

P.O. Box 1742
Gunnison, CO 81230

SUBORDINATION AND CALL PROTECTION FROM THE ASPINALL UNIT

**A REPORT TO THE UPPER GUNNISON RIVER
WATER CONSERVANCY DISTRICT AND
TO THE UPPER GUNNISON BASIN COMMUNITY**

**BY
GUNNISON BASIN POWER**

April, 1996

INTRODUCTION

This report follows examination of by members of Gunnison Basin POWER of records and documents furnished by Mr. L. Richard Bratton and the law offices of Bratton and McClow, L.L.C.. Access to this material is very much appreciated.

The records and documents are notes, letters, reports, and similar material related to the early period of discussion about an idea eventually to become Wayne N. Aspinall Unit of the Bureau of Reclamation. Generally they date from the mid-1940s to the mid 1950s. Taken as a whole, they offer understanding of background and intent for the many statements and actions of local, state, and federal participants in shaping the what was then called the Curecanti Project and sometimes the Curecanti Reservoir.

Study of the documents has certainly helped POWER to understand the 60,000 acre foot subordination concept as well as the historical operation by the Bureau of Reclamation (BOR) to release sufficient water to satisfy downstream calls which in turn protects the Upper Gunnison Basin water users' junior decrees. Those records, however, reinforce POWER's long-held beliefs that promises of protection did exist and were relied upon by

the people of Gunnison County, that they have been recognized by the BOR, and that those promises should be formalized and enforced.

The material furnished, and other papers that may exist, substantiate POWER's position that promises were made to people of the Upper Gunnison Basin in return for the people's support for the Curecanti Project. POWER believes that the Upper Gunnison River Water Conservancy District (UGRWCD) should immediately commence the implementation of these agreements, terminate opposition to this action, and require the BOR to comply with its obligation to the people of this community. It is difficult to understand what more important issues would take precedence over requiring the BOR to honor its promises. The real water issues for our community are surely not addressed by the possibility of agreements between the UGRWCD and the BOR for replacement of subordination by allowing the people of this community to benefit from water stored in Blue Mesa Reservoir by paying for it.

Perhaps if further details and issues are explained to POWER and the Gunnison Community, it might generate needed support for the UGRWCD Board in its efforts to enhance and protect the water rights of the people of this community. By this we do not mean to indicate that the UGRWCD Board is not dealing with other important issues, but surely none can be as or more important for our basin's future than those under discussion here.

We will now deal with six issues. References given in the text are to appended portions of copies of reports and documents. The purpose for appending this material is to permit readers not only to be aware of the source for a statement but also to provide an opportunity to examine its context.

ISSUE ONE === SIZE OF THE DAM

Some have said that the BOR did indeed want to erect a much larger dam than the "small" dam now in existence that impounds about 940,000 acre feet of water. The BOR's initial plan was to build a dam that would contain 2,500,000 acre feet of water or approximately two and a half times as much as the present Blue Mesa Reservoir holds (see resolution of the Gunnison Watershed Conservation Committee relative to Curecanti Dam by E. L. Dutcher dated April 19, 1951; la).

Here we will not argue engineering facts but suffice to say this would have backed water up to the southern part of Gunnison. The Adams-Wilson

ranch south of Highway 50 in the valley would have been inundated as well. The Montrose Water Committee recognized the essential accuracy of the Gunnison Watershed Conservation Committee statement. (See their memo to E. L. Dutcher of April 30, 1951; 1b). At the second meeting of the Policy and Review Committee - Gunnison River Storage of December 14, 1951 (1c), it was confirmed that Plan A was the Bureau of Reclamation's study that provided for a dam backing up 2,500,000 acre feet, Plan B was for 1,935,000 acre feet, and Plan C (the small dam) was for 940,000 acre feet of water. In a letter from E. L. Dutcher to Judge Clifford H. Stone of March 24, 1952, several references are made to the 2,500,000 acre foot reservoir proposed by the BOR (1d). In a letter from Judge Stone to Mr. Dutcher, a reference was made to the proposed 2,500,000 acre foot reservoir (1e).

These references appear to contradict the belief that there was never serious consideration given to the plans for a dam that would have flooded the town. The big dam was certainly a worry to Mr. Dutcher and to the other people who were concerned about the creation of the Curecanti Reservoir. The Gunnison Review Committee met on March 3, 1952, and we believe the document reviewed by that committee on February 23, 1952, would also shed light on the plan of the BOR in this regard. There is reference to a "Plan E" for the Curecanti Unit that should also be located (1e).

ISSUE TWO === NEED FOR LOCAL APPROVAL

POWER believes that without the consent and approval of the people of the Upper Gunnison River Basin, the Colorado River Water Conservation District would not have lent its approval to the project. Without the River District's approval, the Colorado River Water Conservation Board would not have approved it. Without the approval of that board, Colorado's representatives in Congress would not have approved it; and without their approval, Congress would have never funded the Curecanti project. Political forces throughout the state supported the project because the Gunnison community supported it only after various compromises were reached. It would be a disservice to many people in the 1940's, 50's, and 60's who worked diligently on this project to imply that their efforts were not immensely important.

In fact, great blocks of Mr. Dutcher's time were spent on opposing the creation of the large dam, and in providing that this community would be protected, and compensated in various ways if the small dam was built. See the letter to Mr. Dutcher dated April 9, 1951 (2a) by the Colorado River Water Conservation District in which it was stated that:

Finally, I hope that, no matter what their decision may be on their own particular problems the committee will give their consent to the Storage Project as a general proposition, ---.

On April 14, 1951, Mr. Dutcher commented that Mr. Merrill's argument was not very impressive with the local people as they were not close enough to the overall water picture (2b). Mr. Dutcher seemed to think that the feelings and opinions of the local people were important.

The same is also shown in the official comments and recommendations of the State of Colorado and the Colorado River Storage Project (pages 3 and 8 of 2c). There was a Policy Review Committee - Gunnison River Storage meeting on September 28, 1951 (2d). This committee had the major task of ascertaining whether a plan could be worked out for storage on the Gunnison River that would preserve the best water development in Colorado. The approval of this committee was sought so that the project could go forward.

Mr. Dutcher certainly believed that the approval of the Gunnison people was necessary for the project to proceed as shown by his letter of March 24, 1952 to Judge Stone (1d). He stated that the approval of the Gunnison Committee must be predicated on the premise that there will not be any material changes in the size and location of the dam, capacity of the reservoir, as such had to be approved by the committee. If the approval of the people of the Upper Gunnison Valley was not necessary, Mr. Dutcher was certainly misinformed and certainly did much work that was unnecessary.

On April 15, 1952, Mr. Dutcher, in a letter to Judge Stone, regarding the report of the Policy and Review Committee, of the Colorado Water Board, even went so far as to say that if the report is finally amended,

... I will be in a position to approve it and I sincerely trust that the amendments can be made without another meeting. (page 2 of 2e)

Was Mr. Dutcher inappropriately assuming authority that he did not possess? In a letter to L. Richard Bratton on March 15, 1962 (2f), Mr. Barnard, who was chairman of the Colorado River Water Conservancy District, stated that:

... the Secretary of the Interior has agreed to accept the assignment of conditional decrees to the Curecanti Unit as executed by the Colorado River Water Conservation District. He tells me that the Secretary has agreed that negotiations

should be carried forward with your people in the Gunnison Basin, the effect of which would be to subordinate the Curecanti rights, represented by these decrees, to the consumptive use requirements of the private projects with which you and others are concerned. I understand that all of the formalities involved in the acceptance of the assignment have not yet been complied with, and no one knows when such formalities will be completed. (page 1 of 2f, with emphasis added)

Following through with commitments from federal and state officials and political goodwill, as well as statutory requirements are all part of the equation in the approval process of a major project, and in that sense, local approval does mean "permission". Consider the implications of Mr. Bernard's statement and these thoughts in connection with an alternative position that the State was not required to obtain "permission" from our local community to build the Aspinall Unit. Next, consider what agreements and commitments were made to the people of the Gunnison Basin to protect the upper basin junior decree from a call by the Curecanti senior water decrees.

ISSUE THREE === 60,000 ACRE-FEET OF SUBORDINATION

Discussions about having 60,000 or more acre feet of upstream protection from calls by the project occurred as early as April 9, 1951 (see the letter from Mr. Merrill to Mr. Dutcher; 2a). Mr. Dutcher in response was not persuaded that the project would not place a call on junior upstream decrees (see his letter to the Colorado River Water Conservation District of April 14, 1951; 2b). However, this does not mean the people of the upper basin gave up their demands for 60,000 acre feet, consumptive use of water against reservoir calls.

On March 3, 1952, Mr. Dutcher indicated the Gunnison Watershed Conservation Committee, of which he was a chairman, would approve the construction of the Curecanti Project provided that the waters of the Taylor Park Reservoir were transferred to the people of this district (1a, page 3). What Dutcher originally wanted was 106,000+ acre feet of protection for junior decrees above the Curecanti Project by acquiring the Taylor Reservoir. This was later apparently withdrawn in consideration of receiving a 60,000 acre foot depletion out of the Curecanti Project and downstream protection by planned water releases (see page 12 and 13 of BOR Reconnaissance Report, March 1964, 3a; a letter from John Barnard to L. Richard Bratton of March 15, 1962, 3b; letter from the Regional Solicitor, Department of Interior dated October 26, 1984, 3c; page 13 of the

District Water Court Decree dated June 16, 1986, 3d; letter from BOR to Senator Tim Wirth dated March 14, 1990, page 11, 3e; and The Case for the Curecanti Reservoir, page 8, paragraph 2, 3f, circa April 1951).

