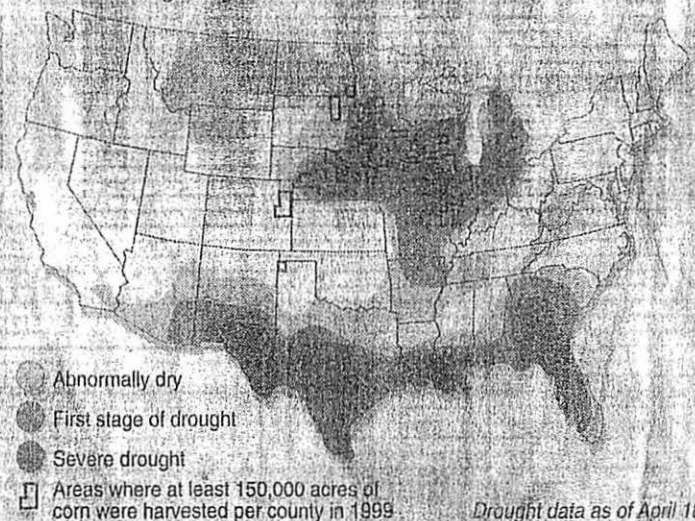
In Iowa, the precipitation total from Sept. 1, 1999, to April 1, 2000, was the fourth-lowest since 1873. Other states in the Corn Belt are seeing pretty much the same thing.

The dry spell has been compounded by unusually warm weather, which has sucked moisture from the soil. Temperatures in Iowa over the past nine months have shown the biggest shift in 105 years.

Large portions of Texas, Florida and Georgia are also going through a severe drought.

## Drought beginning to cause concern

The drought that is gripping the Midwest and southern United States is particularly severe in the Corn Belt. While much of the corn crop has yet to be planted and weather conditions can turn around quickly, farmers are beginning to feel anxious.



Sources: National Drought Mitigation Center, University of Nebraska-Lincoln; U.S. Department of Agriculture



**AlisMynrd@aol.com, 07:46 PM 04/21/20, Re: POWER, Gunnison**

---

X-POP3-Rcpt: willeyr@mail  
From: AlisMynrd@aol.com  
Date: Fri, 21 Apr 2000 19:46:48 EDT  
Subject: Re: POWER, Gunnison  
To: willeyr@gunnison.com  
X-Mailer: AOL 4.0 for Windows 95 sub 101

Hello, Scott--good to hear from you. I feel like a dummy for having missed Bob Ewgen's column (but I often don't read him! I can only guess what he's written about this time....)

Anyhow, no, I was unable to open your attachment. Could you possibly fax it to me at my office? The number is (303) 861-2902. Thank you!

Say "hi" to Butch for me, too.

Sunny

---

Pete

see last page

as of 22 August 2000

Report on Gunnison Basin POWER Membership for 2000

The attached membership renewal letter was sent during May of this year to those listed below. Renewed memberships and contribution to POWER are given below.

Ralph (Butch) Clark

Annual Meeting Roster

Karen and Curt Adkisson  
534 High Meadow Dr.  
Blacksburg, VA 24060

Adventure Experiences, Inc.  
County Rd 742, 2 Illinois Creek  
Almont, CO 81210

Anne Allen  
2090 County Rd 8  
Gunnison, CO 81230

David M. Armstrong,  
Sylvan Dale Guest Ranch  
2939 N. County Rd 31D  
Loveland, CO 80538

= David A. and Chris Baxter duplicate

~~Blackwell~~  
Dean and Rose A. Blackwell  
c/o Cloverleaf Ranch  
4042 Co. Rd 76  
Parlin, CO 81239

07-Jun-2000 \$20.00 970-641-5643

Melva Bemis  
1200 W. Hwy 50, #A9  
Gunnison, CO 81230

Melva Bemis

24-May-2000 \$20.00 970-641-1836

John E. and Patricia L. Bollack  
10706 W. Tufts Dr  
Littleton, CO 80127-1146

returned

Daisy, Laurence, and Charles Campton  
7555 County Rd 111  
Salida, CO 81201

need 2 bst.

19-May-2000 \$20.00 719-539-4053

Carr Ranch Company,  
c/o Jacqueline C. Funk  
6671 S. Cherokee St.  
Littleton, CO 80120-3708

30-May-2000 \$20.00 303-794-1462

= Hazel Chapman  
P.O. Box 309  
Almont, CO 81210

moved from area

Gary and Barbara Christopher  
776 Pashuta Dr.  
Gunnison, CO 81230

Citizens for San Luis Valley Water  
P.O. Box 351  
Alamosa, CO 81101

✓ Judy and Butch Clark *sk*  
519 E. Georgia  
Gunnison, CO 81230

23-May-2000 \$50.00 970-641-2907

✓ Ralph E. Clark Jr. *sk*  
322 North Taylor  
Gunnison, Colorado 81230

22-May-2000 \$200.00

John and Marilyn Cope *sk*  
P. O. Box 633  
Gunnison, CO 81230

By 24 May 2000

Ralph Crandell,  
370 17th St, Suite 4460  
Denver, CO 80202 - 5644

returned

Edna Cranor  
974 Rd 2150  
Austin, CO 81410

✓ Roy and Lynne A. Cranor  
P. O. Box 545  
Almont, CO 81210

Louise D. Cross  
1801 Gurss Pl.  
El Paso, TX 79902

23-May-2000 \$20.00 970-641-3596

Lynn Cudlip and Mark Daily  
1388 C. Rd 8  
Gunnison, CO 81230

✓ Dr. Kelland T. Davis  
200 N. Spruce  
Gunnison, CO 81230

Mr. And Mrs. Garland Denton  
2188 Canyon Ct. West  
Grand Junction, CO 81503

returned

Fritz Diether  
P.O. Box 867  
Crested Butte, CO 81224

✓ Larry and Ruth Dolezal  
Sportsman's Resort, Box 26  
Ohio City, CO 81237

X Jake and Beverly Dykes  
499 County Rd 771  
Ohio City, CO 81237

Andrew and Lori Edstrom returned but may be possible seasonal change to  
103 County Rd 13  
Gunnison, CO 81230 P.O. Box 1967; Grand Canyon AZ 86023

X Karen Edstrom  
564 Seneca Rd.  
Gunnison, CO 81230

07-Aug-2000 \$20.00

Sven and Elsie Edstrom  
564 Seneca Dr.  
Gunnison, CO 81230

✓ Patrick and Judith Farrell  
323 South Main Street  
Gunnison, CO 81230

ad chg  
returned

Gordon Ferguson  
1202 Peppertree Dr.  
Montrose, CO 81401

Pauline (Polly) D. Foster  
321 Baird Dr.  
Folsom, CA 95630

16-May-2000 \$25.00  
and 250 Rainbow Rd.  
Almont, CO 81210

Dr. Barbara Frase  
7259 N. Lakeside Ct  
Peoria, IL 61614-1143

Robert and Judith Fultz  
4630 Burbank Dr.  
Columbus, OH 43220-2806

X Peter and Nancy Gauss  
407 Sierra Vista Way  
Gunnison, CO 81230

03-Jul-2000 \$20.00

Kenneth and Kay George  
808 N. Pine Street  
Gunnison, CO 81230

22-May-2000 \$20.00

X Steve Glazer  
Box 459  
Crested Butte, CO 81224

✓ David and Linda Gore  
P. O. Box 572  
Colleyville, TX 76034-0572

18-Jul-2000 \$100.00

✓ Clea Greenawalt  
Unit #C7  
1200 W. Hwy 50, Frontage Rd  
Gunnison, CO 81230-4053

✓ Russell and Marcia Gregg *ok Marcia*  
608 N. 11th  
Gunnison, CO 81230

22-May-2000 \$50.00

Ron Harris  
7844 South Teller Ct.  
Littleton, CO 80128

new

08-Jun-2000 \$20.00 303-933-1518

John and Mel Harte  
11080 Cragmont Ave.  
Berkeley, CA 94708

Martin and Maxine Hatcher *ok*  
238 Roundtree  
Gunnison, CO 81230

05-Jun-2000 \$20.00 970-641-0654

Dr. J. W. and Lucia L. Haun  
1552 Wyldwood Lane, NE  
Spring Lake Park, MN 55432

Mr. And Mrs. Emmet Headlee.  
6521 Piedmont  
Odessa, TX 79762



Dr. and Mrs. Joe Zuerker  
3509 Rena Dawn Lane  
Edmond, OK 73013

✓ James E. Headlee  
4300 E. Loop 338  
Odessa, TX 79762

01-Jun-2000 \$50.00 915-363-1483

William R. Helms  
Box 782  
Buena Vista, CO 81211-0782

JD and Rosie Herman  
1011 Scenic Circle  
Montrose, CO 81401-4007

27-May-2000 \$20.00 970-249-3281

Joe and Sue Hersey  
P.O. Box 1517  
Gunnison, CO 81230

*Joe died*

Lamar and Jean Hocker  
378 + B Ridge View Dr.  
Grand Junction, CO 81503

42 Camp Bird Ln.  
Almont, CO 81210

17-Jun-2000 \$20.00 970-641-9688

Z. George Jr. and Laura D. Horvath  
2303 Central Park Dr.  
Campbell, CA 95008

03-Jul-2000 \$20.00

✓ Galen and Nancy Houston  
P.O. Box 717  
Gunnison, CO 81230

*X Kelly is here - blend*

Mr. And Mrs. Burl Hulsey  
2609 Colonial Parkway  
Fort Worth, TX 76109

Ronald and Joan Harris  
7844 So. Teller Court  
Littleton, CO 80123

Douglas and Kim Johnson  
1595 West Hillsdale Rd email - dougdaj@aol.com  
Evansville, IN 47710

12-Jun-2000 \$20.00 812-867-0313

F. Dwight and Jane Johnson,  
Rainbow Placer, Inc.  
Rt. 2, Box 68A  
Bertrand, NE 68927

✓ John C. and Dorothy G. Johnson  
1313 S. Homer St.  
Pittsburg, KS 66762

Milo and Peggy Johnson  
521 Park Ln. 18780 Morrison Creek Circle  
Richardson, TX 75081 Buena Vista, CO 81211

12-Jun-2000 \$20.00 719-395-4502

Pat T. Julio  
P. O. Box 1507  
/ 145 Silver Sage Drive  
Gunnison, CO 81230

21-May-2000 \$20.00 970-641-1041

Tim Kempfe  
Rt. 2, Box 24J  
Trinity, TX 75862

Warren and Dorothy Kennison  
179 S. Dekker Drive  
Golden, CO 80401

20-May-2000 \$20.00 ? 526-0596

Pete and Caroline Klingsmith  
1050 Camino del Rio  
Gunnison, CO 81230

*OK  
parent  
ad needed*

*\$20.00 21 Aug 2000*

Father James Koenigsfeld  
303 N. Wisconsin  
Gunnison, CO 81230

✓ Joseph Krahn and Janice Moody  
703 Indiana St.  
Lawrence, KS 66044

01-Jun-2000 \$100.00 785-843-4954

Hans and Sally Kuisle  
1445 Moss Rock Pl.  
Boulder, CO 80304

returned

✓ Gerald and Kathryn Lain  
Box 480  
Gunnison, CO 81230

*OK  
parent  
needed*

*\$5.00 Parent  
24 Aug 2000*

Henry and Kay Ledyard  
600 Genesee Mountain Rd  
Golden, CO 80401-9304

Paula Lehr and Art Mears  
555 County Rd 16  
Gunnison, CO 81230

Lost Canyon Resort  
8264 Hwy 135  
Gunnison, CO 81230

Vanni Lowdenslager  
7251 Hwy 135  
Gunnison, CO 81230

20-May-2000 \$20.00 970-641-3137

Robert MacIntosh  
530 Eldron Rd  
Miami Springs, OH 33166

returned

Leo and Barbara Malloy  
316 N. Taylor  
Gunnison, CO 81230

13-Aug-2000 \$20.00

Donald and Shirley Manning  
Holt's Guest Ranch,  
1711 County Rd 55  
Almont, CO 81210

✓ Helen Marshall  
108 County Rd 33, Unit 20  
Gunnison, CO 81230

08-Aug-2000 \$20.00

*OK re: meeting*

= Laura Martineau  
816 N. Spruce  
Gunnison, CO 81230

not a member for some years

Margaret and George Meihaus  
4705 Harley Ave.  
Fort Worth, TX 76107

05-Jun-2000 \$20.00

Anson and Eudora Moore  
1080 Glen Oaks Blvd.  
Pasadena, CA 91105

24-May-2000 \$20.00 323-681-8336

Ken and Anna McClatchy  
7925 W. Layton Ave., No. 310  
Littleton, CO 80123

= Laura McClow  
P. O. Box 663  
Gunnison, Colorado 81230

not a member for some years  
moved

✓ Joe C. Nance  
908 Camino del Rio and Box 505  
Gunnison, CO 81230 Jasper, AR 72641

30-May-2000 \$20.00

Dave and Lauren Naslund  
5199 S. Green St.  
Salt Lake City, UT 84123

James and Sue Noone  
135 Blackfoot Trail  
Gunnison, CO 81230

✓ Vincent and Wanda Norman  
P.O. Box 548  
Almont, CO 81210

18-May-2000 \$20.00 970-641-2473



Art and Bea Norris  
781 Rio Vista  
Gunnison, CO 81230

20-May-2000 \$5.00 970-641-2669

Rosamund F. Orford  
1485 Union Village Rd  
Norwich, VT 05055-9683

06-Jun-2000 \$20.00 802-649-1490

L. T. and Relda Olearnick  
4976 So. Perry  
Littleton, CO 80123

X Frank and Carol Oyster  
2790 Hwy 135  
Gunnison, CO 81230

Robert and Nadine Park  
168 Lochleven Lane; P.O. Box 604  
Almont, CO 81210

22-May-2000 \$20.00 970-641-3825

Bobbi Peckarsky and Steve Horn  
63 Hunt Hill Rd  
Ithaca, NY 14850

Dennis Pearson  
919 Dewey St,  
Canyon City, CO 81212

05-Jun-2000 \$20.00 719-275-7822

Maurice and Katharine Petersen  
229 Saratoga Blvd.  
Saratoga Springs, NY 12866

30-May-2000 \$25.00 518-583-1877

X Rolf and Betty Peterson  
49 Calle Cantando  
Santa Fe, NM 87505

new  
address

27-May-2000 \$50.00 505-954-4614

Kathy and Dale Picard  
113 Irwin  
Gunnison, CO 81230

Alexander and Dorothy Polowski  
Box 304  
Cornville, AZ 86325-0304

Francis J. Pribyl  
8236 Hwy 135  
Gunnison, CO 81230

X David and Carol Primus  
276 Meadowlark Trail  
Gunnison, CO 81230

25-May-2000 \$20.00 970-641-2516

Leroy and Esther Rathert  
4211 Hearthstone Dr.  
Janesville, WI 53546-2155

31-May-2000 \$15.00

~~X~~ Ramon and Patricia Reed *ok mail, mpa*  
P. O. Box 189  
Pitkin, CO 81241

*20,00 24 Aug 2000*

= dup. Bob and Catherine Reinhardt  
Lost Canyon Resort, 8264 Hwy 135  
Gunnison, CO 81230

Terrance Robinson  
14131 N. Hwy 135  
Almont, CO 91210

David M. Rose  
P.O. Box 783  
Crested Butte, CO 81224-0783

E. C. Russell  
Scenic River Tours  
703 W. Tomichi Ave.  
Gunnison, CO 81230

~~X~~ Paul and Sharon Schlegel  
P. O. Box 1476  
Gunnison, CO 81230

Marion M. Schmidt  
8192 Quail Walk Place  
Citrus Heights, CA 95610

Jeff and Cyndie Schmitt  
2512 Star Grass Circle  
Austin, TX 78745-7652

25-Jun-2000 \$10.00 512-282-6016

~~X~~ Mark Schumacher,  
Three Rivers Outfitting, Inc.  
P.O. Box 339  
Almont, CO 81210

Emmy Sedmak  
Box 153  
Crested Butte, CO 81224

= Louise Reeder

moved from area?

Victoria and Charles Shaw  
P.O. Box 2524  
Crested Butte, CO 81224

Arthur and Nelly Short  
168 W. Wilbur Ave.  
Lake Mary, FL 32746-2945

22-May-2000 \$20.00 407-321-5668

Richard Smith  
Dragon Sheet Metal, P.O. Box 365  
Crested Butte, CO 81224

James and Linda Squirrel  
P.O. Box 115  
Cimarron, CO 81220

Arthur and Vivian Stephens  
9 Colombard Ct.  
Grand Junction, CO 81503

Light and Janice Stephenson returned  
HCO #1, Box W-12  
Whitsett, TX 78075-9401

X Kim and Dick Schweitzer  
566 Tomichi Trail  
Gunnison, CO 81230

22-Jun-2000 \$50.00 970-641-0886

✓ Bruce Cranor,  
Taylor Park Trading Post  
P.O. Box 545  
Almont, CO 81210

*Tax*

Doyle and Betty Templeton  
P.O. Box 37  
Sargents, CO 81248

James and Barbara Thomson  
27 Rathnelly Ave.  
Toronto, Ont. M4V-2M4 Canada

22-May-2000 \$20.00 old 516-571-3973

✓ Bob and Peggy Thompson returned  
4620 Lafayette  
Fort Worth, TX 76107

= Valerie Torrey moved from area?  
P. O. Box 5268  
Mt. Crested Butte, CO 81225

Robert Ulrich and family  
10251 W. 44th Ave. 8-206  
Wheatridge, CO 80033

Ann and Paul Vader,  
Vader Cloverleaf Ranch  
4042 County Rd 76  
Parlin, CO 81239

05-Jun-2000 \$25.00 970-641-0004

✓ = Frank Vader  
Lottis Creek - 16901 County Rd 742  
Almont, CO 81210

c/o Cloverleaf Ranch

= Rick and Lois Vader  
711 Spencer  
Gunnison, CO 81230

c/o Cloverleaf Ranch

= P & J Vader Ranch, Inc.  
595 Ute Lane  
Gunnison, CO 81230

c/o Cloverleaf Ranch

= Sharon P. Vader  
532 Fruitwood Dr.  
Grand Junction, CO 81504

c/o Cloverleaf Ranch

*\$10.00 24 Aug*

✓ Duane Vandebusch  
Western State College  
Gunnison, CO 81231

08-Jun-2000 \$20.00 970-943-2068

X Ted and Martha Violet  
P. O. Box 1266  
Gunnison, CO 81230

Nick Waser and Mary Price  
2540 Thayer Ct.  
Riverside, CA 92507

Glenn and Pearl Webb  
9800 Shade Lane  
Wichita, KS 67212

23-May-2000 \$20.00 316-722-1946

Terri Weber  
P.O. Box 668  
Gunnison, CO 81230

20-May-2000 \$5.00 970-641-4543

Jennifer L. Wellman  
3650 Catalpa Way  
Boulder, CO 80304

Donald and Marilyn Wesley  
24621 Via San Anselmo  
Mission Viejo, CA 92692

Rob and Svea Whiting  
56 Willow Trail  
Gunnison, CO 81230

Rex and Nancy Whitlatch,  
c/o Mendel  
2401 Little Creek Dr.  
Richardson, TX 75080-2512

Bob and Scottie Willey *the parcel*  
222 E. Gothic Ave.  
Gunnison, CO 81230

19-May-2000 \$20.00 970-641-0374

Russell and Linda Winkler  
P.O. Box 302 / 51 Pine Drive  
Santa Claus, IN 47579

29-May-2000 \$25.00

Gregory and Patricia Winslow  
415 County Rd 20  
Gunnison, CO 81230

Marlene Zanetell  
P.O. Box 418  
Gunnison, CO 81230

*the parcel che.*

Ann D. Zugelder  
204 N. Taylor St.  
Gunnison, CO 81230

14-Jul-2000 \$20.00

# What You Need to Know About COLORADO'S NEW CHARITABLE SOLICITATIONS LAW

As you may have heard, Colorado has a new law updating the state's Charitable Solicitations Act.

With this law, Colorado joins thirty-nine other states in requiring charities and their paid solicitors to register and provide basic financial information to the state. Here are answers to some common questions charities may have about the new law.

**WHO IS REQUIRED TO REGISTER?** If you are a charitable organization intending to solicit contributions in Colorado, you'll register with the Secretary of State under the new law unless your organization falls within one of the law's three state exemptions:

- You are exempt from filing a federal Form 990 annual information return because you are a religious organization or an organization that engages in exclusively religious activities.
- You are a political party, candidate for federal or state office, or a political action committee and you are already required to file with federal or state election commissions.
- You do not receive more than \$25,000 in gross revenue per year (excluding grants) or you do not receive contributions from more than 10 people in a fiscal year.

## WHAT DO I NEED TO FILE?

You'll file a brief, online registration form asking for basic information about your organization and either an electronic copy of your most recent Form 990 or an alternate electronic financial form. Colorado will require much less information from charities than do other states with similar laws.

Charities will only register once, but will have to annually advise the Secretary of State of any changes to their registration. Charities will be required to file a Form 990 or equivalent financial report every year.

## WHEN DO I REGISTER?

The registration requirements of the new law take effect on May 9, 2002, at which time charitable organizations will need to register with the state before soliciting contributions.

## WHERE DO I REGISTER?

After the online registration system is created, charities will go to the Secretary of State's web site at [www.sos.state.co.us](http://www.sos.state.co.us). Colorado will be the first state in the country to have an, electronic-only filing system for charitable solicitations.

## WHY DO WE HAVE A NEW LAW?

This law allows donors to make educated choices regarding which charitable causes to support and discourages unscrupulous solicitors from operating in Colorado. We believe it will result in increased donations as donors become more confident, about their giving.

History of POWER

Need water in beams - roofing

Need water representation - drainage

Need environmental protection

water pipe

Need people who are not brought from

People will keep other than travelling

FAEAS.

See.

W. Fae's.

Fae's.

## References

Bonnie, Robert, Margaret McMillan, and David Wilcove (2001). "A Home on the Range: How Economic Incentives Can Save the Threatened Utah Prairie Dog." Environmental Defense Fund. [www.edf.org](http://www.edf.org)

Christensen, V., Guénette, S., Heymans, S., Walters, C.J., Watson, R., Zeller, D. and Pauly, D. (2002). Trends in the abundance of high-trophic level fishes in the North Atlantic, 1950 to 2000. In: S. Guénette, S., V. Christensen, T. Pitcher and D. Pauly (eds.).

Colby, Bonnie G., K. Crandall, and D. Bush (1993). "Water Rights Transactions, Market Values and Price Dispersion." *Water Resources Research* 29:1565-1572.

Hardin, Garret (1968). "The Tragedy of the Commons." *Science* v. 162, pp.1243-48.

Johnson, LC (2000). "Wetland mitigation banking: a market measure for land use control." Presented at the Clark University Multidisciplinary Conference, Worcester, MA.

Land Trust Alliance (2001). *Land Vote 2001: Americans Invest in Parks and Open Space*. [www.lta.org](http://www.lta.org)

Landry, Clay (1999). "Saving our streams through water markets: A Practical Guide." Political Economy Research Center. [www.perc.org](http://www.perc.org)

Lusvardi, Wayne (1997). "The Flawed Logic of Sales Substitution in the Appraisal of Land Suitable for Habitat Preservation or Mitigation." *Right of Way*, May/June, pp. 14 –21.

Miceli, Thomas and Kathleen Segerson (2000). "6200 Takings," *Encyclopedia of Law and Economics*. University of Ghent.

Nelson, Marj (1999). "Habitat Conservation Planning," in *Endangered Species Bulletin*, Volume XXIV NO. 6, November/December.

Parker, Gwen, Nels Johnson, and Paige Brown (2000) "An Overview of Incentive Approaches to Ecosystem Protection." World Resources Institute. [www.wri.org](http://www.wri.org)

Sanders, Michael (2000). "Appraisal Alchemy Debunked." *Right of Way*, July/August, pp. 1 – 4.

Stavins, Robert (1998). "What Can We Learn from the Grand Policy Experiment? Lessons from SO<sub>2</sub> Allowance Trading," *Journal of Economic Perspectives*, 12(3):69-88 (Summer).

US Environmental Protection Agency (1998). *Clean Water Action Plan: Restoring and Protecting America's Waters*. EPA-840-R-98-001. Washington, D.C.





# Lower Colorado River Water Supply Report

CURRENT STORAGE	PERCENT CAPACITY	1000 ACRE-FEET	ELEVATION (FEET)
LAKE POWELL - GLEN CANYON DAM	97%	23,495	3694.79
LAKE MEAD - HOOVER DAM	96%	24,786	1212.56
LAKE MOHAVE - DAVIS DAM	94%	1,695	642.87
LAKE HAVASU - PARKER DAM	94%	582	448.09
LOWER COLORADO BASIN CONTENTS	96%	27,063	
TOTAL SYSTEM CONTENTS (as of 8/05/98)	96%	56,805	
TOTAL SYSTEM CONTENT LAST YEAR	93%	55,240	

PROJECTED USE FOR CALENDAR YEAR 1998 as of 7/20/98	1000 ACRE-FEET
NEVADA	261
SOUTHERN NEVADA WATER SYSTEM	211
OTHERS	50
BANK	0
CALIFORNIA	4974
METROPOLITAN WATER DISTRICT OF CALIFORNIA	1,072
IRRIGATION DISTRICTS	3,869
OTHERS	33
BANK	0
ARIZONA	2662
CENTRAL ARIZONA PROJECT	1,414
OTHERS	1,248
BANK	0
TOTAL LOWER BASIN USE	7,897,000
DELIVERY TO MEXICO	3,463

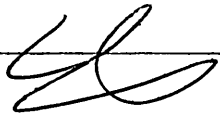
CURRENT 7-DAY AVG RELEASE	CUBIC FEET PER SECOND
GLEN CANYON DAM	21,100
HOOVER DAM	17,000
DAVIS DAM	16,500
PARKER DAM	14,000

OTHER SIGNIFICANT INFORMATION		
INFLOW ABOVE LAKE POWELL -	AUGUST PRELIMINARY FORECAST	AUG 03, 1998
	MILLION ACRE-FEET	PERCENT OF NORMAL
PROJECTED WATER YEAR '98	13.546	116%
PROJECTED APRIL-JULY '98	8.625	112%
JUL OBSERVED INFLOW	1.670	110%
AUG INFLOW FORECAST	0.600	99%

10/26/98

In my opinion the higher basic needs supply 7.5 will save /ft per year (Art III a) plus and additional 1 will save /ft per year (Art III b) of the lower basic needs the additional 1 will save

supply of the  
Additionally if basic needs are to meet the  
U.S. and L.O. States have to split the  
burden 50/50 from the 8.5 in one ft of  
the surplus in order to meet basic needs  
needs, it may have to supply another  
750,000 to meet basic needs



States have only met their requirement to furnish 7.5 million acre feet per annum or 75,000,000 acre feet per 10 year period, 10 out of the past 64 years. If our understanding is correct, there has been a deficiency in the amount of water released in 54 of the years since the treaty became effective. If we add to that deficiency 1,750,000 additional acre feet which the Lower Basin States and Mexico can call upon, although they have not called on it yet, a terribly burdensome deficiency, which might well have to be made up, could be imposed upon the Upper Basin States. If the Upper Basin is ever charged with releasing the full amount of water that the Lower Basin States and Mexico are entitled to, plus making up the deficiency, the burden would fall most heavily on the Eastern Slope which totally consumes the amount of water it diverts from the Colorado River.

~~We feel that negotiations should be entered into between the Gunnison River District and Arapaho County seeking to persuade it to withdraw its application.~~ We suggest that Colorado River Water Conservation District Board be asked to cooperate with the River District in calling a meeting with the Northeast, the Central and the Southeast Colorado Water Conservation Districts, together with the City and County of Denver to apply influence and pressure on Arapaho ~~“not to kick the sleeping dog.”~~ If awakened, that dog could tear the pants off Colorado, on both sides of the Continental Divide.

After the discussion contained in the paragraphs just above be considered, we would hope that the Supreme Court would be made cognizant of the impending disaster which would arise if Arapaho County were awarded a decree for the amount it is seeking, and if, indeed, it ever started withdrawing the amount of water it seeks from the Colorado River System. Specifically, many existing trans-mountain diversion-- all subsequent to the date of the compact,-- would be impacted, as well as Western Slope diversion, subsequent to that date, to the extent of their consumptive uses.

Sincerely yours,

POWER

by P.C. Klingsmith  
P.C. Klingsmith, Water Counsel

PCK:hjp

Approved by POWER steering committee members as follows:

_____	_____
_____	_____
_____	_____

II. Judge Brown only gave minimal consideration to the effect on water availability of the existing private instream flow decrees. He mentions at paragraph 152 page 87, of the decree that Arapaho County's efforts at Texas Creek are interfered with because private instream flow rights of 60 c.f.s. exist. In our opinion, much more important is the fact that Arapaho must allow 450 c.f.s of water to flow through the property on the Taylor River owned by the Cockrell Trust, downstream from the dam. We say this for two reasons:

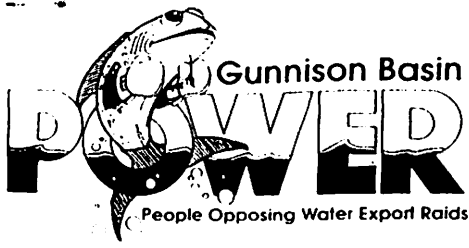
First: if 450 c.f.s. were permitted to flow past the confluence of Lottis Creek with the Taylor River, plus the water decreed instream on Lottis Creek, any excess flow would probably occur for a relatively short period of time, namely the middle of May to the middle of June and would probably not be of the quantity Arapaho needs. Second: it would require the diverters to build their diversion structures below this point which would immensely increase the cost of their diversion facilities over the cost they would incur if they could divert in Taylor or Union Park.

We would further point out that not only are there instream flows decrees in place on Taylor River, Texas Creek and Lottis Creek but also on Willow Creek, Illinois Creek, the Taylor River above the Taylor Reservoir and perhaps other tributaries of the Taylor River, along with instream flows decrees on Copper Creek and the East River below Emerald Lake and Copper Lake, to the south boundary of the Rocky Mountain Biological Laboratory's property.

III. By far the most important reason the Upper Gunnison Basin as well as the whole state of Colorado has for denying Arapaho's application is the fact that there is no water legally available in the Colorado River and its tributaries to provide Eastern Slope diverters with the water they seek, providing the Upper Basin States comply with their obligation to furnish water to California, Arizona and Nevada. The court in its decision refers to the Upper Basin States' obligations, at page 13, paragraph 20 c, of its decree to provide water under the 1922 compact to the Lower Basin States.

We believe the judge has not considered at least two additional blocks of water which must be allowed to flow downstream past Lee Ferry in Utah. The plain wording of the Colorado River Compact at Article III, sub-paragraph (a), (b) and (c) should be most carefully considered. Sub-paragraph (a) of the compact mandates the release of 7,500,000 acre feet of water per annum downstream. Sub-paragraph (b) provides that in addition the Lower Basin can increase its beneficial consumptive use of such waters by a million acre feet. We know that officials of the Colorado Water Conservation Board believe that the word "such" in sub-paragraph (b) refers to the water described in paragraph (a). That is a slender reed to rely on when it is considered that the water being discussed is all of "the waters of the Colorado River system;" as provided in Article I of the Compact. Moreover, if the United States has a treaty with Mexico to provide it with Colorado River water, and if there is a shortage both the Upper and the Lower Basin States must supply additional water to alleviate the shortage, of which the Upper Basin has the duty to provide one-half thereof. We think this might amount to an additional charge of 750,000 acre feet per annum.