As a result of these general understandings, the transfer of the Taylor River rights to the Gunnison people was discontinued (see the letter of April 15, 1952 of Mr. Dutcher to Judge Stone; 2e). There are several other documents in POWER's files to support the 60,000 acre foot protection against Curecanti (now Aspinall) Unit calls.

The terms of the initial contract setting forth these understandings and agreements was prepared in the early 1960s, probably by Mr. Porter and others (3g). In this draft Statement of Intent between the Upper Gunnison River Conservancy District acting on behalf of the valley people and the BOR, it was said that the operating principals of the reservoir would be written in a way that would allow an amount of water to be determined by the United States not to be subjected to call by the project under its decrees and that would:

... allow water depletion of not less than 60,000 acre feet of water upstream from the Blue Mesa Reservoir including the depletion of the Fruitland Mesa Project

ISSUE FOUR === CALL PROTECTION AND ITS RELATIONSHIP TO SUBORDINATION

Moving to the issue of call protection, there are several general positions to which POWER can agree. First, there should probably not be a lumping together of the 60,000 acre foot subordination promise and the agreement by the BOR to protect the upper Gunnison water users against downstream calls. The latter was basically an understanding and agreement that whenever downstream calls were/are placed on the river, water would be released to satisfy these calls regardless of the amount. It was assumed that such protection could be afforded by the normal methodology of operating the reservoir without the necessity of quantifying the amount of water involved. This lumping of call protection and subordination, however, did not originate with POWER, but rather occurred much earlier, as shown by a 1957 letter from the Colorado River Water Conservation District (4a).

POWER supports efforts by the UGRWCD's to work effectively with the BOR in seeking to provide an agreement that the Aspinall Unit operations, which have existed for the past 30 years and which have in effect provided

enough water flows to meet the needs of downstream senior rights, can continue substantially - though not entirely - in the same manner.

It is unfortunate that this agreement was not entered into 30 years ago, but the sooner it is completed and executed the better. POWER is not sure of the meaning of the frequently used qualifying term, "though not entirely," and assumes that it means in a very dry year there would be some potential limitation upon this protection.

POWER also believes that people in the basin always expected one or both of the above (60,000 acre foot subordination and downstream protection) would occur. There is ample evidence to support these expectations, but the origins of both these expectations are found to be considerably earlier than 1959. For example, in 1951 the Colorado River Water Conservancy District through E. C. Merrill, its secretary, wrote to Mr. Dutcher a long and explanatory letter (2a) concerning the reasons the Gunnison people should support the Curecanti Project, and Merrill enclosed a document entitled "The Case for Curecanti Reservoir" (3f). The essence of that document is the statement by the District that:

However, if Curecanti Reservoir is built this cannot happen as the water the Uncompahgre Project needs will be stored in that reservoir below all your uses and that Project will never bother you again. (page 4 of 3f)

Furthermore the "The Case For Curecanti Reservoir" sent by Mr. Merrill to Mr. Dutcher in April of 1951, summarized points why people of the Upper Gunnison River District were to support the building of the reservoir. The first two points given are:

- 1) It will take care of your [the Upper Gunnison's] debts to the Lower Basin, in the worst conditions ever known in the past.
- 2) It will remove the fear that the Uncompahgre Project can ever exercise its priority against you. (page 8 of 3f)

If the conclusions reached in 1951 were as clear and definite as it appears they were, surely these matters were under discussion prior to that time.

It has been stated that downstream call protection was never promised for free. POWER believes Mr. Dutcher and others working on these matters in the 1950s would have been affronted by the suggestion that the people of the upper valley would have had to pay for releases by the BOR to satisfy downstream calls.

Consider the letter from Mr. Barnard of July 29, 1957, to Mr. Porter (4a). In it he discussed rights acquired by the BOR from the Colorado River Water

Conservation District and stated in paragraph 2 that, "Rights acquired in Curecanti Reservoir for irrigation purposes will be utilized by a system of exchange". The district would have the right to call on water stored in the Curecanti Reservoir to be released to meet downstream demands senior to certain junior decreed rights along the upper reaches of Gunnison and its tributaries. The most important and largest of these downstream senior rights, of course, is that of the Uncompahgre Water Users Association. In other words, rather than pay for the water to be released to satisfy downstream uses, the water was to be supplied by exchanging water that the Upper Gunnison District would control in the reservoir or above it. POWER believes that the conditional decrees owned by the district are the source of water discussed by Mr. Barnard to be exchanged with BOR. Apparently if this was done, the current danger of losing this water by non-use would disappear.

Mr. Barnard, in that same letter in 1957 to Mr. Porter (4a), confirmed that one of the purposes of the Curecanti Reservoir would be to permit the Upper Gunnison people to store water in the Curecanti Reservoir to be released to downstream demands senior to certain junior decreed rights along the upper reach of the Gunnison River. Mr. Barnard stated:

Water stored in the Curecanti would be released when these demands are made, and these presently existing rights can then avail themselves of the amount of water flowing in their various sources of supply.

A combined report was prepared by the secretary-engineer and counsel of the Colorado River Water Conservation District dated July 21, 1959 (4b). In that report, at page 3, it is stated that the Curecanti Project would serve to provide water for other beneficial uses within the Gunnison Basin itself and specifically,

Water impounded in these reservoirs can be made available to supply the demands of the decrees of the Uncompahgre Project through the Gunnison Tunnel. Thus, the burden on the stream above the Blue Mesa Reservoir will be relieved; and water, which now must be released or bypassed to meet these demands, will be available for diversion in Gunnison County under existing decrees, and may be utilized for irrigation and other purposes, by exchange for stored water in the Blue Mesa Reservoir.

The statement makes clear that there was indeed an agreement with the people of the Upper Gunnison River to protection against calls by the reservoir. The water was to be furnished "by exchange", or in other words, "for free".

One of the important reasons the people of this community believed they had an agreement with the BOR to provide downstream protection was a result of the above combined report. In sum, it would certainly appear that by the agreed method of releasing water from the Curecanti Reservoir, the prior needs of the Uncompahgre Water Users Association and the Redlands Power and Water Company could be satisfied. Nothing in this report suggests that the people of the upper Gunnison valleys should pay for the water that the proper regulation of the release of water from Curecanti would make available.

ISSUE FIVE === CONTRACT

Although a final form of contract has not been drafted between the BOR and the people of the Upper Gunnison River Basin, sufficient evidence exists of promises made during the past 40 to 50 years to allow the terms of the agreement to be plainly shown. When parties act as though a contract exists, and act to their mutual benefit and detriment, a contract can be found and approved even though it has not been formalized.

A great many meetings and much correspondence have concerned the agreements and understandings with the BOR. They contradict assertions that no such basis exists to support a claim against the United States. An example is the letter from L. Richard Bratton to the BOR on December 4, 1962 (5a) which asserted there was a commitment to the upper Gunnison River of 60,000 acre feet.

The UGRWCD should now persuade the BOR to keep its promises. If it can not, the people of Gunnison County should be apprised of this fact and be given the opportunity to decide whether the BOR should be further encouraged to perform its duties by suit. It seems untenable to allow the rights of the people of the Upper Gunnison River District to lose the protection to which they are entitled, to be neglected, and perhaps substituted, by agreements that would only last a few years and which would require the people of this district to pay for water that was promised to them free.

POWER believes that the people have not been fully informed as to their rights. The Board of the District should insist that the BOR perform on its promises to the people of the upper basin of the Gunnison River.

ISSUE SIX === NEEDED INFORMATION

POWER has repeatedly attempted to furnish information supporting its position that the Curecanti Project did promise call protection for the upper basin by providing a facility that would meet downstream senior demands through normal operation, that such protection has been provided, and an agreement should be drafted and executed so stating.

Finally, POWER believes further investigation would be very helpful, particularly of agreements and understandings that went into effect many years ago. Review of the materials available suggests that documents such as following should be obtained and examined:

- a. Mr. Dutcher's statement to the Colorado Water Conservation Board of June 11, 1951.**
- b. Plan E, developed by the Gunnison Watershed Conservation Committee, which is referred to in Mr. Dutcher's letter of March 3, 1952.**
- c. Final report of the Policy and Review Committee of the Gunnison River Storage and Appendix A referred to in Mr. Dutcher's letters of March 24, 1952, and April 8, 1952.**
- d. BOR's correspondence and plans from 1945 forward. Specifically, its report on the Colorado River project. (See statement of Colorado of June 1954).**
- e. The 1951 reconnaissance report of the BOR referred to in the October 1957 study.**
- f. The 1959 Bylaws of the UGRWCD and drafts.**
- g. Later drafts of the statement of intent and agreement with the BOR.**

POWER looks forward to the opportunity of examining these and other materials such as those assembled in the several collections of papers of Wayne N. Aspinall, the collection of the William H. Nelson Colorado Water Files, the archives of the Bureau of Reclamation, and archives of the Colorado Water Conservation Board.