We understand from Mr. Seaholm of the Colorado Water Board that the Upper Basin



May 14, 1998

Upper Gunnison River Water Conservancy District  
275 S. Spruce  
Gunnison, CO 81230

Re: *The Application for Water Rights by Arapaho County*  
Case No. 88 CW 178 et al.

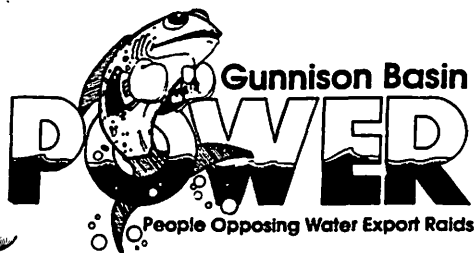
Ladies and Gentlemen:

You and the others working to prevent Arapaho County, Parker and others from appropriating and moving water from Taylor and Union Park to the Front Range should be congratulated on your success before Judge Brown. It is a great victory.

Permit us, however, to act as a devil's advocate in the case. As pleasing as the decision is to POWER, we believe that it is likely to be reversed by the Supreme Court of Colorado if it is appealed. We believe that attorneys for Arapaho county will strongly urge their clients to appeal. Generally and basically the appeal will probably be based upon many of Judge Brown's findings of fact concerning other persons intentions arising out of his interpretation of documents. The Supreme Court could, if it so desires, make such findings as well as a trial judge. The principal example of what I am speaking of here is the court's decision that the Bureau of Reclamation subordinated or agreed to a depletion allowance for junior water users. This point is the keystone to the judge's decision, vulnerable, we believe, to being set aside by a Supreme Court searching for grounds to do so.

For this reason, we believe that if this matter is appealed, the river district and other opponents interested in persuading the Supreme Court to confirm the ruling should bring out the following points which were either glossed over by Judge Brown or not raised by him at all. An opportunity to do so arises because the trial judge touched upon all of these matters in his Findings and Decree.

- I. Conditional Decrees: Until this very case the Supreme Court of Colorado had held on several occasions that in determining whether any water was available for appropriation, the trial court must take into consideration the effect of valid conditional decrees. We have not done exhaustive research into this question but did hand Mr. Bratton two decisions by the Supreme Court holding the effect and validity of conditional decrees was a matter to be considered. We believe the Supreme Court should be urged to, (1) reverse itself on this point in this case, or (2) specifically overrule the cases in which water conditionally decreed was considered. The Supreme Court does not like to reverse itself. Moreover, the Supreme Court violated a well known legal principal, namely stare decisis arriving at its decision that valid conditional decrees are not to be considered in determining water availability. It is more likely to correct this decree coming before it than to overrule prior decrees of long standing.



April 26, 1999

The Board of Directors  
Upper Gunnison River Water  
Conservancy District  
275 S. Spruce  
Gunnison, Colorado 81230

The Board of County Commissioners  
The County of Gunnison  
200 East Virginia  
Gunnison, CO 81230

The Board of County Commissioners  
The County of Hinsdale  
Courthouse  
Lake City, CO 81235

The Board of County Commissioners  
The County of Saguache  
Courthouse  
Saguache, CO 81149

In re: POWER'S response to the Evans and Lochhead letter, 1/25/99, and  
Mr. Kuhn's letter, 2/19/99, concerning Colorado River water shortages.

Ladies and Gentlemen:

Recently Mr. Peter Evans, Acting Director of the Colorado Conservation Board, Mr. James Lochhead, Upper Colorado River Commissioner for Colorado, and Mr. Eric Kuhn, Manager of the Colorado River Conservation District and member of the Colorado Water Conservation Board replied to POWER's interpretation of the Colorado River Compact, indicating how they believe POWER's interpretation to be at variance with their own. In the following document, "A State at Risk: A Study of Colorado River Compact Obligations" POWER continues the dialogue by indicating in some detail how and why it believes the water managers' interpretation to be flawed.

Members of POWER believe that it is vital for the UGRWCD and the Commissioners of Gunnison, Hinsdale and Saguache Counties to learn exactly how Mr. Evans, Mr. Lochhead and Mr. Kuhn have chosen to interpret the Colorado River Compact and the "Law of the River." This information is vital because it highlights the weak points of Colorado's legal defenses against potential future calls by down-stream states of Arizona, California and Nevada--offering any Colorado and Upper Basin water officials and commissioners willing to study the matter a chance to strengthen the argument and/or effectuate counter measures prior to the fateful time when down-stream calls are made in earnest.

If you agree with POWER that large portions of the official representation of Colorado's positions and interpretations of the Colorado River Compact and the "Law of the River" to be flawed in light of current knowledge, we invite you to join us in making this known to Colorado citizens. Our water is our state's most valuable resource; protecting and managing it wisely deserve the highest degree of prudence and legal far-sightedness.

Sincerely yours,

  
Gunnison Basin POWER  
by P.C. Klingsmith, Chairman

P.O. Box 1742  
Gunnison, CO 81230

**37-61-101. Colorado River compact.** The General Assembly hereby approves the compact, designated as the "Colorado River Compact", signed at the City of Santa Fe, State of New Mexico, on the 24th day of November, A.D. 1922, by Delph E. Carpenter, as the Commissioner for the State of Colorado, under authority of and in conformity with the provisions of an act of the General Assembly of the State of Colorado, approved April 2, 1921, entitled "An Act providing for the appointment of a Commissioner on behalf of the State of Colorado to negotiate a compact and agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming and between said States and the United States respecting the use and distribution of the waters of the Colorado River and the rights of said States and the United States thereto, and making an appropriation therefor.", the same being Chapter 246 of the Session Laws of Colorado, 1921, and signed by the Commissioners for the States of Arizona, California, Nevada, New Mexico, Utah, and Wyoming, under legislative authority, and signed by the Commissioners for said seven States and approved by the Representative of the United States of America under authority and in conformity with the provisions of an Act of the Congress of the United States, approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes.", which said compact is as follows:

#### Colorado River Compact

The States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, having resolved to enter into a compact, under the Act of the Congress of the United States of America approved August 19, 1921, (42 Statutes at Large, page 171), and the Acts of the legislatures of the said states, have through their Governors appointed as their commissioners:

W. S. Norviel, for the State of Arizona;  
 W. F. McClure, for the State of California;  
 Delph E. Carpenter, for the State of Colorado;  
 J. G. Scrugham, for the State of Nevada;  
 Stephen B. Davis, Jr., for the State of New Mexico;  
 R. E. Caldwell, for the State of Utah;  
 Frank C. Emerson, for the State of Wyoming;

who, after negotiations participated in by Herbert Hoover appointed by the President as the representative of the United States of America, have agreed upon the following articles:

#### Article I

The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters and the protection of life and property from floods. To these ends the Colorado River Basin is divided into two Basins, and an apportionment of the use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionments may be made.

#### Article II

As used in this Compact:

- (a) The term "Colorado River System" means that portion of the Colorado River and its tributaries within the United States of America.
- (b) The term "Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.
- (c) The term "States of the Upper Division" means the States of Colorado, New Mexico, Utah and Wyoming.
- (d) The term "States of the Lower Division" means the States of Arizona, California and Nevada.

(e) The "Lee Ferry" means a point in the main stream of the Colorado River one mile below the mouth of the Paria River.

(f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above Lee Ferry.

(g) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System below Lee Ferry.

(h) The term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial and other like purposes, but shall exclude the generation of electrical power.

### Article III

(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin respectively the exclusive beneficial consumptive use of 7,500,000 acre feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a) the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre per annum.

(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin; and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).

(d) The states of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact.

(e) The States of the Upper Division shall not withhold water, and the States of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses.

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (a), (b) and (c) may be made in the manner provided in paragraph (g) at any time after October first, 1963, if and when either basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b).

(g) In the event of a desire for a further apportionment as provided in paragraph (f) any two signatory States, acting through their Governors, may give joint notice of such desire to the Governors of the other signatory States and to the President of the United States of America, and it shall be the duty of the Governor of the signatory states and of the President of the United States of America forthwith to appoint representatives, whose duty it shall be to divide and apportion equitably between the Upper Basin and Lower Basin the beneficial use of the unapportioned water of the Colorado River System as mentioned in paragraph (f), subject to the Legislative ratification of the signatory States and the Congress of the United States of America.

### Article IV

(a) Inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of its Basin, the use of its waters for purpose of navigation shall be subservient to the uses of such waters for domestic, agricultural and power purposes. If the Congress shall not consent to this paragraph, the other provisions of this compact shall nevertheless remain binding.



(b) Subject to the provisions of this compact, water of the Colorado River System may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(c) The provisions of this article shall not apply to or interfere with the regulation and control by any state within its boundaries of the appropriation, use and distribution of water.

#### Article V

The Chief Official of each signatory State charged with the administration of water rights, together with the Director of the United States Reclamation Service and the Director of the United States Geological Survey shall co-operate, ex officio:

(a) To promote the systematic determination and coordination of the facts as to flow, appropriation, consumption and use of water in the Colorado River Basin, and the interchange of available information in such matters.

(b) To secure the ascertainment and publication of the annual flow of the Colorado River at Lee Ferry.

(c) To perform such other duties as may be assigned by mutual consent of the signatories from time to time.

#### Article VI

Should any claim or controversy arise between any two or more of the signatory States: (a) with respect to the waters of the Colorado River System not covered by the terms of this compact; (b) over the meaning or performance of any of the terms of this compact; (c) as to the allocation of the burdens incident to the performance of any article of this compact or the delivery of waters as herein provided; (d) as to the construction or operation of works within the Colorado River Basin to be situated in two or more States, or to be constructed in one State for the benefit of another State; or (e) as to the diversion of water in one State for the benefit of another State; the Governors of the States affected, upon the request of one of them, shall forthwith appoint Commissioners with power to consider and adjust such claim or controversy, subject to ratification by the Legislatures of the States so affected.

Nothing herein contained shall prevent the adjustment of any such claim or controversy by any present method or by direct future legislative action of the interested States.

#### Article VII

Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes.

#### Article VIII

Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. Whenever storage capacity of 5,000,000 acre feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then claims of such rights, if any, by appropriators or users of waters in the Lower Basin, against appropriators or users of water in the Upper Basin shall attach to and be satisfied from water that may be stored not in conflict with Article III.

All other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that Basin in which they are situate.

#### Article IX

Nothing in this compact shall be construed to limit or prevent any State from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

#### Article X

This compact may be terminated at any time by the unanimous agreement of the signatory States. In the event of such termination all rights established under it shall continue unimpaired.

Article XI

This compact shall become binding and obligatory when it shall have been approved by the Legislatures of each of the signatory States and by the Congress of the United States. Notice of approval by the Legislatures shall be given by the Governor of each signatory State to the Governors of the other signatory States and to the President of the United States, and the President of the United States is requested to give notice to the Governors of the signatory States of approval by the Congress of the United States.

In Witness Whereof, The Commissioners have signed this compact in a single original, which shall be deposited in the archives of the Department of State of the United States of America and of which a duly certified copy shall be forwarded to the Governor of each of the signatory States.

Done at the City of Santa Fe, New Mexico, this Twenty-fourth day of November, A.D. One Thousand Nine Hundred and Twenty-Two.

W. S. Norviel,  
W. F. McClure,  
Delph E. Carpenter,  
J. G. Scrugham,  
Stephen B. Davis, Jr.,  
R. E. Caldwell,  
Frank E. Emerson.

Approved:  
Herbert Hoover.

Source: L. 23: p. 684, § 1. not in CSA. CRS 53: § 148-2-1. C.R.S. 1963: § 149-2-1.

Am. Jur.2d. See 78 Am. Jur.2d, Waters, § § 309, 310, 373, 374.

C.J.S. See 81A C.J.S., States, § § 8, 31, 93 C.J.S., Waters, § § 5-8.

Law reviews. For article, "Water for Oil Shale Development", see 43 Den. L.J. 72 (1966). For comment, "Bryant v. Yellen: Perfected Rights Acquire New Status Under a Belated Clarification of Arizona v. California", see 58 Den. L.J. 847 (1981). For article, "The Law of Equitable

Apportionment Revisited, Updated and Restated", see 56 U. Colo. L. Rev. 381 (1985). For article, "Competing Demands for the Colorado River", see 56 U. Colo. L. Rev. 413 (1985). For article, "Management and Marketing of Indian Water: From Conflict to Pragmatism", see 58 U. Colo. L. Rev. 515 (1988). For article, "Colorado River Governance", see 68 U. Colo. L. Rev. 573 (1997).

37-61-102. Compact effective on approval. That said compact shall not be binding and obligatory on any of the parties thereto unless and until the same has been approved by the legislature of each of the said states and by the congress of the United States, and the governor of the state of Colorado shall give notice of the approval of said compact by the general assembly of the state of Colorado to the governors of each of the remaining signatory states and to the president of the United States, in conformity with article XI of said compact.

Source: L. 23: p. 693, § 2. not in CSA. CRS 53: § 148-2-2. C.R.S. 1963: § 149-2-2.

Am. Jur.2d. See 78 Am. Jur.2d, Waters, § § 309, 310.

C.J.S. See 81A C.J.S., States, § § 8, 31.

37-61-103. Approval waived. That the provisions of the first paragraph of article XI of the Colorado River Compact, making said compact effective when it has been approved by the legislature of each of the signatory states, are hereby waived and said compact shall become binding and obligatory upon the state of Colorado and upon the other signatory states, which have ratified or may hereafter ratify it, whenever at least six of the signatory states have consented thereto and the congress of the United States has given its consent and approval, but this article shall be of no force or effect until a similar act or resolution has been passed or adopted by the legislatures of the states of California, Nevada, New Mexico, Utah, and Wyoming.

802 - Special Master's Decree Recommended to Supreme Court

801 - Special Master's Analysis of Compact

APPENDIX VIII - ARIZONA v. CALIFORNIA

## STATE OF COLORADO

Colorado Water Conservation Board  
Department of Natural Resources

721 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  
Charles C. Lile, P.E.  
Director, CWCB

February 13, 1998

Mr. Peter C. Klingsmith, Attorney  
Gunnison Basin POWER  
P.O. Box 1742  
Gunnison, Colorado 81230

Dear Mr. Klingsmith,

Thank you for your letter of January 8, 1998 concerning the state of Colorado's position on Article III(b) of the Colorado River Compact. Article III(b) provides that the Lower Basin may increase its beneficial consumptive uses by 1,000,000 acre-feet per annum from waters of the Colorado River System. In order to address your question, Article III, paragraphs (a) to (e) of the compact and the terms defined in the Compact must be read together. The pertinent sections are as follows:

**Colorado River Compact**

**Article III**

- (a) *There is hereby apportioned from the Colorado River System in perpetuity to the Upper and to the Lower Basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.*
- (b) *In addition to the apportionment in paragraph (a), the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre-feet per annum.*
- (c) *If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any water of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the Upper Basin and Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).*
- (d) *The states of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten*

Mr. Peter C. Klingsmith, Attorney  
 February 13, 1998  
 Page 2 of 3

*consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact.*

- (e) *The states of the Upper Division shall not withhold water, and the states of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses.*

Critical to your question is the definition of the term, "Colorado River System" which is defined in Article II(a) of the Colorado River Compact as follows:

*"The term 'Colorado River System' means that portion of the Colorado River and its tributaries within the United States of America."*

Additionally, there are two major factual reasons that the Lower Division States can not seek any additional water from the "Upper Basin" under paragraph III(b). The first reason is that there is not enough water in the mainstem of the Colorado to satisfy the apportionments made under paragraph III(a) most of the time. The progressive 10-year moving average virgin flow at Lee Ferry has not exceeded 15.0 million acre-feet since 1934, except during the 1983-1993 period. Also, the estimated virgin flow average since 1896 is only 14.9 million acre-feet.

★  
 THIS IS POWER'S  
 MAJOR POINT

Secondly, the negotiators of the compact looked at the entire "Colorado River System" in making the apportionments thereunder. The Lower Basin has already taken the additional water and then some from the Colorado River tributaries. The "Consumptive Uses and Losses Report" prepared by the U.S. Bureau of Reclamation every five-years shows consumptive uses for the state of Arizona alone range between 4.0 and 6.3 million acre-feet annually, which is well in excess already of the additional water apportioned to the Lower Basin in Article III(b). Furthermore, this does not even consider uses made by those portions of Utah and New Mexico that are also part of the Lower Basin.

In other words, the allocations in Articles III(a) and (b) are made from the mainstem of the Colorado River and its tributaries, including Lower Basin tributaries such as the Gila River in Arizona and the Virgin River in Utah, Arizona and Nevada. In contrast, Article III(d) applies only to flows in the mainstem at Lee Ferry. Therefore, the right of the Lower Basin to increase its consumptive use by 1,000,000 acre-feet pursuant to Article III(b) refers only to Lower Basin tributaries. It does not authorize the Lower Basin to call for more water at Lee Ferry. This is clear from a plain reading of the Compact, as well as extensive background in the negotiations and subsequent events. For example, Arizona refused to ratify the compact until 1944 precisely because Article III(b) would limit its consumptive uses on the Gila River.

NONSENSE

Given these facts, it is extremely unlikely that the Lower Basin will ever make an issue out of Article III(b) and even more unlikely that they could ever prevail on the issue in a court of law.

Mr. Peter C. Klingsmith, Attorney  
February 13, 1998  
Page 3 of 3

I hope this addresses your concerns relative to Article III(b) of the Colorado River Compact.

Respectfully,



D. Randolph Seaholm  
Chief, Interstate Streams Investigations

Cc:  
Colorado Water Conservation Board Members  
Manager, Upper Gunnison River Water Conservancy District

## APPENDIX VIII

VIII-3

801

PARTIAL DOCUMENT  
Special Master's Analysis of Compact

I therefore conclude that the provisions of the Compact, unless made operative by relevant statutes or contracts, do not control the disposition of this case. Nevertheless, in view of the urgent arguments of the sovereign parties and against the eventuality that the Court may take a different view of the matter, I set forth my views regarding the meaning of some provisions of the Compact.

The limits established by the Compact on the acquisition of appropriative rights are applicable to the mainstream of the Colorado River and to its tributaries. Arizona has contended otherwise, claiming that the Compact relates to the mainstream exclusively. To support this contention, Arizona advances a number of arguments:

1. That the events leading to the adoption of the Compact, already mentioned in this Report, reveal an intention to deal with mainstream problems rather than with problems on the tributaries;
2. That the Upper Basin could physically control and acquire rights, against the Lower Basin, in mainstream and Upper Basin tributary water only, and hence was not interested in Lower Basin tributaries;
3. That the Compact purports to apportion only part and not all of the water in the River System;
4. That the obligation specified in Article III(d) necessarily refers to mainstream water only;
5. That subdivisions (a) and (d) of Article III are correlative and that III(b) refers to additional mainstream water;
6. That Article VIII deals with mainstream water.

At best, these arguments suggest two things: (1) that some provisions of the Compact relate to mainstream water exclusively, and (2) that the Compact might have been limited to the mainstream in all of its provisions if the negotiators had chosen to have it so confined. However, the plain words of the Compact permit only one interpretation — that Article III(a), (b), (c), (f) and (g) deal with both the mainstream and the tributaries. Article II(a) states: "The term 'Colorado River System' means that portion of the Colorado river and its tributaries within the United States of America." Article III(a) apportions "from the Colorado River System . . . the exclusive beneficial consumptive use . . . of water." Article III(b) allows the Lower Basin "to increase its beneficial consumptive use of such waters. . . ." "Such waters" can only refer to System waters, that is, to mainstream and tributary water as defined in Article II(a). In Article III(c), (f) and (g) System water is specified by name.

The various arguments of Arizona fail before this unmistakable language of the Compact. The historical fact that the Upper Basin was primarily concerned with the mainstream will not nullify language of the Compact that subjugates both mainstream and tributaries to its rule. Nor is the argument persuasive that because some provisions deal only with the mainstream, all provisions are so limited. It is certainly true that the second sentence of Article VIII deals with the mainstream only. It very clearly says so. The preceding and the following sentences, however, speak of the Colorado River System, indicating the draftsmen's intent to distinguish the two terms.

Article I states that "an apportionment of the use of part of the water of the Colorado River System is made" by the Compact, and Article VI speaks of "waters of the Colorado River System not covered by the terms of this Compact". From this Arizona would have me infer that tributaries are not subject to the limitations of Article III(a) and (b). The provisions of Articles I and VI can be given full effect without thus overriding the plain language of Article II(a). Article I is consistent with Article III(f) and (g) which provides for further equitable apportionment of the use of System water. The 1922 Compact apportioned the use of 16,000,000 acre-feet of water to the two Basins; a later compact could make a "further equitable apportionment" of remaining System water. Article VI demonstrates that the Compact governs inter-basin and not interstate relations. If a controversy should arise, for example, between two Lower Basin states over the mainstream, or over a tributary, that Article provides for alternative modes of adjusting the dispute. As

## VIII-4

## UPDATING THE HOOVER DAM DOCUMENTS

between Lower Basin states "the waters of the Colorado River System [are] not covered by the terms" of the Compact. (Colorado River Compact, Art. VI(a); see Ariz. Exs. 46, 49.)

Lastly, Arizona argues that Article III(a) relates to the mainstream only because III(a) and III(d) are correlative, III(d) being III(a) multiplied by ten, and Article III(d) is clearly a mainstream measurement. This argument is unacceptable. Since Article III(a) imposes a limit upon appropriation whereas III(d) deals with supply at Lee Ferry, an interpretation which makes these two provisions correlative one to another is inadmissible. Since a substantial quantity of water is lost through reservoir evaporation and channel losses as it flows from Lee Ferry, the point where the III(d) obligation is measured, to the diversion points downstream from Hoover Dam, where most of the appropriations are made, 7,500,000 acre-feet of water at Lee Ferry will supply a considerably smaller amount of appropriations below Hoover Dam. Moreover, III(a) extends to appropriations on Lower Basin tributaries as well as the mainstream. Such appropriations cannot possibly have any relation to the quantitative measurement of the flow of water at Lee Ferry.

The Compact does affect the supply of water available to the Lower Basin. Two provisions of the Compact relate to supply, Article III(c) and Article III(d). Article III(d) presents no questions of interpretation. Under it, the Upper Division states may "not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years, reckoned in progressive series beginning with the first day of October...."

With the storage provided by Lake Mead, and barring a drought unprecedented in the recorded history of the River, the Lower Basin has, under the guarantee of the Compact, available for use at Hoover Dam a minimum of 7,500,000 acre-feet of water per year, less transit losses between Lee Ferry and the dam, evaporation loss from Lake Mead, and its share of the Mexican treaty obligation.

The Compact provides for the delivery of water by the states of the Upper Division at Lee Ferry, in addition to the supply guaranteed by III(d), when the obligation to Mexico cannot be satisfied "from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b) [of Article III of the Compact]. . . ." In that event, "the burden of such deficiency shall be equally borne by the upper basin and the lower basin, and whenever necessary the states of the upper division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d)" of Article III. At the time the Compact was signed (1922) and when it became effective (1929), the United States was under no treaty obligation to Mexico and the Compact created no obligation. However, in 1944 the United States and Mexico negotiated a treaty, proclaimed in 1945, under which the United States has the duty to deliver 1,500,000 acre-feet annually to the United States of Mexico at the international boundary.<sup>13</sup>

Several questions arise regarding the effect of Article III(c), and the parties have offered various suggestions regarding its interpretation. These questions include: (1) what is the meaning of the word "surplus"? (2) if surplus is not sufficient to supply Mexico, how should the Upper Basin's further delivery obligation be measured under the language of Article III(c)? In my judgment, the various questions advanced by the parties concerning construction of this subdivision ought not to be answered in the absence of the states of the Upper Basin; nor need they be answered in order to dispose of this litigation affecting only Lower Basin interests. Under the interpretation which I propose of the Boulder Canyon Project Act and the water delivery contracts made by the Secretary of the Interior pursuant thereto, it is unnecessary to predict the supply of water in the mainstream, in the Lower Basin, in order to adjudicate the present controversy.<sup>14</sup>

Arizona argues that Article III(b), relating exclusively to appropriations in the Lower Basin, imposes an additional delivery burden on the Upper Basin. She reasons that after the III(a) apportionment is exhausted, the Lower Basin may, under Article III(b), increase its uses by 1,000,000 acre-feet and that the Upper Basin is obliged to furnish water for this increased III(b) use, subject only to the Upper Basin's first right to 7,500,000 acre-feet of water under Article III(a).

<sup>13</sup>This obligation is subject to several qualifications; the treaty is discussed *infra* at pages 295-296.

<sup>14</sup>Stream flow at Lee Ferry has historically exceeded the maximum delivery obligation under III(c) and III(d). Whether this condition will continue upon full development of the Upper Basin is a subject of dispute among the experts which need not be resolved here.

AZ  
III(b)



## APPENDIX VIII

VIII-5

Historic stream flows at Lee Ferry were as follows:

TEN-YEAR TOTALS OF COLORADO RIVER WATER  
AT LEE FERRY  
(In Acre-Feet)

Ten-Year Period	Stream Flow In Acre-Feet	Ten-Year Period	Stream Flow In Acre-Feet
1896-1905	133,700,000	1923-1932	139,969,500
1897-1906	141,904,000	1924-1933	133,453,600
1898-1907	146,407,000	1925-1934	125,368,900
1899-1908	144,870,000	1926-1935	123,939,900
1900-1909	151,326,000	1927-1936	121,901,700
1901-1910	151,695,000	1928-1937	117,211,700
1902-1911	153,417,000	1929-1938	117,328,400
1903-1912	163,557,000	1930-1939	107,498,700
1904-1913	162,601,000	1931-1940	101,510,200
1905-1914	167,235,800	1932-1941	111,174,700
1906-1915	164,736,200	1933-1942	112,917,800
1907-1916	164,097,000	1934-1943	114,435,400
1908-1917	163,987,100	1935-1944	123,260,400
1909-1918	165,873,700	1936-1945	124,893,700
1910-1919	155,026,100	1937-1946	121,668,100
1911-1920	161,795,800	1938-1947	123,285,600
1912-1921	167,888,600	1939-1948	121,532,800
1913-1922	165,311,000	1940-1949	126,498,100
1914-1923	168,578,300	1941-1950	130,473,700
1915-1924	161,724,600	1942-1951	124,252,400
1916-1925	160,565,300	1943-1952	125,203,000
1917-1926	157,249,000	1944-1953	122,745,000
1918-1927	151,942,800	1945-1954	115,639,600
1919-1928	153,616,500	1946-1955	111,401,200
1920-1929	161,981,500	1947-1956	111,410,500
1921-1930	156,312,900	1948-1957	115,243,100
1922-1931	140,985,600	1949-1958	116,555,900

Article III(b) cannot be stretched so far. Whatever may account for its segregation as a separate provision of the Compact, there is nothing to suggest that III(b) imposes an affirmative duty on the Upper Basin. Rather, it imposes for the benefit of the Upper Basin, a ceiling on Lower Basin appropriations, albeit that the Lower Basin is privileged to have a higher ceiling than the Upper Basin.

It is my conclusion that Article III(b) has the same effect as Article III(a), and this conclusion is supported by the reports of the Compact commissioners, who spoke of III(a) and III(b) as apportioning 7,500,000 acre-feet to the Upper Basin and 8,500,000 acre-feet to the Lower Basin. (See Ariz. Exs. 46, 49, 53, 55, 57).

"Beneficial consumptive use" is a term used throughout the Compact although, regrettably, it is not defined in Article II or elsewhere in the document. In the early stages of the hearing, Arizona spent a vast amount of effort in seeking to establish the term as a word of art. She now contends that it has no special meaning and never did:

California argues that the term is used in the Compact as a word of art and means:

"the loss of Colorado River System water in processes useful to man by evaporation, transpiration or diversion out of the drainage basin, or otherwise, whereby such water becomes unavailable for use within the natural drainage basin in the United States, or unavailable for delivery to Mexico in satisfaction of requirements imposed by the Mexican Treaty. The term includes but is not limited to incidental consumption of water such as evaporation and transpiration from water surfaces and banks of irrigation and drainage canals, and on or along seeped areas, when such incidental consumption is associated with beneficial consumptive use of water, even though such incidental consumption is not, in itself, useful."<sup>13</sup>

<sup>13</sup> Calif. Brief, Vol. II, p. A1-4.

## VIII-6

## UPDATING THE HOOVER DAM DOCUMENTS

Further refinements of this definition are contained in a 70-page brief, labeled Appendix 1 of California's Opening Brief. Other parties have contributed suggestions for construing the term.

As used in the Compact, beneficial consumptive use was intended to provide a standard for measuring the amount of water each Basin might appropriate. This was necessary since Article III(a) and (b) imposed limits on appropriative rights. In early applications of the western law of appropriation, diversions were regarded as the measure of water use.<sup>16</sup> By 1922, however, it was recognized that the amount of water diverted for irrigation purposes was not necessarily the amount consumed and lost to the stream. Some water applied to the ground would usually reappear in the stream as return flow. The term beneficial consumptive use as employed in the Compact was intended to give each Basin credit for return flow. Thus whether the limits fixed by Article III(a) and (b) have been reached or exceeded is to be determined by measuring the amount of each Basin's total appropriations through the formula, diversions less return flows. In the Compact, "beneficial consumptive use" means consumptive use (as opposed to non-consumptive use, e.g. water power) measured by the formula of diversions less return flows, for a beneficial (that is, non-wasteful) purpose. This understanding of the term is reflected in several of the commissioner's reports. (See Ariz. Exs. 46, 52, 54, 57.)<sup>17</sup>

As the foregoing discussion indicates, I regard Article III(a) and (b) as a limitation on appropriative rights and not as a source of supply. So far as the Compact is concerned, Lower Basin supply stems from Article III(c) and (d). There are, of course, other sources of supply, for example, Lower Basin tributary inflow, but these are not dealt with as supply items in the Compact. Thus when referring to the Compact, it is accurate to speak of III(c) and III(d) water, but it is inaccurate and indeed meaningless to speak of III(a) and III(b) water. For Compact purposes, Article III(a) and (b) can refer only to limits on appropriations, not to the supply of water itself.

It is true that Congress in Section 4(a) of the Project Act, treated Article III(a) as a source of supply rather than as a limitation on appropriations. The Act speaks of "the waters apportioned to the lower basin States by paragraph (a) of Article III of the Colorado River compact..." Later in this Report I shall develop at some length the meaning of this language and the confusion it has produced in this litigation. Suffice it now to say that the congressional meaning is different from the Compact meaning. One may properly speak of III(a) water in the Project Act sense, but not in the Compact sense. Much of the confusion in this case may be traced to this difference between the two writings, for the parties speak of III(a) water without differentiating between the Compact and the Project Act.