POWER wants to cooperate and participate knowledgeably, particularly with the UGRWCD, and to avoid an adversarial position. Cooperation is a two-way street and the people of the Upper Gunnison Basin can only benefit from the cooperative efforts of all concerned toward seeking resolution of these long standing issues in a manner as was intended so many years ago.

~~TOP SECRET~~
J. H. Dulek

1a

RESOLUTION OF THE GUNNISON WATERSHED CONSERVATION
COMMITTEE RELATIVE TO THE CURECANTI DAM

WHEREAS, officials of the Bureau of Reclamation under the sponsorship of the Colorado Water Conservation Board have submitted to the citizenry of the upper Gunnison River Basin (which means that area from Crystal Creek east to the Continental Divide) their plans for the construction of certain dams under the Colorado River Storage Project report, for the storage of water in the upper Colorado River Basin, and

Whereas, one of the dams proposed, known as the Curecanti Dam, will, if constructed, impound approximately 2,500,000 acre feet of water, and the reservoir will extend from the dam site east to within one mile of the city limits of the City of Gunnison, Colorado, and all of the ranches, resorts, and other property along the Gunnison River Basin between the dam site and the City of Gunnison will be inundated, and

Whereas, a series of meetings have been held in the upper Gunnison River Basin by the various groups and organizations for the purpose of determining whether the construction of the Curecanti Dam would be beneficial or detrimental to the people in the upper part of the Gunnison River Basin, and

Whereas, the Gunnison Watershed Conservation Committee was organized and selected for the purpose of representing the interested organizations and people in the upper part of the Basin in connection with said matter, and

Whereas, after careful and thorough consideration it is the opinion of the people represented by said Committee that the losses and damages that will result from the construction of the Curecanti Reservoir, as now planned, will far outweigh any benefits that might accrue to the people in this area, and that the construction of the said Curecanti Dam as now planned and the reservoir which will result therefrom will cause irreparable injury and loss to the people and property in this area for the following reasons, to-wit:

1. That it will inundate approximately 20% of the ranch land in

the only ones injured, are entitled to fair treatment and consideration and have definitely concluded that certain adjustments must be made and that the same must be ratified and confirmed by congressional act as a part and parcel of the proposed projects if the construction of the Curecanti Dam is authorized.

THEREFORE, BE IT RESOLVED by the Gunnison Watershed Conservation Committee, representing the people in the upper Gunnison River Basin, that the following adjustments be made and incorporated as a part and parcel of the Colorado River Storage Project plans and that the same be sanctioned and approved by congressional act:

1. That a coffer dam be constructed at some suitable point below Iola for the purpose of preventing the water in the reservoir from inundating that part of the Gunnison River Basin above the coffer dam.

2. That the Taylor Park dam, reservoir, waters and increased storage rights be transferred and conveyed to the people in the upper Gunnison River Basin for domestic, irrigation and industrial purposes and that the water stored therein be used to firm the Curecanti Reservoir, thereby permitting and supporting the construction of the coffer dam lower down the river.

3. That the engineering surveys and investigations of projects in the upper Gunnison River Basin be completed as quickly as possible and prior to any congressional action on the Curecanti Dam, and if the surveys disclose that one or more of the proposed projects is found to be feasible that the people thereby affected shall have the right to insist upon the construction and completion of said project or projects prior to or concurrently with the construction of the Curecanti Dam and as a participating project or projects.

4. That the Government as compensation for the loss of revenue in the form of taxes and for lowering the economy of Gunnison County, pay to Gunnison County the sum of \$500,000.00, prior to the construction of the dam, and a reasonable amount annually thereafter as may be determined by a survey and investigation of an impartial committee or group working in conjunction with the local people,

5. That the Government provide whatever funds are necessary for the additional school facilities in Gunnison as well as maintenance and

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reduction, of range rights and privileges on the National Forest and Public Domain, from the ranches that will be inundated, to any new lands that will be taken up by the permittees or their assignees.

3. It is questionable whether there will be any good resort sites bordering the Curecanti Reservoir yet the resort owners whose lands will be inundated should be given a preferential right to new locations on Government lands bordering this reservoir, and on other reservoirs which may be constructed in the upper Gunnison River Basin.

4. That in the acquisition of the lands that will be inundated, and other property affected by the proposed Curecanti Reservoir, the Government shall take into consideration the effect of the income tax burden and the devaluation of the dollar in awarding its compensation to the owners of said properties.

5. That arrangements be made in the regulation of the water from the Taylor Park reservoir to prevent, as much as possible, the injury to and adverse effect upon the fish life and fishing conditions along the streams affected, and that the local people have a permanent voice in such regulatory measures.

BE IT FURTHER RESOLVED, that as the above conclusions and requirements have been made after careful, thorough and complete study, debate and consideration, that it is the firm belief of the people in this area that such requirements are fair, reasonable and just.

BE IT FURTHER RESOLVED, that copies of these resolutions be transmitted to Gov. Dan Thornton, the Colorado Water Conservation Board, to the Colorado River Conservancy District, to the Delta County Agricultural Planning Committee, to the Board of Directors of the Montrose Chamber of Commerce, to the Colorado State Agricultural Planning Committee, and to the press.

Upon motion duly made and seconded the above and foregoing resolution was unanimously passed, approved and adopted by the Gunnison Watershed Conservation Committee representing the people in the upper Gunnison River Basin, this 19th day of April, A.D. 1951.

GUNNISON WATERSHED CONSERVATION COMMITTEE

By: E. L. Dutcher, Chairman

April 30, 1951

Gunnison Watershed Conservation Committee
Gunnison, Colorado

Attention Mr. E. L. Dutcher, Chairman

Gentlemen:

In response to your letter of recent date enclosing copy of the resolution passed by the Gunnison Watershed Conservation Committee relative to the building of the Curecanti Dam, we wish to say that while the Montrose Water Committee goes along with Gunnison in some of their requests and demands, it is felt that these requests and demands should be considered as subsequent to the building of the Curecanti Dam. The Montrose Water Committee does urge the Colorado River Water Board to approve the construction of the Curecanti Project in the initial phase of the Colorado River Water Development.

In meeting, the Montrose Water Committee took up the Gunnison resolution, point by point, and its conclusions were as follows:

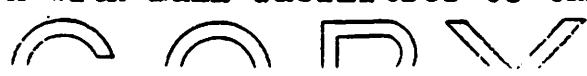
1. COFFER DAM: It is ~~was~~ not believed that the Montrose Water Committee was capable of passing on the engineering problems involved in the construction of such a coffer dam. It was felt, however, that the additional cost of construction, together with the decreased capacity of the reservoir might be a prohibitive factor

2. TAYLOR PARK RESERVOIR: The Committee was agreeable to any mutual understanding that might be reached between the parties concerned in the transfer of storage rights in the Taylor Park Reservoir to the Curecanti Reservoir, but believes that such an agreement should not be a condition precedent to the construction of the Curecanti Dam.

3. ENGINEERING SURVEYS & INVESTIGATIONS: It was agreed that these should be completed as rapidly as possible when requested by those concerned.

4. COMPENSATION FOR LOSS OF REVENUE: It is believed that Gunnison County and the individuals concerned should be properly re-imbursed for all losses sustained as a result of construction of the Curecanti Dam.

5. PROVISION FOR SCHOOL FACILITIES; It is the understanding of the Montrose Committee that in the case of the construction of such projects as the Curecanti Dam it is customary for the Government to provide a town with full facilities to take care of the working force.



6. RELOCATION OF HIGHWAY 50: The Committee is in agreement with Gunnison on this matter but feels that it is a matter for the Government agencies and the Colorado State Highway Board to decide. Experience has shown that the Government in reconstruction of roads on such projects usually replaces with better roads than those originally in use.

7. HIGHWAY FROM GUNNISON TO HINSDALE COUNTY LINE; Committee is in agreement with Gunnison, but reference to Point #6, above, will cover this matter.

8. FISH AND WILDLIFE: It is reasonable to expect that the general policy followed by the various services in the creation of other reservoirs will be followed in the construction of the Curecanti Dam.

9. SURVEYS FOR THE UPPER GUNNISON: STUDY OF RE-SEEDING AND METHOD OF IRRIGATING: The Montrose Committee is in agreement with Gunnison to the extent that it requires a pledge that participating projects in this area be given priority on the revenues from power development for survey projects, but believe that these surveys should not be a condition precedent to the construction of the Curecanti Dam.

On the matter of the five points outlined on page 4 of the Gunnison resolution relative to further adjustments "provided legal considerations will permit", the Montrose Committee reports to you the following conclusions:

1. It is agreed that the ranchers whose lands have been inundated shall have first right to re-location.

2. It is agreed that proper arrangements should be made for the transfer, without reduction, of range rights on National Forest land and the Public Domain lands, for those whose land is inundated.

3. It is agreed that the resort owners whose property is affected by the building of the dam at Curecanti be given preferential right to new sites.

4. It is agreed that in cases of property owners affected by the Curecanti Dam the effect of Income Tax and the devaluation of the dollar should be considered.

5. Regulation of the Taylor Park Reservoir is a matter for a mutual understanding between those parties directly concerned and Government agencies.