One other contention relating to the Compact may be noticed here. Under Section 4(a) of the Project Act, California, in addition to consuming a part of the so-called III(a) water, may share in "excess or surplus waters unapportioned by said Compact." California contends that III(b) uses are unapportioned by the Compact. The argument is based primarily on the fact that Article III(b) does not use the word "apportioned" which appears in Article III(a). Article III(b) gives the Lower Basin "the right to increase its beneficial consumptive use of" water by 1,000,000 acre-feet per annum. I have already indicated my view that subdivisions (a) and (b) of Article III operate in identical fashion; that the net effect of the two sections is to limit appropriations in the Upper Basin to 7,500,000 acre-feet and in the Lower Basin to 8,500,000 acre-feet. That both sections effect an apportionment is made clear by Article III(f), which provides for "further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (a), (b) and (c)" of Article III. California argues that apportionment has no precise or consistent meaning in the Compact, since in the foregoing provision Article III(a) and (b) are lumped together with Article III(c) which, according to the argument, clearly does not apportion water to Mexico. California's argument has no merit. Article III(c), while apportioning no water to Mexico, does apportion the burden of a deficiency resulting from the Mexican obligation between the Upper and Lower Basins, and hence effects an apportionment. Moreover, as I have previously had occasion to observe, the reports of the Compact commissioners describe Article III(b) as an apportionment (See Ariz. Exs. 46, 49, 53, 55, 57).

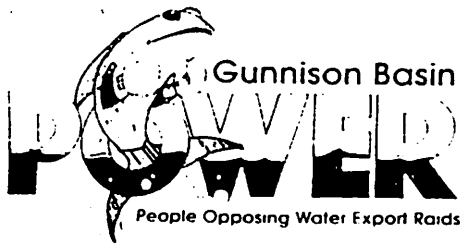
<sup>16</sup>See Hutchins, Selected Problems in the Law of Water Rights in the West 331 (1942).

<sup>17</sup>The term has since been adopted by branches of the engineering profession to express highly sophisticated formulae useful in the planning of irrigation projects. One such is the Blany-Criddle formula  $U = KF - R$ . For an explanation of this formula, see Tr. 13417-13428 (Criddle). Such meanings have no bearing on the term as used in the Compact.

## APPENDIX VIII

VIII-7

By these observations I do not mean to rule on California's rights under Section 4(a) of the Project Act. That III(b) uses are apportioned for Compact purposes does not control the interpretation of the statute, and I shall discuss its interpretation in this regard later in the Report.



February 12, 1999

The Board of Directors  
Upper Gunnison River Water Conservancy District  
275 S. Spruce  
Gunnison, CO 81230

The Board of County Commissioners  
The County of Gunnison  
200 East Virginia  
Gunnison, CO 81230

The Board of County Commissioners  
The County of Hinsdale  
Courthouse  
Lake City, CO 81235

The Board of County Commissioners  
The County of Saguache  
Courthouse  
Saguache, CO 81149

Ladies & Gentlemen:

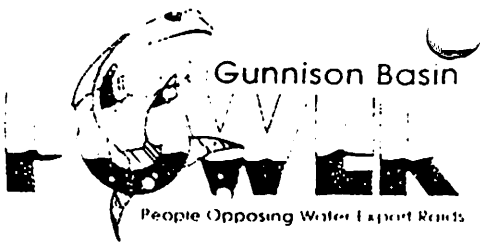
In response to Wayne S. Cook's letter to Ms. Klein of January 8, 1999, permit POWER to comment as follows: The business of measuring, allocating and distributing water efficiently from streams is complicated, and in connection with a river system as vast as the Colorado, it borders on the impossible. Similarly, the wording of the Compact is complicated and ambiguous and may need to be clarified (See appendix "A"). Mr. Cook and other Colorado water managers should be hesitant to criticize those who question their interpretation and judgment because if they prove to be wrong, which POWER believes they are as to certain aspects of the Colorado River's administration, great unnecessary expense, inconvenience and trouble could follow. Referring to each other as being guilty of misrepresenting the compact, disregarding facts and making seriously flawed choices is not helpful in arriving at the correct interpretation of the Compact and correctly, properly and fairly representing water users in Colorado and the Upper Basin States.

We have numbered each paragraph and sub-paragraph of Mr. Cook's letter attached hereto as Appendix "B", from 1 through 13, and will comment on each in order.

As to paragraph 1 through 4: we have no further comment.

As to paragraph 5: the first sentence is accurate. Whether the tributaries below Lee Ferry will produce 2 million acre feet of water per annum available after prior claims to satisfy Lower Basin and Mexican requirements in the future is doubtful. The diminishing effects of drought, the calls of the Indian tribes and the prior calls upon such waters by early users protected by the first sentence of Article III of the Compact makes such an optimistic guess unreliable and unrealistic.

As to paragraph 6: this wording is Article III (c) of the Compact, and it is ambiguous - if "over



February 8, 1999

and above" is over and above the 7.5 million acre feet to be supplied above Lee Ferry by Article III(a), it means one thing; but it means another if such water is to be supplied in whole or in part from waters produced below Lee Ferry. See Mr. Cook's paragraph 8.

As to paragraph 7; no comment.

As to paragraph 8; Regarding sub paragraph (1), POWER is correct that the waters described in Article III (c) & (d) are to be measured at Lee Ferry, by the words, and import of the Compact itself. As to where the waters of Article III (a) & (b) are to be measured, no other measuring place than Lee Ferry is provided in the Compact, or would such be feasible. Taken as a whole, the wording of the Compact directs these waters are to be measured at the only measuring place provided--Lee Ferry.

Would the Lower Basin (or a federal referee) be persuaded that the 7.5 million acre feet referred to in Article III(a) could come in part, or from time to time, from Lower Basin water? We think not. But if Mr. Cook is correct that the 1 million acre feet of Article III(b) can or should be diverted below Lee Ferry, then by the specific words of the Compact, so also a part of the water of Article III (a) could be so diverted as well. The Lower Basin States would not possibly abide by this interpretation. (See our later paragraph herein regarding relative political strengths of the Upper and Lower Basin States.)

Regarding sub-paragraph 8 of Mr. Cook's letter; (2) we do not think these lower basin waters can be so counted to provide (a), (b) & (d) waters. Obviously they can be as to sub-paragraph (c) of Article III of the compact.

Regarding sub-paragraph 8 (3), this is critical. A front range farmer should not have to bet his farm on whether the 1 million acre feet of Article III (b) water would and could be considered as being supplied by Lower Basin tributaries' water and might or might not be available to him.

The language referred to, ie. Article III (a)(b) is not clear but is ambiguous. Those who guess wrong as to its true meaning, as finally determined by a federal referee, are putting innocent water users at grave risk. We believe that Mr. Cook and his colleague Mr. Randy Seaholm of the Colorado Water Conservation Board are guessing wrong as to its meaning.

As to paragraphs 9 and 10: the position of the Upper Colorado River Commission, as set forth in its quoted resolution of July 13, 1984, is untenable. It makes no provision for the Lower Basin's entitlement to 7.5 million acre feet under Articles III (a) and (b) at Lee Ferry, on an annual basis, as such position appears to be a unilateral statement of rights, nor does it consider Indian rights,



February 8, 1999

and above” is over and above the 7.5 million acre feet to be supplied above Lee Ferry by Article III(a), it means one thing; but it means another if such water is to be supplied in whole or in part from waters produced below Lee Ferry. See Mr. Cook’s paragraph 8.

As to paragraph 7; no comment.

As to paragraph 8: Regarding sub paragraph (1), POWER is correct that the waters described in Article III (c) & (d) are to be measured at Lee Ferry, by the words, and import of the Compact itself. As to where the waters of Article III (a) & (b) are to be measured, no other measuring place than Lee Ferry is provided in the Compact, or would such be feasible. Taken as a whole, the wording of the Compact directs these waters are to be measured at the only measuring place provided--Lee Ferry.

Would the Lower Basin (or a federal referee) be persuaded that the 7.5 million acre feet referred to in Article III(a) could come in part, or from time to time, from Lower Basin water? We think not. But if Mr. Cook is correct that the 1 million acre feet of Article III(b) can or should be diverted below Lee Ferry, then by the specific words of the Compact, so also a part of the water of Article III (a) could be so diverted as well. The Lower Basin States would not possibly abide by this interpretation. (See our later paragraph herein regarding relative political strengths of the Upper and Lower Basin States.)

Regarding sub-paragraph 8 of Mr. Cook’s letter; (2) we do not think these lower basin waters can be so counted to provide (a), (b) & (d) waters. Obviously they can be as to sub-paragraph (c) of Article III of the compact.

Regarding sub-paragraph 8 (3), this is critical. A front range farmer should not have to bet his farm on whether the 1 million acre feet of Article III (b) water would and could be considered as being supplied by Lower Basin tributaries’ water and might or might not be available to him.

The language referred to, ie. Article III (a)(b) is not clear but is ambiguous. Those who guess wrong as to its true meaning, as finally determined by a federal referee, are putting innocent water users at grave risk. We believe that Mr. Cook and his colleague Mr. Randy Seaholm of the Colorado Water Conservation Board are guessing wrong as to its meaning.

As to paragraphs 9 and 10: the position of the Upper Colorado River Commission, as set forth in its quoted resolution of July 13, 1984, is untenable. It makes no provision for the Lower Basin’s entitlement to 7.5 million acre feet under Articles III (a) and (b) at Lee Ferry, on an annual basis, as such position appears to be a unilateral statement of rights, nor does it consider Indian rights,



February 8, 1999

rights of prior appropriators nor (3) does it consider the effect of drought. Although perhaps interesting and comforting, this position would have no binding effect on the Lower Basin States or on a federal referee or judge.

As to paragraph 11: the statement may be correct. However, what the Upper Basin states believe may not be what the Lower Basin states believe or what a federal referee would rule. What if what the Upper Division States believe is erroneous and 8,230,000 acre feet of water can not be delivered because of drought, transmountain diversion or Indian Tribes draw down? What Upper Basin water user will be shut off to make up the deficiencies when such occurs?

As to paragraph 12; POWER contests the statement made here in the first sentence. POWER wonders what will happen when a sustained drought occurs (see our appendix C hereto) or when the Indian tribes demand delivery of their reserved water. What has occurred in the past has a minor, if any, import on what will happen in the future.

As to paragraph 13: POWER has not implied the Lower Basin states have suffered shortages. It warns, however, that if further transmountain diversions from the Colorado River occur in Colorado, shortages are likely to occur in water quantities awarded to Lower Basin States. Even if the 10,400,000 acre feet of water referred to have been available to the Lower Basin states and Mexico, such may not be available if a serious, sustained drought occurs and/or when the Indian tribes make their claim.

Mr. Cook ignores or over-looks four of the most important considerations one should keep in mind in interpreting the Compact for the welfare of future water users in Colorado. These omissions are (1) the effects of the diminishment of water available in the Colorado River System after the Indian tribes have been allotted their reserved shares and such has been diverted, (2) the effect of a serious and sustained drought, (3) the effects of further transmountain diversion to the Front Range of Colorado, and (4) the withdrawals of water unimpaired by the Compact, by prior appropriators, under Article VIII.

Mr. Cook has not fully answered or satisfied POWER'S, and we trust others', concerns about the Colorado River Compact. In POWER'S letter, we warn that many Indian tribes have claims to the water of the Colorado River system which have not yet been made but which have been provided for. (See Article VII of the Compact.) These claims could amount to several million acre feet per annum, and they would come ahead of all junior claims to Colorado River water, ie. later in time to the dates of the Indian reservations. One can rely on the fact that such claims will be enforced when they are made. To ignore or disregard the Indians' claims in allocating Colorado River water would be perilous to all concerned Upper Basin water users.



February 8, 1999

A severe sustained drought (see appendix C hereto) could knock the "Criteria for Coordinated Long Range Operation of Colorado River Reservoirs" (Mr. Cook's paragraph 11) into a cocked hat. What a drought would not change, however, is in case of a deficiency, the obligation of the Upper Basin states to furnish the water at Lee Ferry referred to in Article III(a)(b)(c) and (d) would continue undiminished. If, pursuant to the Upper Basin states water managers' recommendations and encouragement, more water is permitted to be withdrawn than has now been decreed and divested for the purpose of increasing development out of the basin on the Front Range of Colorado, disaster looms on the horizon.

POWER would make a further point not dealt with by Mr. Cook. Lower Basin need for water is increasing exponentially. Las Vegas, Nevada, has been awarded 42+ sections of dry land by the U.S. Government, (30,080 acres), much of which will need water. (See Appendix D hereto.) Southern California's and the Imperial Valley's need for water is growing by leaps and bounds. No Upper Basin water manager should want to involve Colorado in a dispute over water with the Lower Basin States which boast of 3 U.S. Supreme Court Justices, and whose U.S. Representatives outnumber our Congressional delegation about 10 to 1. To set up a conflict with such weighty opponents does not seem wise to POWER, but rather seems to be a recipe for calamity for our Colorado community.

We ask that you read POWER'S amended letter again with an open mind. We ask our water managers to reconsider the risks and possible dire consequences of dismissing interpretations of the Colorado River compact which Lower Basin users are virtually certain to make in the future as their demands for Colorado River water grow ever more intense.

Sincerely,

POWER

By: P.C. Klingsmith, Chairman  
POWER Steering Committee





February 8, 1999

A severe sustained drought (see appendix C hereto) could knock the "Criteria for Coordinated Long Range Operation of Colorado River Reservoirs" (Mr. Cook's paragraph 11) into a cocked hat. What a drought would not change, however, is in case of a deficiency, the obligation of the Upper Basin states to furnish the water at Lee Ferry referred to in Article III(a)(b)(c) and (d) would continue undiminished. If, pursuant to the Upper Basin states water managers' recommendations and encouragement, more water is permitted to be withdrawn than has now been decreed and divested for the purpose of increasing development out of the basin on the Front Range of Colorado, disaster looms on the horizon.

POWER would make a further point not dealt with by Mr. Cook. Lower Basin need for water is increasing exponentially. Las Vegas, Nevada, has been awarded 42+ sections of dry land by the U.S. Government, (30,080 acres), much of which will need water. (See Appendix D hereto.) Southern California's and the Imperial Valley's need for water is growing by leaps and bounds. No Upper Basin water manager should want to involve Colorado in a dispute over water with the Lower Basin States which boast of 3 U.S. Supreme Court Justices, and whose U.S. Representatives outnumber our Congressional delegation about 10 to 1. To set up a conflict with such weighty opponents does not seem wise to POWER, but rather seems to be a recipe for calamity for our Colorado community.

We ask that you read POWER'S amended letter again with an open mind. We ask our water managers to reconsider the risks and possible dire consequences of dismissing interpretations of the Colorado River compact which Lower Basin users are virtually certain to make in the future as their demands for Colorado River water grow ever more intense.

Sincerely,

POWER

By: P.C. Klingsmith, Chairman  
POWER Steering Committee



xc: Kathleen Klein  
L. Richard Bratton, Esq.  
Charles Cliggett, Esq.  
David Baumgarten, Esq.  
Robert S. Crites, Jr.  
Mr. Wayne E. Cook  
Mr. Randy Seaholm  
Representative Russell George  
Senator Ray Powers

### Colorado River Compact

37-61-101.	Colorado River compact.	37-61-103.	Approval waived.
37-61-102.	Compact effective on approval.	37-61-104.	Certified copies of compact.