In closing, the Montrose Water Committee would be glad to meet at any time with the Gunnison Watershed Conservation Committee if the latter Committee so desires, in the event that said committee is in possession of information not available to the Montrose Water Committee that would enable the Montrose committee to go along with

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MINUTES OF THE SECOND MEETING

POLICY AND REVIEW COMMITTEE--GUNNISON RIVER STORAGE

December 14, 1951

Attendance

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

Members of Committee

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

Absent:

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

Secretary

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

Federal Observers

Bureau of Reclamation

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

Fish and Wildlife Service

A. B. Eustis--Denver, Colorado

<u>RESERVOIR SITE</u>	<u>PLAN A*</u>	<u>PLAN B*</u>	<u>PLAN C*</u>
Curecanti	2,500,000 A.F.	1,935,000 A.F.	940,000 A.F.
Crystal	40,000 A.F.	510,000 A.F.	510,000 A.F.
Whitewater	880,000 A.F.	880,000 A.F.	880,000 A.F.
Taylor Park			760,000 A.F.
Gateview			308,000 A.F.

*Active storage capacity of 2,480,000 acre-feet held constant in all combinations.

The study disclosed that the only increased service over the Bureau plan from these alternatives is added output of electrical energy (Plan B: 21.9 percent initially and 26.8 percent ultimately over Plan A; and for Plan C: 16.8 percent initially and 26.2 percent ultimately over Plan A). The cost of this additional generation varied from 13.1 to 22.4 mills per kilowatt hour, showing these alternatives to be relatively less feasible from an economic standpoint than the Bureau plan.

6. Question 2: What is the relative effect of decreased storage capacity in the Curecanti Reservoir on power production of Gunnison River units of the Colorado River Storage Project?

The results of the studies show the following power potential of the Gunnison River with various capacities for Curecanti Reservoir:

MEAN ANNUAL ENERGY GENERATION

Units: Million kwhr

	Curecanti 2,500,000 af		Curecanti 1,935,000 af		Curecanti 940,000 af		Curecanti Eliminated	
	Ini- tial	Ulti- mate	Ini- tial	Ulti- mate	Ini- tial	Ulti- mate	Ini- tial	Ulti- mate
Curecanti	327.9	196.1	298.5	173.2	224.7	139.3		
Crystal	284.1	176.6	277.8	175.0	243.7	158.1	189.0	145.0
Whitewater	290.0	164.6	288.8	168.0	274.7	156.1	245.6	152.5
TOTAL	902.0	542.3	865.1	516.2	743.1	453.5	434.6	297.5

7. Question 3: What is the amount of regulatory storage required at the Curecanti Reservoir site to facilitate full irrigation development in the Gunnison River Basin from its mouth to the headwaters?

The Region 4 studies of storage required to facilitate irrigation use in the Gunnison Basin assumed that: (1) no allowance was made for a diversion to the Arkansas River Basin, (2) a demand on the proposed Whitewater Reservoir to replace water now being applied to Grand Valley from the Colorado River was not considered, (3) full irrigation development was assumed to include all the pro-

General Discussion

13. Messrs. Cory and Peterson observed that the studies made at the request of the Committee show no alternatives in the Gunnison Basin to have an economic feasibility comparable to the Curecanti Reservoir site. Mr. Dutcher stated that he thought the studies would include all other possible reservoir sites in the Upper Gunnison and wondered whether any information was available to determine the aggregate amount of water that could be impounded in the Basin. He also felt that provision for some storage, but not necessarily in the amount of 2,500,000 acre-feet, might be feasibly substituted for the Curecanti. Bureau representatives pointed out the needs for the regulatory system of reservoirs in the Colorado River Storage Project plan and of the high favorability of the Curecanti site as one of the important points of regulatory control in the Upper Colorado River Basin System, and the relationship of providing regulation of water for within-use of the Gunnison River Basin.

14. Mr. Gildersleeve obtained from the Board's files and read to the Committee a list of reservoir sites in the Gunnison Basin compiled from various Bureau reports and other sources showing reservoir capacities, estimated dam and reservoir (only) construction costs based on 1949 prices, and unit costs per acre-foot of capacity. The list comprised 22 sites, totalling 1,917,400 acre-feet exclusive of the Curecanti (2,500,000 acre-feet) and the Parlin site (2,550,000 acre-feet), and ranging in capacities from 1,000 acre-feet to 750,000 acre-feet, and in unit cost per acre-foot storage from \$638 to \$26. Mr. Jacobson called the Committee's attention to the probability that sufficient water might not be available to develop the total capacities of these reservoirs and cited certain instances where the water supply would not be adequate, such as the Parlin site.

15. The Chairman called attention to the fact that the storage to be provided in the Basin must consider the following four items: (a) existing uses of water, (b) the additional projects in the Gunnison River Project reconnaissance report, (c) water required to round out the supply and provide supplemental water for existing projects, and (d) industrial development, keeping in mind the coal reserves within the basin. In response to Mr. Smith's question, whether the presently available draft of report on synthetic fuels was considered in the studies on questions relating to industrial use of water, the Region 4 representatives stated that the report was not available at the time of the studies, and although they now have a copy it has not yet been studied in detail. The Chairman clarified questions the members had about the use of holdover storage water that might be converted to consumptive use purposes under provisions of the Upper Colorado River Compact, by reading and explaining Section V (c) of that compact. He also described Congressional procedures necessary before the Colorado River Storage Project can be authorized and expressed hope that the State of Colorado might arrive at a conclusion on the Gunnison Basin problem before Congressional hearings are concluded.

March 24, 1952

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

Dear Judge Stone:

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

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

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

#3: Hon. Clifford H. Stone

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

7. In sub-paragraph (d) on page 15, reference is made to 5,049 acres of land estimated by the Bureau as land being presently irrigated which would be inundated in Gunnison County by the 2,500,000 ft. reservoir. It is my understanding that such a figure 5,049 was the figure estimated by the Bureau of Reclamation under its old survey of irrigated lands in the areas affected, and that since the old survey was made the Bureau found an additional 1,229 acres in that area, making a total of 6,278 acres of irrigated land that would be inundated by the 2,500,000 acre ft. reservoir, and if this latter figure is used, it would mean about 83% of the presently irrigated land would be inundated by the 940,000 acre ft. reservoir. The 5,049 figure was also used in the latter part of the paragraph and perhaps this also should be corrected.

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

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

#4: Hon. Clifford H. Stone

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

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

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

#7: Hon. Clifford H. Stone

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

With kindest personal regards, I am

Yours very truly,

DUTCHER AND SERAPHINE

by:

FLD/amp



COLORADO WATER CONSERVATION BOARD

212 STATE OFFICE BUILDING
DENVER 2, COLORADO

TABOR 5853
KEYSTONE 1171, EXT. 432

April 8, 1952

Mr. E. L. Dutcher, Attorney at Law
Gunnison, Colorado

Dear Ed:

I received your letter of March 24 commenting and suggesting revisions of the tentative draft of the report and recommendations of the Policy and Review Committee, Gunnison River Storage. There is attached a second draft of the report together with a memorandum which goes out to all members of the Committee. This memorandum will suggest the further procedure which, it seems to me, we must follow.

You made more suggested changes than any other member of the Committee and I have made every attempt to incorporate your suggestions into the draft, with two or three exceptions. The reasons for the two or three exceptions are hereinafter discussed.

Briefly reviewing the manner in which I have handled your various suggested revisions, may I explain, in the order of the numbered paragraphs contained in your letter, as follows:

1. In reference to your motion to the effect that any agreement must be predicated on the premise that there would not be any material changes in the size and location of the dams and the capacity of the reservoirs, as agreed upon by the Committee in the tentative draft of the report, I assumed that the recommendations in the last paragraph on Page 28 carried out the intent of that motion. However, near the beginning of the report I incorporated the motion as disclosed by the stenographic notes taken at the meeting. Also, I retained the recommendations appearing in the tentative draft at the end of the report. Thus, I believe this suggestion of yours has been incorporated in the report.

2. I believe that in the re-draft attached you will find full compliance with your suggestion number 2.

3. Your suggested revision of paragraph 1 on page 10 is carried out by adding the words under section (a) "and, in connection therewith, the preservation of fish, wildlife and recreational values".

4. I have rephrased and extended paragraph 1 (d) on page 11. You questioned whether the phraseology used in the preliminary draft expressed the intention of the Committee. I thought it did, but if there is any doubt, I trust that you will find the re-draft of the paragraph clarifies the Committee intent.

5. You asked that the words "and particularly of the Upper Gunnison River Basin" be added to sub-paragraph (f) on page 11. I have re-drafted that paragraph, but have not used the words suggested by you, as quoted above. I am not sure that the principle set forth in that sub-paragraph should be confined to any particular area. It is a good principle under any plan of development and it is incorporated largely as an admonition to the Bureau of Reclamation which is inclined to disregard both state concern and that of local areas. In other words, I feel that we would weaken our report if we confined this principle, of interest to the entire State, to a particular area.

6. I have made no revisions to take care of your suggested revision under paragraph 6 of your letter. I think that the revision you suggest would be a disastrous one to make. It would be adverse to the interests of the Gunnison River Basin as well as to the State of Colorado. My reason is this: The storage, approved by the Committee in the Gunnison River Basin, is a part of the Colorado River Storage Project. The Colorado River Storage Project units, throughout the Upper Basin, will be paid for by power revenues, and there will be surplus revenues to aid in constructing participating irrigation projects, some of which will also serve other purposes such as storing water for synthetic fuel processing. Beneficiaries under these participating projects must pay up to their ability to repay, and the balance of the cost of such participating projects will be paid for by surplus power revenues from Colorado River Storage units.