**37-61-101. Colorado River compact.** The General Assembly hereby approves the compact, designated as the "Colorado River Compact", signed at the City of Santa Fe, State of New Mexico, on the 24th day of November, A.D. 1922, by Delph E. Carpenter, as the Commissioner for the State of Colorado, under authority of and in conformity with the provisions of an act of the General Assembly of the State of Colorado, approved April 2, 1921, entitled "An Act providing for the appointment of a Commissioner on behalf of the State of Colorado to negotiate a compact and agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming and between said States and the United States respecting the use and distribution of the waters of the Colorado River and the rights of said States and the United States thereto, and making

an appropriation therefor.", the same being Chapter 246 of the Session Laws of Colorado, 1921, and signed by the Commissioners for the States of Arizona, California, Nevada, New Mexico, Utah, and Wyoming, under legislative authority, and signed by the Commissioners for said seven States and approved by the Representative of the United States of America under authority and in conformity with the provisions of an Act of the Congress of the United States, approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes.", which said compact is as follows:

Colorado River Compact

The States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, having resolved to enter into a compact, under the Act of the Congress of the United States of America approved August 19, 1921, (42 Statutes at Large, page 171), and the Acts of the legislatures of the said states, have through their Governors appointed as their commissioners:

- W. S. Norviel, for the State of Arizona;
- W. F. McClure, for the State of California;
- Delph E. Carpenter, for the State of Colorado;
- J. G. Scrugham, for the State of Nevada;
- Stephen B. Davis, Jr., for the State of New Mexico;
- R. E. Caldwell, for the State of Utah;
- Frank C. Emerson, for the State of Wyoming;

who, after negotiations participated in by Herbert Hoover appointed by the President as the representative of the United States of America, have agreed upon the following articles:

Article I

The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters and the protection of life and property from floods. To these ends the Colorado River Basin is divided into two Basins, and an apportionment of the use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionments may be made.

Article II

As used in this Compact: -

- (a) The term "Colorado River System" means that portion of the Colorado River and its tributaries within the United States of America.
- (b) The term "Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.
- (c) The term "States of the Upper Division" means the States of Colorado, New Mexico, Utah and Wyoming.
- (d) The term "States of the Lower Division" means the States of Arizona, California and Nevada.

the dra  
cially s  
(h)  
municip  
ation o

(a)  
the Up  
use of  
for the

(b)  
the rig  
per an

(c)  
recogni  
River  
and a  
surplu  
be eq  
States  
defici

(d)  
to be  
years  
next:

(e)  
Low  
to do

(f)  
rado  
man  
eithe

(a) a  
(g)

(f) a  
such  
Uni  
and  
who  
Low  
as n  
and

(  
the  
Bas  
of :

the drainage area of the Colorado River System which are now or shall hereinafter be beneficially served by waters diverted from the System below Lee Ferry.

(h) The term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial and other like purposes, but shall exclude the generation of electrical power.

### Article III

(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin respectively the exclusive beneficial consumptive use of 7,500,000 acre feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a) the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre per annum.

(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).

(d) The states of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact.

(e) The States of the Upper Division shall not withhold water, and the States of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses.

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (a), (b) and (c) may be made in the manner provided in paragraph (g) at any time after October first, 1963, if and when either basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b).

(g) In the event of a desire for a further apportionment as provided in paragraph (f) any two signatory States, acting through their Governors, may give joint notice of such desire to the Governors of the other signatory States and to the President of the United States of America, and it shall be the duty of the Governor of the signatory states and of the President of the United States of America forthwith to appoint representatives, whose duty it shall be to divide and apportion equitably between the Upper Basin and Lower Basin the beneficial use of the unapportioned water of the Colorado River System as mentioned in paragraph (f), subject to the Legislative ratification of the signatory States and the Congress of the United States of America.

### Article IV

(a) Inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of its Basin, the use of its waters for purpose of navigation shall be subservient to the uses of such waters for domestic, agricultural and power purposes. If the Congress shall not consent to this paragraph, the other provisions of this compact shall nevertheless remain binding.

(b) Subject to the provisions of this compact, water of the Colorado River System may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(c) The provisions of this article shall not apply to or interfere with the regulation and control by any state within its boundaries of the appropriation, use and distribution of water.

EXH 'A'

## Article V

The Chief Official of each signatory State charged with the administration of water rights, together with the Director of the United States Reclamation Service and the Director of the United States Geological Survey shall co-operate, ex officio:

(a) To promote the systematic determination and coordination of the facts as to flow, appropriation, consumption and use of water in the Colorado River Basin, and the interchange of available information in such matters.

(b) To secure the ascertainment and publication of the annual flow of the Colorado River at Lee Ferry.

(c) To perform such other duties as may be assigned by mutual consent of the signatories from time to time.

## Article VI

Should any claim or controversy arise between any two or more of the signatory States: (a) with respect to the waters of the Colorado River System not covered by the terms of this compact; (b) over the meaning or performance of any of the terms of this compact; (c) as to the allocation of the burdens incident to the performance of any article of this compact or the delivery of waters as herein provided; (d) as to the construction or operation of works within the Colorado River Basin to be situated in two or more States, or to be constructed in one State for the benefit of another State; or (e) as to the diversion of water in one State for the benefit of another State; the Governors of the States affected, upon the request of one of them, shall forthwith appoint Commissioners with power to consider and adjust such claim or controversy, subject to ratification by the Legislatures of the States so affected.

Nothing herein contained shall prevent the adjustment of any such claim or controversy by any present method or by direct future legislative action of the interested States.

## Article VII

Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes.

## Article VIII

Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. Whenever storage capacity of 5,000,000 acre feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then claims of such rights, if any, by appropriators or users of waters in the Lower Basin, against appropriators or users of water in the Upper Basin shall attach to and be satisfied from water that may be stored not in conflict with Article III.

All other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that Basin in which they are situated.

## Article IX

Nothing in this compact shall be construed to limit or prevent any State from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

## Article X

This compact may be terminated at any time by the unanimous agreement of the signatory States. In the event of such termination all rights established under it shall continue unimpaired.

## Article XI

This compact shall become binding and obligatory when it shall have been approved by the Legislatures of each of the signatory States and by the Congress of the United States. Notice of approval by the Legislatures shall be given by the Governor of each signatory State to the Governors of the other signatory States and to the President of the United States, and the President of the United States is requested to give notice to the Governors of the signatory States of approval by the Congress of the United States.

EXH "A"  
p 9 2

In Witness Whereof, The Commissioners have signed this compact in a single original, which shall be deposited in the archives of the Department of State of the United States of America and of which a duly certified copy shall be forwarded to the Governor of each of the signatory States.

Done at the City of Santa Fe, New Mexico, this Twenty-fourth day of November, A.D. One Thousand Nine Hundred and Twenty-Two.

W. S. Norviel,  
W. F. McClure,  
Delph E. Carpenter,  
J. G. Scrugham,  
Stephen B. Davis, Jr.,  
R. E. Caldwell,  
Frank E. Emerson.

Approved:  
Herbert Hoover.

Source: L. 23: p. 684, § 1. not in CSA. CRS 53: § 148-2-1. C.R.S. 1963: § 149-2-1.

Am. Jur.2d. See 78 Am. Jur.2d, Waters, § § 309, 310, 373, 374.

C.J.S. See 81A C.J.S., States, § § 8, 31; 93 C.J.S., Waters, § § 5-8.

Law reviews. For article, "Water for Oil Shale Development", see 43 Den. L.J. 72 (1966). For comment, "Bryant v. Yellen: Perfected Rights Acquire New Status Under a Belated Clarification of Arizona v. California", see 58 Den. L.J.

847 (1981). For article, "The Law of Equitable Apportionment Revisited, Updated and Restated", see 56 U. Colo. L. Rev. 381 (1985). For article, "Competing Demands for the Colorado River", see 56 U. Colo. L. Rev. 413 (1985). For article, "Management and Marketing of Indian Water: From Conflict to Pragmatism", see 58 U. Colo. L. Rev. 515 (1988).

37-61-102. Compact effective on approval. That said compact shall not be binding and obligatory on any of the parties thereto unless and until the same has been approved by the legislature of each of the said states and by the congress of the United States, and the governor of the state of Colorado shall give notice of the approval of said compact by the general assembly of the state of Colorado to the governors of each of the remaining signatory states and to the president of the United States, in conformity with article XI of said compact.

Source: L. 23: p. 693, § 2. not in CSA. CRS 53: § 148-2-2. C.R.S. 1963: § 149-2-2.

Am. Jur.2d. See 78 Am. Jur.2d, Waters, § § 309, 310.

C.J.S. See 81A C.J.S., States, § § 8, 31.

37-61-103. Approval waived. That the provisions of the first paragraph of article XI of the Colorado River Compact, making said compact effective when it has been approved by the legislature of each of the signatory states, are hereby waived and said compact shall become binding and obligatory upon the state of Colorado and upon the other signatory states, which have ratified or may hereafter ratify it, whenever at least six of the signatory states have consented thereto and the congress of the United States has given its consent and approval, but this article shall be of no force or effect until a similar act or resolution has been passed or adopted by the legislatures of the states of California, Nevada, New Mexico, Utah, and Wyoming.

Source: L. 25: p. 525, § 1; not in CSA; CRS 53, § 148-2-3; C.R.S. 1963, § 149-2-3.

Am. Jur.2d. See 78 Am. Jur.2d, Waters, § § 309, 310.

C.J.S. See 81A C.J.S., States, § § 8, 31; 93 C.J.S., Waters, § 7.

37-61-104. Certified copies of compact. That certified copies of this article be forwarded by the governor of the state of Colorado to the president of the United States, the secretary of state of the United States, and the governors of the states of Arizona, California, Nevada, New Mexico, Utah, and Wyoming.

Source: L. 25: p. 526, § 2. not in CSA. CRS 53: § 148-2-4. C.R.S. 1963: § 149-2-4.



# UPPER COLORADO RIVER COMMISSION

received  
F11-99

355 South 400 East • Salt Lake City • Utah 84111 • 801-531-1150 • FAX 801-531-9705

January 8, 1999

Ms. Kathleen C. Klein  
Manager  
Upper Gunnison River Water  
Conservancy District  
275 South Spruce Street  
Gunnison, Colorado 81230

Post-It™ brand fax transmittal memo 7671		# of pages	3
To	Pete Klingsmith <sup>from</sup> Jill Steele		
Co.	J	Co.	UGRWC
Dept.		Phone #	641 6065
Fax #	641 1331	Fax #	641 6727

Dear Ms. Klein:

I am writing in response to your letter dated December 3, 1998. You have asked for the Commission's opinion concerning a letter you received from People Opposing Water Export Raids (POWER) regarding water availability in the State of Colorado as affected by requirements of the Colorado River Compact. The POWER letter contains serious misinterpretations of the Colorado River Compact and disregards facts regarding water use in the Colorado River Basin.

POWER's letter fails to recognize the following critical Compact provisions:

The term "Colorado River system" means that portion of the Colorado River and its tributaries within the United States of America (Article II(a), emphasis added). 2

There is hereby apportioned from the Colorado River system in perpetuity to the upper basin and to the lower basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of rights which may now exist (Article III(a), emphasis added). 3

In addition to the apportionment in paragraph (a), the lower basin is hereby given the right to increase its beneficial consumptive use of such waters (i.e. waters of "the Colorado River system") by 1,000,000 acre-feet per annum (Article III(b), emphasis added). 4

The Colorado River system includes the tributaries below Lee Ferry such as the Virgin, Little Colorado and Gila Rivers. These tributaries produce an average of at least two million acre-feet of water per year. 5

If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any 6



Ms. Kathleen C. Klein  
January 8, 1999  
Page 2

waters of the Colorado River system, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then the burden of such deficiency shall be equally borne by the upper basin and the lower basin, and whenever necessary the States of the upper division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d) (Article III(c), emphasis added).

6

The States of the upper division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of 10 consecutive years reckoned in continuing progressive series beginning with the 1st day of October next succeeding the ratification of this compact (Article III(d)).

7

In contrast, POWER's letter argues that (1) "The measurement of the water to be apportioned and divided by the Compact . . . is at Lee Ferry, Arizona . . ." (2) "these waters [from Lower Basin tributaries] may not be counted to make up the amount apportioned to the Lower Basin States under Article III(a) (b) (c) or (d)" and (3) the Lower Basin States may make a "call" on the Upper Basin to provide an additional 1,000,000 acre-feet of water per annum. These arguments, however, are clearly refuted by the plain language of the Compact provisions quoted above.

8  
(1)(2)(3)

POWER has also misinterpreted the Upper Basin States' Mexican Treaty obligations. The position of the Upper Colorado River Commission on many of POWER's assertions is stated in the following paragraph of a resolution passed by the Commission at its Adjourned Regular Meeting on July 13, 1994:

9

[I]t is the position of the Upper Colorado River Commission and the Upper Division States that, with the delivery at Lee Ferry of 75 million acre-feet of water in each period of ten consecutive years, the water ~~supply available~~ in the Colorado River System below Lee Ferry may be sufficient to meet the apportionments to the Lower Basin provided for in Article III(a) and (b) of the Colorado River Compact and the entire Mexican Treaty delivery obligation;

10

The "Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs," authorized by the 1968 Colorado River Basin Project Act, govern operation of Lake Powell and Lake Mead, together with other Federal reservoirs. Pursuant to these Criteria, the objective of the Bureau of Reclamation is to maintain a minimum release of 8,230,000 acre-feet of water from Lake Powell each year, which the Upper Division States believe is more than sufficient to satisfy all downstream demands, including Mexican Treaty obligations.

11  
III(a) & (b)  
= 8,500,000

POWER also misunderstands some fundamental facts regarding historic and present use of the waters of the Colorado River Basin. POWER states that Mexico "has not yet called

12

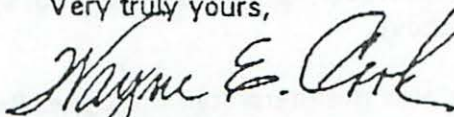
Ms. Kathleen C. Klein  
January 8, 1999  
Page 3

upon" its treaty entitlement. In reality, at least 1,500,000 acre-feet of water have been delivered to the Republic of Mexico every year since the Treaty was signed. Those deliveries are documented in reports by the International Boundary and Water Commission and since 1969 by the Bureau of Reclamation in its reports entitled "Compilation of Records in Accordance With Article V of the Decree of the Supreme Court of the United States in Arizona v. California Dated March 9, 1964." 12

POWER also implies that the Lower Basin States have suffered shortages. In fact, the Upper Basin States have never delivered less than 75,000,000 acre-feet of water in any period of 10 consecutive years. Furthermore, the Bureau of Reclamation prepares a "Consumptive Uses and Losses Report" that documents all water used in the Colorado River Basin. The "Consumptive Uses and Losses Report" shows that much more than 1,000,000 acre-feet of water has been used from Lower Basin tributaries for many years. According to the Bureau of Reclamation, total consumptive uses in the Lower Basin for the period 1986-1990 averaged more than 10,400,000 acre-feet. 13


To summarize, the group's interpretation of the Colorado River Compact is seriously flawed, and the letter ignores documented facts about Colorado River system water use in the Lower Basin States. If you have any questions regarding this letter, please call me. 14

Very truly yours,



Wayne E. Cook  
Executive Director

*No comment re the Indians*



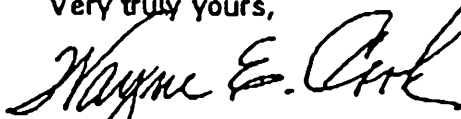
Ms. Kathleen C. Klein  
January 8, 1999  
Page 3

upon" its treaty entitlement. In reality, at least 1,500,000 acre-feet of water have been delivered to the Republic of Mexico every year since the Treaty was signed. Those deliveries are documented in reports by the International Boundary and Water Commission and since 1969 by the Bureau of Reclamation in its reports entitled "Compilation of Records in Accordance With Article V of the Decree of the Supreme Court of the United States in Arizona v. California Dated March 9, 1964." 12

POWER also implies that the Lower Basin States have suffered shortages. In fact, the Upper Basin States have never delivered less than 75,000,000 acre-feet of water in any period of 10 consecutive years. Furthermore, the Bureau of Reclamation prepares a "Consumptive Uses and Losses Report" that documents all water used in the Colorado River Basin. The "Consumptive Uses and Losses Report" shows that much more than 1,000,000 acre-feet of water has been used from Lower Basin tributaries for many years. According to the Bureau of Reclamation, total consumptive uses in the Lower Basin for the period 1986-1990 averaged more than 10,400,000 acre-feet. 13

To summarize, the group's interpretation of the Colorado River Compact is seriously flawed, and the letter ignores documented facts about Colorado River system water use in the Lower Basin States. If you have any questions regarding this letter, please call me. 14

Very truly yours,



Wayne E. Cook  
Executive Director

*No comment re the Indians*

received  
12-11-98

# COLORADO RIVER WATER CONSERVATION DISTRICT

December 8, 1998

Post-It™ brand fax transmittal memo 7571		# of pages ▶
To: Pete Kingsmith	From: Jill Steele	
Co.	Co. UGRWCA	
Dept.	Phone # 641 6065	
Fax # 641 1331	Fax # 641 6727	

Kathleen Klein, Manager  
 Upper ~~Gunnison River~~ Water Conservancy District  
 275 S. Spruce St.  
 Gunnison, CO 81230

**Subject: Your Letter Concerning the Colorado River Compact**

Dear Kathleen:

I have received your letter attaching the Colorado River Compact analysis by POWER. For your information, the subject of the POWER letter will be an agenda item for the River District's January 19-20, 1999 Board Meeting.