As you say, it was very important for us to be sure that necessary storage capacity was included in the Upper Basin to serve beneficial consumptive use purposes; the Committee was very careful to ascertain what the amount of this storage should be, and we found that such requirements would be within the storage provided by the Curecanti and Crystal units, as approved by the Committee. With this storage, approved by the Committee, the regulation for beneficial consumptive use purposes will be there even though the Upper Gunnison River Storage Units come within the category of "Colorado River Storage Units" which will produce power and aid in equating the flow at Lee Ferry. Physically, and as a matter of fact,

such regulation will be there and the State and local affected areas will, as a matter of course, profit thereby. If, as you suggest, we include a positive statement that there is included in the Curecanti and Crystal Reservoirs 425,000 acre-feet of water for potential consumptive use in the area, then there is real danger that the Bureau of Reclamation, or some other government agency dealing with the report, will allocate the cost of 425,000 acre-feet of storage in these two Upper Gunnison River Basin units, on the basis of a participating project, thereby requiring the beneficiaries to repay the cost of such 425,000 acre-feet of storage. As a matter of fact, throughout the whole system of Colorado River Storage Project units there is the effect of adding a beneficial consumptive use in various parts of the Basin. Colorado and its local affected areas should be careful not to make a statement indicating that we agree to pay for portions of hold-over storage which will have the effect of making available stored water for beneficial consumptive use purposes when the regulation for that purpose is there in any event.

7. As to your suggestion for the revision of sub-paragraph (d) on page 15, I have checked on the statement by the Bureau and understood by you to mean "that since the old survey was made, the Bureau found an additional 1,219 acres in that area, making a total of 6,268 acres of irrigated land that would be inundated by the 2,500,000 acre ft. reservoir,". I find that your understanding of this statement is incorrect. The statement was that there were 1,219 acres in the area of the proposed 2,500,000 acre-foot Curecanti Reservoir which are "under ditch", but which are not presently irrigated. Accordingly, I have not followed your suggested change, but I have made an addition to the paragraph to call attention to this 1,219 acre increment of land.

8. You state that you found no where in your files any reference to the 46% figure used in sub-paragraph (e) on page 16, but you explain that if the computation has been made by the staff of the Water Board, it is undoubtedly correct. This computation was carefully made by my staff and I believe it is correct.

9. You suggest a minor change in sub-paragraph (9) on page 17. This entire paragraph has been rewritten as the result of a suggested revision made by R. J. Tipton. Following Mr. Tipton's suggestion, this paragraph has been carefully re-drafted. There were two or three obvious errors in that paragraph and it was not too clear. I trust that you will find the revision satisfactory and that it covers the point which you made.

10. Your suggestion for revision of paragraph 9 on page 20 in which you believe that the purpose of the integration of the operation of Taylor Park Reservoir with the proposed Curecanti and Crystal Reservoirs is not properly stressed, has been taken care of by rewriting of that paragraph. I trust that the revision covers your point.

17. I have made the correction of sub-paragraph (e), page 26, but have substituted the word "preference" in lieu of the word "opportunity" rather than your suggested word, "priority".

18. The revision recommended by you of sub-paragraph (f) on page 26 by striking the words "consistent with the availability of funds for the purpose" has been made.

19. I believe that you will find that I have accomplished your recommended revision in paragraph 14, (a) to (h) inclusive, by adding a new paragraph "15" and by revising the recommendations contained in the last section of the report. I think your suggested revision on this point is very good and it brought to my mind the necessity of including paragraph 15 to clarify the procedure which will be followed.

20. Your statement attached in the Appendices has been mimeographed and appears in the report as revised by you.

I think your comments for suggested revisions have vastly improved the report. We have faithfully tried to carry them out, except as to the two or three matters which are covered in this letter, and I sincerely trust that you will agree with me so that we may finally get this report of the Policy and Review Committee before the Colorado Water Conservation Board without undue delay. However, if you do not agree with me on the two or three matters where I have not complied with your suggested revisions, then I think the only alternative is to have another meeting of the Committee.

Very truly yours,


Clifford H. Stone, Chairman
Policy and Review Committee

CHS:djh
Enclosure

where is Plan E?

1 F

APPENDIX P

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

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

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

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

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

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

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

1. That the road be changed, that it continue to be designated as U. S. Highway No. 50, and that it continue to run through the Cities of Montrose and Gunnison.
2. That the government make certain arrangements and provide certain facilities to take care of the influx of school children who will be in the affected areas during the construction period.
3. That some arrangement be made with the Upper Gunnison River Basin people concerning the transfer of the Taylor Park Reservoir. water rights and storage rights to them.
4. That Montrose and Gunnison Counties be reimbursed for their tax loss during their construction period and thereafter either by the Bureau of Reclamation or some other federal agency.
5. That some definite agreement be made with the Game and Fish Department and the Fish and Wildlife Service to regulate the flow of the Gunnison River below the Taylor Park Reservoir and to regulate the draw-down of the Crystal and Curecanti Reservoirs so as to cause as little damage to the fish and wildlife as is possible.
6. That if a committee is selected for that purpose, some representative of Gunnison County be appointed and selected to serve on the committee.
7. That the people who are dispossessed by reason of the acquisition of lands for the construction of the reservoirs, either ranchers or resort owners be given some kind of priority to locate on public lands elsewhere in that area or if they so desire, around the shores of the reservoirs.

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**THE COLORADO RIVER
 WATER CONSERVATION DISTRICT**
 Grand Junction, Colo.
 9 April 1951.

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

My Dear Mr. Dutcher:

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

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

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

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

Mr. Dutcher

9 April 1951

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

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

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

If this assumption is correct, of the 240,000 acre-feet applied, some 180,000 acre-feet appears at Iola as return flow the rate of which is known to be high for this type of use. This means that during the irrigation season, from the average flow of 357,200 acre-feet, 177,200 acre-feet is never diverted or used in Gunnison County at all, and that 60,000 acre-feet is all that is actually consumed there. Now if all the projects proposed by Mr. Jex' report are built, but nobody has demonstrated that they are either needed or desired, 121,000 acre-feet of demand water will have to be stored or diverted and consumptive use in Gunnison County might approach or somewhat exceed 100,000 acre-feet and irrigation demand would approach 360,000 acre-feet, both yearly, which is just about what the river flows during the irrigation season. Of course, the reservoirs Mr. Jex proposed would have to be, and would be, filled to 20

Mr. Dutcher

9 April 1951

large extant from non-irrigation season flow.

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

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

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

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

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

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

Mr. Dutcher

9 April 1951

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

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

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

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

Sincerely yours,

A. C. Merriell
A. C. Merriell
Secretary

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

2b

April 17, 1951

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

Dear Mr. Merriell:

I have your letter of the 7th, with the enclosures which you have entitled, "The Case For Curecanti Reservoir". I have read your letter and your arguments very carefully.

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

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

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

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

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Mr. F. C. Merriell

4/14/51

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

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

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

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

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

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

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

2c

OFFICIAL COMMENTS AND RECOMMENDATIONS

of the

STATE OF COLORADO

on the

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

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

June 12, 1950

The Secretary of the Interior

Sir:

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

Preliminary Statement

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

General Comments

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

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

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

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

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

Participating Projects

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

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

2d

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

September 28, 1951

Attendance

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

Members of Committee

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

Federal Observers

Bureau of Reclamation

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

Fish and Wildlife Service

R. A. Schmidt--Albuquerque, New Mexico
A. B. Eustis--Denver, Colorado

Others Present

F. C. Marriell—Colorado River Water Conservation District, Grand Junction, Colorado

W. A. Groom—President, Redlands Water and Power Company, Grand Junction, Colorado

Introductions

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

Purpose of the Committee

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

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

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

9. Mr. Feast stated that in his field of interest and in looking at the basic problem of the Upper Gunnison River Basin he could not help but be concerned in the relationship of Curecanti Reservoir with proposed trans-basin diversions to the Eastern Slope such as the ultimate Gunnison-Arkansas Project, especially with respect to reservoir inundation in the 30

2e

April 15, 1952

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

RE POL. & REVENUE COMM.
GUNNISON STORAGE

Dear Judge:

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

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

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

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

#2: Hon. Clifford H. Stone, Director

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

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

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

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

#3: Hon. Clifford H. Stone, Director

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

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

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

JOHN B. BARNARD
DUANE L. BARNARD

BARNARD AND BARNARD
ATTORNEYS AT LAW
GRANBY, COLORADO
TUCKER 7-3362
March 15, 1962



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

Dear Dick:

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

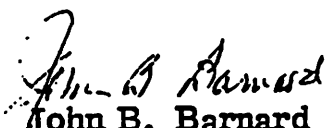
In our conversation, I asked Mr. Jennings whether or not the Secretary wished that you and I present proof of diligence in connection with the Curecanti Units on April 16; and he stated that he felt that such would be the case. Those proofs will, of course, closely parallel the proof we presented at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

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

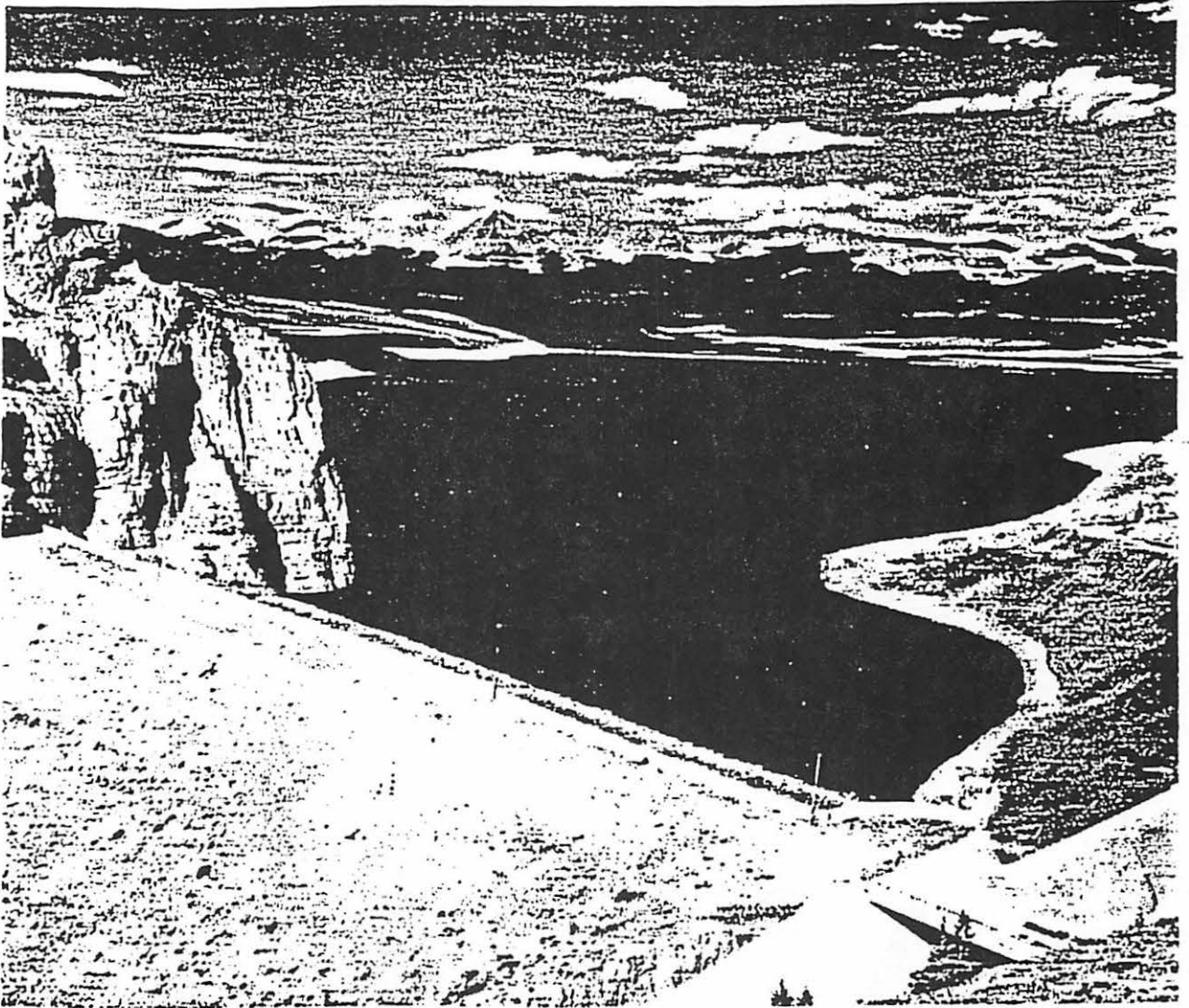
With regard to the agreement to be negotiated with your clients pertaining to privately financed projects, it would be my suggestion that those negotiations include only such as are now rather firmly planned. It would appear to me to be ^{unwise} to attempt to consummate such agreements in connection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

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

Yours very truly,


John B. Barnard
For BARNARD AND BARNARD

JBB:jb



Taylor Park Reservoir on headwaters of Taylor River.

Subordination of Curecanti Unit Rights

Rights for the Curecanti unit were granted by the State of Colorado to the Colorado River Water Conservation District with a priority date of November 13, 1957. These rights were assigned by the district to the United States in January 1962 subject to the condition that the unit would be developed and operated in a manner consistent with beneficial use of the waters in the Gunnison River Basin. In order that future developments in the Upper Gunnison Basin may be assured of rights to use of water, a form of contract has been developed for execution between the United States Government, the Upper Gunnison River Water Conservancy District, and water users in the upper basin subordinating the diversion and storage rights of the Curecanti unit to future developments upstream, both private and Federal, even though the rights of the upstream developments may be junior to

the Curecanti unit right. The aggregate amount of upstream depletions for which the priority of the Curecanti right may be waived has not yet been determined. An upstream depletion of 60,000 acre-feet was allowed in the operation studies for the Curecanti unit in the determination of the water supply available for power generation.

Use of Curecanti Reservoir Storage

Special contracts would be required for use of storage in Curecanti reservoirs for developments above or below the reservoirs. Charges would be made for the storage but the rate for payments has not yet been determined. No payment would be required for depletions of the streamflow at Curecanti reservoirs from upstream developments unless storage space in the reservoirs were substituted for storage required upstream.

Possible Exchanges with Uncompahgre Project

In the three plans outlined in this report water of the Uncompahgre project has been assumed to be available to the Upper Gunnison project on an exchange basis. In the comprehensive and intermediate developments water would be replaced to the Uncompahgre project from the Upper Gunnison project facilities while in the small development replacement would be made from the large storage reserves soon to be available in the Curecanti reservoirs. In all the plans considered the Uncompahgre project water users would continue to receive the same quantities of water and in the same pattern as in the past. Of course, no exchanges involving the Uncompahgre project could actually be made until prior agreements had been negotiated with the Uncompahgre Water Users Association which is responsible for administration of that project.

Although charges that would be made for use of replacement storage in Curecanti reservoirs have not yet been established, certain charges have been estimated for analyses of the small plan requiring use of the storage. These charges have been based on the actual costs of providing storage in Blue Mesa Reservoir and, for each acre-foot of active reservoir capacity, they amount to \$52 for construction, \$4 for interest during construction where applicable, and \$0.10 annually for operation, maintenance, and replacements. These estimated charges may be either higher or lower than those finally established. The estimated costs for use of replacement storage were included in the repayment analyses of the small plan and were considered a part of the project repayment obligation. The costs were excluded from the benefit-cost analyses, however, as they are considered sunk costs and therefore not properly a factor in the comparison of benefits and costs from future construction.

As additional studies are made in the Upper Gunnison Basin, further consideration will be required of the possible use of Uncompahgre project

water, the most desirable means of providing replacement storage, and the charges that would be required for replacement storage in Curecanti reservoirs if such storage is used. A study also will be needed of coordinated operation of Taylor Park and Curecanti reservoirs for power production. Such a study has not been made but indications are that coordinated operation would be beneficial to both the Upper Gunnison project and the Curecanti unit.

Upper Gunnison Project Water Rights

Conditional water rights for the Upper Gunnison project along with rights for the Curecanti unit were granted by the State of Colorado to the Colorado River Water Conservation District with a priority date of November 13, 1957. The project rights were later conveyed by the district to the Upper Gunnison River Water Conservancy District. The project rights were acquired for the development plans presented in the 1951 Gunnison River Project Reconnaissance Report. Additional filings or modifications of the previous filings may be necessary for the project plan as finally formulated and adopted. Water exchanges required for optimum project operation are permitted by Colorado law and, with the anticipated cooperation of the water users, could be arranged in a satisfactory manner.

JOHN B. BARNARD
DUANE L. BARNARD

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BARNARD AND BARNARD
ATTORNEYS AT LAW
GRANBY, COLORADO
TUCKER 7-3362
March 15, 1962



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

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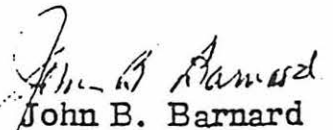
In our conversation, I asked Mr. Jennings whether or not the Secretary wished that you and I present proof of diligence in connection with the Curecanti Units on April 16; and he stated that he felt that such would be the case. Those proofs will, of course, closely parallel the proof we presented at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

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

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

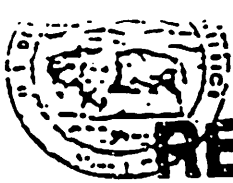
If you have any questions or suggestions, I would be glad to hear from you.

Yours very truly,


John B. Barnard

For BARNARD AND BARNARD

JBB:jb



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RECEIVED

OFFICE OF THE SOLICITOR

RECEIVED

INTERMOUNTAIN REGION

SUITE 6701, FEDERAL BUILDING

NOV 09 1984

123 SOUTH STATE STREET

SALT LAKE CITY, UTAH 84138-1180

WATER RESOURCES
STATE ENGINEERS
COLL.

October 26, 1984

JUN 16 1986

Colorado Water Resources
Power Development Authority

Blue Mesa

10/30
11-7
12-31

LBR.IM.0256

Memorandum

To: Regional Director, Bureau of Reclamation

From: Regional Solicitor, Intermountain Region

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

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

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

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

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

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

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

W. P. ELLIOTT, JR.
Acting Regional Solicitor

By *William Robert McConkie*
WILLIAM ROBERT MC CONKIE
Attorney

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

DIST. CT. DECREE " 6116/c
WATER COURT 3d

Power Plant, and due to the relocation of Crystal dam, entered a new decree granting a reduced water right for Crystal Reservoir and for Crystal Power Plant.