I would like the River District Board to formally address this matter, but our initial staff view is that the POWER analysis is based on the basic misconception that the lower basin tributaries are not included in the Compact's definition of the Colorado River.

After the Board discusses the matter, we will provide you with a more detailed response.

Sincerely,

*R. Eric Kuhn*  
 R. Eric Kuhn  
 Secretary/General Manager

*12/16/98*  
*Indian rights*  
*Mexico rights*

REK/vms  
 cc: Bill Trampa  
 David Halford  
 Randy Seaholm

*If Kuhn is correct, can Colorado claim the flow of lower basin rivers to satisfy is requires needs to lower basin states?*  
*If lower river flows are the waters to satisfy (B), such para. wd be unnecessary. See ART VIII second par.*

SUITE #204 • 201 CENTENNIAL STREET  
 P.O. BOX 1120/GLENWOOD SPRINGS, COLORADO 81602  
 (970) 945-8522 • FAX (970) 945-8799

*We will believe this interpretation of CA AZ NEV agree to it in writing.*

**KLINGSMITH & ASSOCIATES, P.C.**  
ATTORNEYS AND COUNSELORS AT LAW

P.O. BOX 99  
234 NORTH MAIN STREET  
SUITE 2A  
GUNNISON, COLORADO 81230  
TELEPHONE (970) 641-1334  
FAX (970) 641-1331

PHIL KLINGSMITH  
CLAYTON R. MILLER

Of Counsel  
P.C. KLINGSMITH

November 30, 1998

The Board of Directors  
Upper Gunnison River Water Conservancy District  
275 S. Spruce  
Gunnison, CO 81230

The Board of County Commissioners  
The County of Gunnison  
200 East Virginia  
Gunnison, CO 81230

The Board of County Commissioners  
The County of Hinsdale  
Courthouse  
Lake City, CO 81235

The Board of County Commissioners  
The County of Saguache  
Courthouse  
Saguache, CO 81149

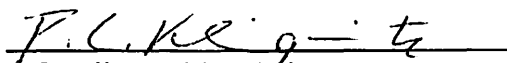
Re: WATER AVAILABILITY FOR TRANSMOUNTAIN DIVERSION -  
CONSEQUENCES OF FURTHER TRANSMOUNTAIN DIVERSION

Ladies and Gentlemen:

We enclose an appendix to POWER'S letter regarding Colorado River water dated November 18, 1998. Please attach this sheet to your letter as a part of it.

Sincerely yours,

POWER

  
P.C. Klingsmith, Chairman  
Power Steering Committee

xc: L.Richard Bratton, Esq.      John Cope  
Charles Cliggett, Esq.      Editor Crested Butte Chronicle  
David Baumgarten, Esq.      Editor Gunnison Country Times  
Robert S. Crites, Esq.      Ramone Reed  
Rep. Russell George      Joe Hersey  
Sen. Ray Powers      Mike Petersen  
Dr. Scottie Willey      Paul Vader  
Gerald Lain

### Colorado River Compact

37-61-101.	Colorado River compact.	37-61-103.	Approval waived.
37-61-102.	Compact effective on approval.	37-61-104.	Certified copies of compact.

**37-61-101. Colorado River compact.** The General Assembly hereby approves the compact, designated as the "Colorado River Compact", signed at the City of Santa Fe, State of New Mexico, on the 24th day of November, A.D. 1922, by Delph E. Carpenter, as the Commissioner for the State of Colorado, under authority of and in conformity with the provisions of an act of the General Assembly of the State of Colorado, approved April 2, 1921, entitled "An Act providing for the appointment of a Commissioner on behalf of the State of Colorado to negotiate a compact and agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming and between said States and the United States respecting the use and distribution of the waters of the Colorado River and the rights of said States and the United States thereto, and making

an appropriation therefor.", the same being Chapter 246 of the Session Laws of Colorado, 1921, and signed by the Commissioners for the States of Arizona, California, Nevada, New Mexico, Utah, and Wyoming, under legislative authority, and signed by the Commissioners for said seven States and approved by the Representative of the United States of America under authority and in conformity with the provisions of an Act of the Congress of the United States, approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes.", which said compact is as follows:

### Colorado River Compact

The States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, having resolved to enter into a compact, under the Act of the Congress of the United States of America approved August 19, 1921, (42 Statutes at Large, page 171), and the Acts of the legislatures of the said states, have through their Governors appointed as their commissioners:

- W. S. Norviel, for the State of Arizona;
- W. F. McClure, for the State of California;
- Delph E. Carpenter, for the State of Colorado;
- J. G. Scrugham, for the State of Nevada;
- Stephen B. Davis, Jr., for the State of New Mexico;
- R. E. Caldwell, for the State of Utah;
- Frank C. Emerson, for the State of Wyoming;

who, after negotiations participated in by Herbert Hoover appointed by the President as the representative of the United States of America, have agreed upon the following articles:

#### Article I

The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters and the protection of life and property from floods. To these ends the Colorado River Basin is divided into two Basins, and an apportionment of the use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionments may be made.

#### Article II

As used in this Compact: -

- (a) The term "Colorado River System" means that portion of the Colorado River and its tributaries within the United States of America.
- (b) The term "Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.
- (c) The term "States of the Upper Division" means the States of Colorado, New Mexico, Utah and Wyoming.
- (d) The term "States of the Lower Division" means the States of Arizona, California and Nevada.
- (e) The "Lee Ferry" means a point in the main stream of the Colorado River one mile below the mouth of the Paria River.
- (f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above Lee Ferry.
- (g) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without

the dra  
cially s  
(h)  
munic  
ation o

(a)  
the Up  
use of  
for the

(b)  
the rig  
per ani

(c)  
recogn

River :

and ab  
surplu:

be equ

States  
deficie

(d)  
to be d

years 1  
next st

(e)  
Lower

to don

(f)  
rado 1

mann

either

(a) and

(g)  
(f) any

such c

Unite

and of

whose

Lower

as me

and th

(a)  
the re

Basin,

of suc  
conser  
bindir

(b)  
may b  
and u  
and d  
purpo  
(c)  
and c  
of wa

the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System below Lee Ferry.

(h) The term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial and other like purposes, but shall exclude the generation of electrical power.

### Article III

(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin respectively the exclusive beneficial consumptive use of 7,500,000 acre feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a) the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre per annum.

(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).

(d) The states of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact.

(e) The States of the Upper Division shall not withhold water, and the States of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses.

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (a), (b) and (c) may be made in the manner provided in paragraph (g) at any time after October first, 1963, if and when either basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b).

(g) In the event of a desire for a further apportionment as provided in paragraph (f) any two signatory States, acting through their Governors, may give joint notice of such desire to the Governors of the other signatory States and to the President of the United States of America, and it shall be the duty of the Governor of the signatory states and of the President of the United States of America forthwith to appoint representatives, whose duty it shall be to divide and apportion equitably between the Upper Basin and Lower Basin the beneficial use of the unapportioned water of the Colorado River System as mentioned in paragraph (f), subject to the Legislative ratification of the signatory States and the Congress of the United States of America.

### Article IV

(a) Inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of its Basin, the use of its waters for purpose of navigation shall be subservient to the uses of such waters for domestic, agricultural and power purposes. If the Congress shall not consent to this paragraph, the other provisions of this compact shall nevertheless remain binding.

(b) Subject to the provisions of this compact, water of the Colorado River System may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(c) The provisions of this article shall not apply to or interfere with the regulation and control by any state within its boundaries of the appropriation, use and distribution of water.

EXH 'A'



## Article V

The Chief Official of each signatory State charged with the administration of water rights, together with the Director of the United States Reclamation Service and the Director of the United States Geological Survey shall co-operate, ex officio:

(a) To promote the systematic determination and coordination of the facts as to flow, appropriation, consumption and use of water in the Colorado River Basin, and the interchange of available information in such matters.

(b) To secure the ascertainment and publication of the annual flow of the Colorado River at Lee Ferry.

(c) To perform such other duties as may be assigned by mutual consent of the signatories from time to time.

## Article VI

Should any claim or controversy arise between any two or more of the signatory States: (a) with respect to the waters of the Colorado River System not covered by the terms of this compact; (b) over the meaning or performance of any of the terms of this compact; (c) as to the allocation of the burdens incident to the performance of any article of this compact or the delivery of waters as herein provided; (d) as to the construction or operation of works within the Colorado River Basin to be situated in two or more States, or to be constructed in one State for the benefit of another State; or (e) as to the diversion of water in one State for the benefit of another State; the Governors of the States affected, upon the request of one of them, shall forthwith appoint Commissioners with power to consider and adjust such claim or controversy, subject to ratification by the Legislatures of the States so affected.

Nothing herein contained shall prevent the adjustment of any such claim or controversy by any present method or by direct future legislative action of the interested States.

## Article VII

Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes.

## Article VIII

Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. Whenever storage capacity of 5,000,000 acre feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then claims of such rights, if any, by appropriators or users of waters in the Lower Basin, against appropriators or users of water in the Upper Basin shall attach to and be satisfied from water that may be stored not in conflict with Article III.

All other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that Basin in which they are situate.

## Article IX

Nothing in this compact shall be construed to limit or prevent any State from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

## Article X

This compact may be terminated at any time by the unanimous agreement of the signatory States. In the event of such termination all rights established under it shall continue unimpaired.

## Article XI

This compact shall become binding and obligatory when it shall have been approved by the Legislatures of each of the signatory States and by the Congress of the United States. Notice of approval by the Legislatures shall be given by the Governor of each signatory State to the Governors of the other signatory States and to the President of the United States, and the President of the United States is requested to give notice to the Governors of the signatory States of approval by the Congress of the United States.

EXH "A"  
pg 2

# Fax

**FAXED**

Klingsmith & Associates, P.C. Telephone (970) 641-1334 Fax (970) 641-1331

**Name:** Kathleen Klein  
**Organization:**  
**Fax:** 641-6727  
**Phone:**  
**From:** P.C. Klingsmith  
**Date:** December 14, 1998  
**Subject:**  
**Pages:** 4

Comments:

5  
PICK TO SEND

10/11/2011  
10/11/2011  
10/11/2011  
10/11/2011  
10/11/2011  
10/11/2011  
10/11/2011  
10/11/2011  
10/11/2011  
10/11/2011

EX-9

EX-9

Mike Peterson's original copy

HTTP://waterdata.usgs.gov/nwis-w/AZ/data/Components/HIST.CGL? STATNUM=09380000 & bdate=month=10 & bdate=day=01 & bdate

HISTORIC FLOW AT LEE FERRY

1953-1995  
 Year = 110/22/98 etc - mo Unit 1,000 a.f.

1	2	3	4	5
Water Year Ending Sept 30	Historic Flow a.f. +1000 +1750			Progressive 10-Year Total
1953	8,805	✓		
1954	6,116			
1955	7,307			
1956	8,750	✓		
1957	17,340	✓	✓	
1958	14,260	✓	✓	
1959	6,788	✓	✓	
1960	9,182	✓	✓	
1961	8,574	✓	✓	
1962	14,790	✓	✓	89,990
1963	2,520			93,705
1964	2,427			90,016
1965	10,633	✓	✓	93,544
1966	7,070			92,864
1967	7,824	✓	✓	83,146
1968	8,356	✓	✓	77,248
1969	8,650	✓	✓	78,340
1970	8,688	✓	✓	78,636
1971	8,607	✓	✓	80,708
1972	9,330	✓	✓	75,308
1973	10,141	✓	✓	82,530
1974	8,277	✓	✓	68,780
1975	9,274	✓	✓	67,216
1976	8,464	✓	✓	67,843
1977	8,280	✓	✓	68,268
1978	8,369	✓	✓	68,290
1979	8,333	✓	✓	87,782
1980	10,950	✓	✓	90,044
1981	8,316	✓	✓	89,793
1982	8,323	✓	✓	86,748
1983	17,520	✓	✓	98,125
1984	20,518	✓	✓	108,369
1985	19,109	✓	✓	118,201
1986	16,988	✓	✓	126,573
1987	13,450	✓	✓	131,754
1988	8,231	✓	✓	131,016
1989	7,995	✓	✓	131,278
1990	7,962	✓	✓	128,280
1991	8,111	✓	✓	126,075
1992	6,002	✓	✓	127,754
1993	8,137	✓	✓	118,371
1994	8,306	✓	✓	108,158
1995	9,505	✓	✓	96,555

Storage years

75000.000 minimum per Compact

the virgin flow. Beginning in 1962, caused by the retention and storage River Storage Project. The horizo acre-feet) shows the long-term aver Because the Colorado River Compac averages covering periods of ten y historic and virgin flows are display

The second chart on page 23, ent Selected Periods, is a graphical rep averages for several periods of recor were those to which reference is documents pertaining to the Colorad

Several important hydrologic fact pages 26 and 27.

- (1) A vast majority of the high fl
- (2) Since the 1924-1933 decade, flow has not exceeded the average v the exceptionally wet 1975-1984 th
- (3) For the period 1896-1921, Compact of 1922, the average virgin acre-feet per year, which is consider selected, including the long-term ave Ferry, Arizona was not installed unl Ferry prior to the 1922 Compact is e at other stations, e.g. the stream ( Arizona for the period 1902-1921.
- (4) For the longest period show annual virgin flow is 14.8 million acr flow is 12.2 million acre-feet.
- (5) For the next longest period annual virgin flow is 15.0 million acr flow is 12.0 million acre-feet. Many years, as well as for the 1896-1995 p flows made at other gaging station average is about equal to the 15. ( 1906-1967 period which was used a supply for the Central Arizona Project
- (6) The estimated average annu period is 14.7 million acre-feet. This p

Total 46 years

Storage in Fleming Gorge and Navajo Reservoirs began in 1902.  
 Storage in Glen Canyon Reservoir began in 1963.  
 Storage in Fortanella reservoir began in 1864.  
 Based upon provisional streamflow records subject to revision.  
 Note: The 1995 flow is 9,465,100 a.f. at Lee's Ferry, Arizona and 19,643 a.f. at the Paria River.

1996	1152	✓	✓
1997	1328	✓	✓
1998	1354	✓	✓

CO River Compact  
ARTICLE III

10/27/98  
MUF

a) Upper Basin - 750000 AF/y - (CO allotted 52% in subsequent negotiations)  
Lower Basin - 750000 AF/y

① 51.75  
CO 51.75  
NK 11.25  
UT 23.00  
WY 14.00

b) Lower Basin - 1000000 AF/y - In addition to (a)

c) Mexico - 1500000 AF/y - Treaty - if insufficient surplus  
1/2 from Upper Basin  
1/2 from Lower Basin

d) 75000000 AF/Minimum - 10 consecutive years aggregate Progressive Series

e) Upper Basin cannot withhold } water which cannot  
Lower Basin cannot require } normally be applied  
to domestic and ag  
uses.

f) Unapportioned water in excess of (a), (b), and (c) may be further equitably apportioned per Par (g). Can occur when either basin has reached its total beneficial consumption use as set out in (a) and (b).

g) Any two states can call for representatives of all Upper & Lower Basin States and the Pres. of the United States to meet and divide and apportion per (f) equitably between the Upper & Lower Basins. Must be ratified by the States Legislatures and Congress of U.S.