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

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

JUDGMENT AND DECREE

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED

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

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

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

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ANSWER TO QUESTION 5.

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

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

ANSWER TO QUESTION 6.

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

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

ANSWER TO QUESTION 7.

Reclamation's intent at the time the Aspinall Unit was constructed was to subordinate the project's water rights to 60,000 acre-feet of in-basin depletions. Although this is Reclamation's position, we do not have the authority to require the Colorado State Engineer (CSE) to administer our subordination in this manner if it is in conflict with Colorado State law. 44
Reclamation has already subordinated to 60,000 acre-feet of in-basin use, but believes that the CSE will make the final determination as to how to enforce

THE CASE FOR CURECANTI RESERVOIR

Foreword

The purpose of this meeting is to discuss the wisdom of building a large reservoir on Gunnison river below Gunnison, which will store for long periods of years all the water of the river that Gunnison County does not use. So far you have heard only the side of the problem, here in Gunnison, of those who do not want the reservoir built. There is another side, with many weighty arguments why building this reservoir will really benefit Gunnison County. We want you to hear and weigh the arguments both for and against before you make up your minds. Once you decide you will probably be bound by that decision from this time on.

Colorado River Storage Project

In order properly to lay the ground work for understanding the Colorado River Storage Project we must go back to the time when people from the seven Colorado Basin states were writing the 1922 Compact. Those people did not know too much about Colorado river. The river was not measured in nearly so many places as it is today, and in some places where it was very essential to know what the river flowed, there were no measurements at all. One of these was the place which the Commission chose to divide the flow of the river between the Upper and Lower Basins, at Lee Ferry, near the Arizona line. No measurements had ever been taken anywhere near there, in spite of which fact the Commission chose that point to divide the river.

They decided to divide somewhat less than the total quantity of water they believed the river flowed between the Upper and Lower Basins, after months spent in trying to divide the water to each single state. It was very evident that California and Arizona, at least, could not agree upon a proper division of water to each of them, so the whole question of division by states was waived for division between the two principal basins into which the river naturally divides itself. This division point, at Lee Ferry is 28 miles below the Utah-Arizona line. Above this point over 90 percent of the flow originates, and not too far below Lee Ferry, Colorado river becomes a losing stream, that is, the further it flows the less water there is in it, because of stream losses.

The great canons of Colorado river are generally below Lee Ferry, although it flows in pretty considerable canons for many miles above. The tributaries that enter it above Lee Ferry are many of them large and most have a constant flow, while those that enter below are small and often dry. Lee Ferry is probably the proper place to make such a division, and since it was chosen, we are bound by that fact.

As has been said, there were no measurements of the river anywhere near Lee Ferry. The nearest place below was at Topock, Arizona, 470 miles below. The nearest place above, was on San Juan river 135 miles upstream from Lee Ferry. Colorado and Green rivers were measured many miles further upstream. None of these places had then, a very long record of runoff so the guess the Commission made was liable to be considerably in error. It was in fact, wrong by just about 32 percent. They estimated from the short records they had that the flow at Lee Ferry would average, before any use above, 20,000,000 acre-feet a year. When an estimate was made in 1946, upon the basis of much more information, including a

THE CASE FOR CURECANTI RESERVOIR

the Colorado River Storage Project the people of the Upper Basin including you people on Gunnison river, are only taking out an insurance policy on your supply of water. If part of this water is stored in Curecanti reservoir everybody above that reservoir can continue to use his water as he always has. If Curecanti is not built another reservoir will have to be built to take its place in the scheme, somewhere downstream where the evaporation is greater, and you with all the other people in the Upper Basin will lose the difference in evaporation which might be a good many thousands of acre-feet a year. But this is not the only gain from building Curecanti.

Another Danger — Uncompahgre Project

Some of you can remember what happened in 1934, when the rivers generally only flowed about one-third of their average. The Uncompahgre Project at Montrose claimed it had priorities old enough to shut a lot of you people down. You believed them and after a meeting here, both parties went over to Denver, and in the State Engineer's office came to an agreement. This was that you would use water in your customary manner until July 15th, on your meadow hay and then turn it down for use on the Uncompahgre Project for the rest of the summer. When you did turn this water down the river, without using it, the river rose in a few hours from 400 second-feet to 850 second-feet, but within a week had fallen again to about 400 second-feet. This led to the building of Taylor Park reservoir. You needed this water at least a month longer than you had it, and might not then have produced an average crop of hay. This can still happen, even with Taylor Park reservoir, since in a year like 1934 it would not fill, and you might very well be called upon for some of the late summer flow, which you would need for you own crops. However, if Curecanti reservoir is built this cannot happen as the water the Uncompahgre Project needs will be stored in that reservoir below all your uses and that Project will never bother you again.

Modern Road — Now

These are two ways in which Curecanti reservoir will be of positive benefit to all Gunnison County, so perhaps we should talk a little more about it. The dam which will make the reservoir will probably be of concrete, about 475 feet above present river level, $3\frac{1}{2}$ miles below Sapinero. Probably the highway to Montrose will cross the dam and in that case will be moved above high water line along the north side of the reservoir, which of course, will be done at the expense of the Storage Project. The present highway is being slowly rebuilt to the necessary standard for present traffic, but by this means a new highway of a type equal to the best of the present highway will all be built at once. This is a small gain, perhaps, but it is badly needed right now.

Stream Fishing vs. Lake Fishing

Built to the height stated above the dam will impound water in a lake that will reach to a point about one mile below Gunnison. It will fill the canon of Lake Fork and the valley of Sapinero creek for several miles and extend up the smaller creeks for greater or less distances and will afford reservoir fishing for many more people than can at present use the river. There will be just as much opportunity to build camps and resorts along it, and maybe more.

THE CASE FOR CURECANTI RESERVOIR

Summary

This has been a pretty long explanation, to come on top of all the bad things some of your own people have told you Curecanti would do to you. Suppose we make a list of the benefits this reservoir will actually bring you:

- 1) It will take care of your debts to the Lower Basin, in the worst conditions ever known in the past.
- 2) It will remove the fear that the Uncompahgre Project can ever exercise its priority against you.
- 3) You will get a new and modern highway as far as the dam all in one lump, while the Highway Dept., could only build it piecemeal.
- 4) You will get electricity in quantities as great as all the demand you can develop.
- 5) You can have, if you want it, twice as many acres of new land as will be lost in Curecanti reservoir.
- 6) It will ^{probably} ~~definitely~~ prevent the Arkansas diversion.
- 7) The Storage Project should help pay for the more expensive of the new projects, if you want them.
- 8) Other advantages can be worked out, which may be a real help to Gunnison County.

The Problem

What will you lose for all these advantages? About 30 miles of Gunnison river will be converted into a lake instead of a stream. As was said in discussing the Arkansas diversion the only way to hold onto your water is to make use of it, before the other fellow can. When you start out to make use of water the first thing you find is that it involves change — things cannot stay as they were. You expect us engineers to furnish you projects that will make your country grow, make it a better place to live, but if you tell us that nothing can be changed we cannot furnish you with projects because growth itself involves change.

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STATEMENT OF INTENT

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

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

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

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

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

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

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

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

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

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

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

IN WITNESS WHEREOF (see last page
of K)

U S - - -
By _____

Upper Gunnison - - -

By _____

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BARNARD AND BARNARD

ATTORNEYS AT LAW
GRANBY, COLORADO

JOHN B. BARNARD
DUANE L. BARNARD

July 29, 1957

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

Dear Mr. Porter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Yours very truly,

John E. Barnard
John E. Barnard

for Barnard and Barnard

JBB:sc
cc Phil Smith

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COMBINED REPORT
of the
SECRETARY-ENGINEER and COUNSEL
of
THE COLORADO RIVER WATER CONSERVATION DISTRICT

July 21, 1959

Over three years have elapsed since the passage of the Colorado River Storage Project and Participating Projects Act, Public Law 485. During that period, the Board of Directors and the staff of the District have directed their efforts toward the establishment and firming up of rights to the use of water for the storage and participating projects which are designed, primarily, to develop the water resources of the Colorado River and its tributaries within the district boundaries. Your secretary-engineer and counsel feel that their report, to be submitted at the third quarterly meeting in 1959, should review the activities and accomplishments of the District during these three years, in order that the Board may be advised as to the status of water rights for these projects, in determining its future course of action.

The report divides itself into river basins. In considering it, the members of the Board should have in mind the fact that, as to some of the filings which have been made and decrees which have been obtained or are sought in pending adjudication proceedings, competition with transmountain diversions, either existing, planned, or possible, is of prime importance. Some of the District's conditional decrees, for example that to the West Divide Project, not only establish rights to the use of water for the project involved, but also protect the sources of supply therefor against such diversions to the Eastern Slope as are planned or may be possible.

THE GUNNISON BASIN

Development of water resources in the Gunnison Basin will be made in five general areas, the Uncompahgre Valley, including Bostwick Park, Gunnison County proper, the North Fork, the cities of Delta and Grand Junction, and the Redlands Project, west of Grand Junction.

THE CURECANTI UNIT.