10/27/98  
 (7)  
 4/27

Down Payment on House (a) = 750,000 AF / water year  
 10/11 - 9/30

Down Payment for (b) = 1,000,000 AF  
 of cases

Interest for (c)  $\frac{150000}{2}$  = 750,000 AF

Possible minimum of the party = 925,000 AF

Good on the water flow at the party - Table 4

Period 1953 - 1995

and

USBR Monthly Release Rate at the party  
 Period 1996 - 1998

- 1) 750,000 AF minimum met in 38 of last 46 yrs.  
 Did not meet minimum 8 yrs (17% of time)
- 2) 850,000 AF minimum met in 24 of last 46 yrs.  
 Did not meet minimum 22 yrs (48% of time)
- 3) 925,000 AF minimum met in 14 of last 46 yrs.  
 Did not meet minimum 29 yrs (63% of time)

4) Proposed 18 yr Total of 75,000,000 AF has been met. (including Glen Canyon Bill)

# STATE OF COLORADO

Colorado Water Conservation Board  
Department of Natural Resources

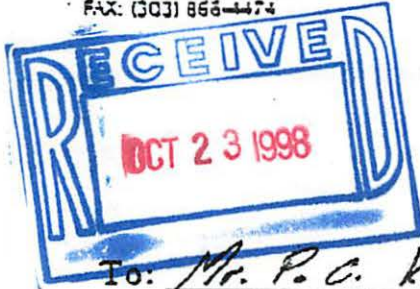
721 Centennial Building  
1313 Sherman Street  
Denver, Colorado 80203  
Phone: (303) 866-3441  
Fax: (303) 866-4474



Roy Romer  
Governor  
James S. Lochhead  
Executive Director, CNR  
Doris C. Uile, PE  
Director, CWCB  
Peter M. Evans  
Acting Director, CWCB



FAX COVER SHEET



Date: Oct. 22, 1998

Fax #: 970-641-1331

To: Mr. P. C. Klingsmith

Agency: Klingsmith & Associates

From: Randy Seaholm

Fax#: (303) 866-4474

Phone: (303) 866-3441

10 Pages transmitted, including this cover sheet

Dear Pete,

Attached are 6 pages describing flows at Lee Ferry, Arizona in 10 different manners (i.e. Virginia flows, gaged flows, 10-year averages). The table showing historic flows at Lee Ferry indicates the Upper Basin states have no trouble meeting the delivery obligation to the lower Basin states. Also attached are graphs for the Virgin River @ Littlefield, Arizona, the Gila River near Dome, Arizona, and the Colorado River at the Northern International Boundary for your information.

All this information is available via the USGS website on the Internet, the address of which appears at the bottom of the graphs. There are several other tributaries to be considered.

In closing, I can not agree with the conclusions in the last paragraph of your March 24, 1998 letter. I am frustrated with our conversations on this matter, the continual misunderstandings and disagreements. I wish

we could have time to make you understand why it is so very important to Colorado to be precise in what we say concerning the compacts.

Original Mailed:  Yes  No

Sincerely,  
Randy



May 14, 1998

Upper Gunnison River Water Conservancy District  
275 S. Spruce  
Gunnison, CO 81230

Re: *The Application for Water Rights by Arapahoe County*  
Case No. 88 CW 178 et al.

Ladies and Gentlemen:

You and the others working to prevent Arapahoe County, Parker and others from appropriating and moving water from Taylor and Union Park to the Front Range should be congratulated on your success before Judge Brown. It is a great victory.

Permit us, however, to act as a devil's advocate in the case. As pleasing as the decision is to POWER, we believe that it is likely to be reversed by the Supreme Court of Colorado if it is appealed. We believe that attorneys for Arapahoe county will strongly urge their clients to appeal. Generally and basically the appeal will probably be based upon many of Judge Brown's findings of fact concerning other persons intentions arising out of his interpretation of documents. The Supreme Court could, if it so desires, make such findings as well as a trial judge. The principal example of what I am speaking of here is the court's decision that the Bureau of Reclamation subordinated or agreed to a depletion allowance for junior water users for use only within the Upper Gunnison River Basin. This point is the keystone to the judge's decision, vulnerable, we believe, to being set aside by a Supreme Court searching for grounds to do so.

For this reason, we believe that if this matter is appealed, the river district and other opponents interested in persuading the Supreme Court to confirm the ruling should bring out the following points which were either glossed over by Judge Brown or not raised by him at all. An opportunity to do so arises because the trial judge touched upon all of these matters in his Findings and Decree.

- I. Conditional Decrees: Until this very case the Supreme Court of Colorado had held on several occasions that in determining whether any water was available for appropriation, the trial court must take into consideration the effect of valid conditional decrees. We have not done exhaustive research into this question but did hand Mr. Bratton two decisions by the Supreme Court holding the effect and validity of conditional decrees was a matter to be considered. We believe the Supreme Court should be urged to, (1) reverse itself on this point in this case, or (2) specifically overrule the cases in which water conditionally decreed was considered. The Supreme Court does not like to reverse itself. Moreover, the Supreme Court violated a well known legal principal, namely stare decisis



arriving at its decision that valid conditional decrees are not to be considered in determining water availability. It is more likely to correct this decree coming before it than to overrule prior decrees of long standing.

- II. Judge Brown only gave minimal consideration to the effect on water availability of the existing private instream flow decrees. He mentions at paragraph 152 page 87, of the decree that Arapahoe County's efforts at Texas Creek are interfered with because private instream flow rights of 60 c.f.s. exist. In our opinion, much more important is the fact that Arapahoe must allow 265 c.f.s of water to flow through the property on the Taylor River owned by the Cockrell Trust, downstream from the dam. We say this for two reasons:

First: if 265 c.f.s. were permitted to flow past the confluence of Lottis Creek with the Taylor River, plus the 60 c.f.s. decreed instream on Lottis Creek, any excess flow would probably occur for a relatively short period of time, namely the middle of May to the middle of June and would probably not be of the quantity Arapahoe needs. Second: it would require the diverters to build their diversion structures below this point which would immensely increase the cost of their diversion facilities over the cost they would incur if they could divert in Taylor or Union Park.

We would further point out that not only are there instream flow decrees in place on Taylor River, Texas Creek and Lottis Creek but also on Willow Creek, Illinois Creek, the Taylor River above the Taylor Reservoir and perhaps other tributaries of the Taylor River, along with instream flows decrees on Copper Creek and the East River below Emerald Lake and Copper Lake, to the south boundary of the Rocky Mountain Biological Laboratory's property.

- III. By far the most important reason the Upper Gunnison Basin as well as the whole state of Colorado has for denying Arapahoe's application is the fact that there is no water legally available in the Colorado River and its tributaries to provide Eastern Slope diverters with the water they seek, providing the Upper Basin States comply with their obligation to furnish water to California, Arizona and Nevada. The court in its decision refers to the Upper Basin States' obligations, at page 13, paragraph 20 c, of its decree to provide water under the 1922 compact to the Lower Basin States.

We believe the judge has not considered at least two additional blocks of water which must be allowed to flow downstream past Lee Ferry in Utah. The plain wording of the Colorado River Compact at Article III, sub-paragraph (a), (b) and (c) should be most carefully considered. Sub-paragraph (a) of the compact mandates the release of 7,500,000 acre feet of water per annum downstream. Sub-paragraph (b) provides that in addition the Lower Basin can increase its beneficial consumptive use of such waters by a million acre feet. We know that officials of the Colorado Water Conservation Board believe that the word "such" in sub-paragraph (b) refers to the water described in paragraph (a). That is a slender reed to rely on when it is considered that the water being discussed is all of "the waters of the Colorado River system;" as provided in Article I of the Compact.

Moreover, if the United States has a treaty with Mexico to provide it with Colorado River water, and if there is a shortage both the Upper and the Lower Basin States must supply additional water to alleviate the shortage, of which the Upper Basin has the duty to provide one-half thereof. We think this might amount to an additional charge of 750,000 acre feet per annum.

We understand from Mr. Seaholm of the Colorado Water Board that the Upper Basin States have only met their requirement to furnish 7.5 million acre feet per annum or 75,000,000 acre feet per 10 year period, 10 out of the past 64 years. If our understanding is correct, there has been a deficiency in the amount of water released in 54 of the years since the treaty became effective. If we add to that deficiency 1,750,000 additional acre feet which the Lower Basin States and Mexico can call upon, although they have not called on it yet, a terribly burdensome deficiency, which might well have to be made up, could be imposed upon the Upper Basin States. If the Upper Basin is ever charged with releasing the full amount of water the Lower Basin States and Mexico are entitled to, plus making up the deficiency, the burden would fall most heavily on the Eastern Slope which totally consumes the amount of water it diverts from the Colorado River.

We suggest that Colorado River Water Conservation District Board be asked to cooperate with the River District in calling a meeting with the Northeast, the Central and the Southeast Colorado Water Conservation Districts, together with the City and County of Denver to persuade Arapahoe to cease its efforts to divert Gunnison River water. If it persists, it will be "kicking a sleeping dog." If awakened, that dog could tear the pants off Colorado, on both sides of the Continental Divide.

After the discussion contained in the paragraphs just above we considered, we would hope that the Supreme Court would be made cognizant of the impending disaster which would arise if Arapahoe County were awarded a decree for the amount it is seeking, and if, indeed, it ever started withdrawing the amount of water it seeks from the Colorado River System.

Sincerely yours,

POWER

by P. C. Klingsmith  
P.C. Klingsmith  
PCK:hjp

Approved by POWER steering committee members as follows:

(S) <u>Herald Linn</u>	(S) <u>Maurice 'Mike' Peterson</u>
(S) <u>Ruth "Scottie" Willey</u>	(S) <u>Paul Vader</u>
19 <u>Ralph "Butch" Clark</u>	<u>approved by but not signed Remond Reed</u>

KLINGSMITH & ASSOCIATES, P.C.  
ATTORNEYS AND COUNSELORS AT LAW

P.O. BOX 59  
234 NORTH MAIN STREET  
SUITE 2A  
GUNNISON, COLORADO 81230  
TELEPHONE (970) 641-1334  
FAX (970) 641-1331

PHIL KLINGSMITH  
CLAYTON R. MILLER

Of Counsel  
P.C. KLINGSMITH

March 24, 1998

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


Dear Mr. Seaholm:

Thank you for your letter to me of February 13, 1998, in which you clearly set forth the position Colorado has taken with reference to its and the other Upper Basin states' obligation to the Lower Basin states concerning the waters of Colorado River. I want to play the devil's advocate concerning the meaning of the Colorado River Compact in this regard, but first I would ask whether you would furnish me with the average flows into the Colorado River of the Gila River in Arizona and the Virgin River in Utah, and or any other major streams that contribute to the Colorado River's flow below Lee Ferry.

One thing that appears to be in clear agreement between yourself and me and that is that no additional trans-mountain diversions of water from the Colorado River system should be made, in-as-much as the Upper Basin states have not met their Compact obligation. This is for the reason that "there is not enough water in the mainstem of the Colorado River" to satisfy the reapportionments made under paragraph III (a) most of the time. If the Upper Basin states have not met their Compact requirement since 1934 except during the 1983 - 1993 period, it should be agreed Colorado cannot allow any additional trans-mountain diversion of the Colorado River water to take place within its boundaries. If the Upper Basin states have only met their commitments for a period of 10 years in the past 64 years, Colorado cannot permit any further diversions to occur which it has any control over. I have in mind the unhappy results of the suit brought against Colorado by Kansas to force Colorado to comply with its duties to allow water to flow into Kansas in the Arkansas River.

Thanks for your help and interest in this matter.

Sincerely yours,

  
P.C. Klingsmith  
PCK:hjp

9/6/98

*This letter has answered  
See us below 10/22/98*

Colorado Water Conservation Board  
Department of Natural Resources

721 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

February 13, 1998

Mr. Peter C. Klingsmith, Attorney  
Gunnison Basin POWER  
P.O. Box 1742  
Gunnison, Colorado 81230

Dear Mr. Klingsmith,

Thank you for your letter of January 8, 1998 concerning the state of Colorado's position on Article III(b) of the Colorado River Compact. Article III(b) provides that the Lower Basin may increase its beneficial consumptive uses by 1,000,000 acre-feet per annum from waters of the Colorado River System. In order to address your question, Article III, paragraphs (a) to (e) of the compact and the terms defined in the Compact must be read together. The pertinent sections are as follows:

### *Colorado River Compact*

#### *Article III*

- (a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper and to the Lower Basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.*
- (b) In addition to the apportionment in paragraph (a), the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre-feet per annum.*
- (c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any water of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the Upper Basin and Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).*
- (d) The states of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten*

*consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact.*

- (e) *The states of the Upper Division shall not withhold water, and the states of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses.*

Critical to your question is the definition of the term, "Colorado River System" which is defined in Article II(a) of the Colorado River Compact as follows:

*"The term 'Colorado River System' means that portion of the Colorado River and its tributaries within the United States of America."*

Additionally, there are two major factual reasons that the Lower Division States can not seek any additional water from the "Upper Basin" under paragraph III(b). The first reason is that there is not enough water in the mainstem of the Colorado to satisfy the apportionments made under paragraph III(a) most of the time. The progressive 10-year moving average virgin flow at Lee Ferry has not exceeded 15.0 million acre-feet since 1934, except during the 1983-1993 period. Also, the estimated virgin flow average since 1896 is only 14.9 million acre-feet.

See III d -  
LB States get  
7,500,000  
comp held on  
high water.

Secondly, the negotiators of the compact looked at the entire "Colorado River System" in making the apportionments thereunder. The Lower Basin has already taken the additional water and then some from the Colorado River tributaries. The "Consumptive Uses and Losses Report" prepared by the U.S. Bureau of Reclamation every five-years shows consumptive uses for the state of Arizona alone range between 4.0 and 6.3 million acre-feet annually, which is well in excess already of the additional water apportioned to the Lower Basin in Article III(b). Furthermore, this does not even consider uses made by those portions of Utah and New Mexico that are also part of the Lower Basin.

In other words, the allocations in Articles III(a) and (b) are made from the mainstem of the Colorado River and its tributaries, including Lower Basin tributaries such as the Gila River in Arizona and the Virgin River in Utah, Arizona and Nevada. In contrast, Article III(d) applies only to flows in the mainstem at Lee Ferry. Therefore, the right of the Lower Basin to increase its consumptive use by 1,000,000 acre-feet pursuant to Article III(b) refers only to Lower Basin tributaries. It does not authorize the Lower Basin to call for more water at Lee Ferry. This is clear from a plain reading of the Compact, as well as extensive background in the negotiations and subsequent events. For example, Arizona refused to ratify the compact until 1944 precisely because Article III(b) would limit its consumptive uses on the Gila River.

optimistic  
hopeful  
ing

Given these facts, it is extremely unlikely that the Lower Basin will ever make an issue out of Article III(b) and even more unlikely that they could ever prevail on the issue in a court of law.

Mr. Peter C. Klingsmith, Attorney  
February 13, 1998  
Page 3 of 3

I hope this addresses your concerns relative to Article III(b) of the Colorado River Compact.

Respectfully,



D. Randolph Seaholm  
Chief, Interstate Streams Investigations

Cc:  
Colorado Water Conservation Board Members  
Manager, Upper Gunnison River Water Conservancy District