1. This is actually the Curecanti Project, authorized by Public Law 485, upon which the feasibility report required by that Act has been completed by the Bureau of Reclamation and submitted through the Secretary of the Interior to the President of the United States. In passing, it should be noted that the President has not yet officially advised the Congress that the report of the Bureau of Reclamation establishes the feasibility of the project, as he is required to do by the Storage Project Act; and, for that reason, appropriations for construction of the project may not be included in the budget for fiscal 1960. It is noteworthy, however, that the Senate has appropriated \$1, 000, 000 for initiation of construction of the Curecanti Unit in fiscal year 1960.

The Curecanti Project is designed, primarily, as a hold-over storage and power generation facility, performing the same function as do the Glen Canyon and Flaming Gorge reservoirs. In addition, however, as planned by the District, as a part of the Upper Gunnison Project, the Curecanti Project will also serve to provide water for irrigation and other beneficial uses within the Gunnison Basin itself. These uses may be made in the following manner:

The Curecanti Project, as now planned by the Bureau of Reclamation, includes two reservoirs, plus a third which is still under investigation and study, and which may or may not form a unit of the completed project. These are: (a) The Blue Mesa Reservoir, located below the confluence of the Gunnison and Lake Fork, which is the principal storage structure of the project, and is designed to impound 939, 204 acre feet of water; (b) Morrow Point Reservoir, which is to be located immediately above the confluence of the Gunnison and Cimarron Rivers. The amount of storage in this reservoir is comparatively small, 114, 706 acre feet; and it will serve primarily as a power generation generating facility; (c) the Crystal Reservoir, the exact location of which has not yet been determined. If built, the Crystal Reservoir will be located in the Black Canyon of the Gunnison River a short distance above the East Portal of the Gunnison Tunnel. It also is primarily a power generation facility. In-basin use of stored water will be made possible by the following procedures:

(1) Water impounded in these reservoirs can be made available to supply the demands of the decrees to the Uncompahgre Project through the Gunnison Tunnel. Thus, the burden on the stream above the Blue Mesa Reservoir will be relieved; and water, which now must be released or bypassed to meet these demands, will be available for diversion in Gunnison County under existing decrees, and may be utili-

zed for irrigation and other purposes, by exchange for stored water in Blue Mesa Reservoir.

(2) Water stored in these reservoirs may be used to provide stored water for the Uncompahgre Project, which is now made available by the Taylor Park Reservoir. This will make possible the use of Taylor Park water for the generation of power, by the Taylor Park Power Plant. It should be noted that a power house and penstocks have been constructed at the Taylor Park Dam; but, by reason of the seasonal nature of releases of water on the reservoir to meet the demands of the Uncompahgre Project, it has not been feasible to install or to operate power generating machinery. With the Curecanti water available for this purpose, releases from Taylor Park Reservoir may be made according to such a schedule as will permit power generation. By exchange, water for irrigation use in the Ohio Creek Unit area may be made available by means of the proposed Taylor River Canal, diverting below the confluence of the East River and Taylor River.

(3) Storage of water in the reservoirs of the Curecanti Project, and releases therefrom for power generation, will so regulate the flow of the Gunnison River downstream therefrom that a full supply for domestic and municipal use in Delta, Grand Junction, and other towns and cities served by the water from the Gunnison River or its tributaries will be assured. These cities now have decrees, conditional and absolute, for sufficient water for their present and reasonable future needs; but, during the low-flow period each year, there is insufficient water in the river to fill these decrees. With the operation of the Curecanti Reservoir sufficient water will be provided for these and other decrees for domestic and municipal uses.

(4) The regulation of the flow of the Gunnison River at the headgate and diversion works of the Redlands Power and Water Company west of Grand Junction, will permit that company to divert sufficient water at all periods of the year to meet its present and future needs and requirement for water irrigation, domestic, and power generation purposes.

THE TOMICHI UNIT.

The Tomichi Unit includes the following structures and facilities: Ohio City Reservoir; Quartz Creek Canal; Monarch Reservoir; South Crookton Canal. The two reservoirs will impound the water of Quartz Creek and Tomichi Creek, and the water stored in the reservoirs together with direct flow diversions from the two streams and their tributaries, intercepted in the course of the canals, will serve lands on

December 4, 1962

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

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Dear Bob,

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

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

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

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

Very truly yours,

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

MEMORANDUM RE UPPER GUNNISON BASIN PROJECT OF THE
COLORADO RIVER WATER CONSERVATION DISTRICT
PREPARED BY PHILIP P. SMITH, SECRETARY-ENGINEER,
AND JOHN B. BARNARD, COUNSEL
February 19, 1960

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This meeting has been called by The Colorado River Water Conservation District for the purpose of outlining and more fully describing the Upper Gunnison Basin Project as it has been designed and planned by the Secretary-Engineer and Counsel for the District. We have prepared this pamphlet in a sufficient number of copies so that each person in attendance here may have one, and additional copies are available for distribution to others who are not here today. In advance of stating and discussing the definite problems which must be solved and the questions which must be answered in connection with the project, we should recount some of the background facts and considerations which prompted the District to make the steps it has taken in the matter of the Upper Gunnison Basin Project.

WHAT IS THE UPPER GUNNISON PROJECT?

Details of the project will be given later herein. Generally speaking, it is an overall plan for the diversion, storage and distribution of the water of the Gunnison River and its tributaries, for optimum beneficial uses within the natural basin of the stream. The Curecanti Project itself is correlated with and integrated into this general plan. The District believes that the Curecanti Reservoirs should not become solely a holdover storage and power generation facility, but that they should also serve to impound water to be used in the basin itself for irrigation, domestic, municipal and industrial purposes, among others.

WHAT HAS THE COLORADO RIVER WATER CONSERVATION DISTRICT DONE IN THE MATTER OF THE UPPER GUNNISON BASIN PROJECT?

To this date, the District has taken the following steps:

1. It has made an analysis and tabulation of decreed water rights in Water Districts 28, 59 and 62, showing those rights which are senior and those which are junior to (a) the Gunnison Tunnel decree,

- 1 -

APPLICANT'S
EXHIBIT
#184

REC-226888-178

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DEPOSITION
EXHIBIT 30

AGREN, BLANDO & ASSOCIATE

and (b) the Taylor Park decree. This was done for the purpose of identifying those rights, junior to these two decrees, which could augment their present source of water supply by acquiring replacement capacity in the Curecanti reservoirs. Copies of these analyses have been transmitted to Region 4 of the United States Bureau of Reclamation and to the Colorado Water Conservation Board, as well as to various local interests in the Gunnison River Basin.

2. It has prepared and filed, in the office of the State Engineer of Colorado, a map and statement of the project, which was made and filed in strict accordance with the Map and Statement Act of Colorado. A copy of this map and statement also has been filed in the offices of the County Clerks and Recorders of Gunnison, Montrose, Delta and Saguache Counties, and is there available for the inspection of any interested party.

3. It has filed a statement of claim for the Curecanti Reservoirs in Water District 62 and presented evidence in support thereof to the Referee. The adjudication proceedings in which this claim statement was filed have been closed; and a form of conditional decree to the Curecanti Reservoirs has been prepared and was filed by the Referee. Hearing on protests thereto has been set for March 30, 1960. Since there are no protests filed in these proceedings, having to do with the Curecanti Reservoirs, it is expected that, on that date, a conditional decree therefor will be entered by the Court. The importance of this conditional decree will be discussed later herein.

4. It has commenced adjudication proceedings in Water Districts 28 and 59 in the District Court of Gunnison County. In each of these proceedings it has filed statements of claim for the units of the Upper Gunnison Basin Project which are located therein; and has submitted evidence in support of those statements. The proceedings in these districts have not been closed as yet; and the entry of a conditional decree to the units of the Upper Gunnison Basin Project which are located therein must, of necessity, await the closing of the proceedings.

It should be noted that the left abutments of the Curecanti Dams are located in Water District 62, and the right abutments in Water District 59. Part of the sources of supply for the Reservoirs is located in each of those districts. Therefore, it was wise and probably necessary that a conditional decree for the Curecanti Reservoirs themselves was sought in Water District 59 as well as in Water District 62. This has been done.

WHY WAS THIS WORK DONE BY THE COLORADO RIVER WATER CONSERVATION DISTRICT?

The District took the initiative in the matter of the Upper Gunnison Basin Project for two principal reasons, which are:

1. The Curecanti Project is one of four of the holdover storage projects authorized for construction by Public Law 485, the Colorado River Storage Project and Participating Projects Act. The others are Glen Canyon, Flaming Gorge and Navajo. Curecanti is the only one of these which is located in Colorado, the others are in Arizona, Utah, New Mexico and Wyoming. In these last named states, a water right is granted by the state water officials by means of permits issued by the State Engineer. In Colorado, on the other hand, rights to the use of water may only be acquired by proceedings in the state courts in which proceedings decrees, conditional or absolute, are entered.

Water rights have been obtained by the United States itself in the other four states for the other three storage reservoirs. This was done in advance of any construction work thereon. However, the United States Department of Justice has established a policy that will not permit any bureau or agency of the federal government, for instance, the Bureau of Reclamation, to participate in any type of proceeding in state courts. Therefore, no right for the Curecanti Reservoir has been obtained by the United States, and, as we are advised by the Regional Director of Region 4, it was not the intention of either the Bureau or the Department of Justice to do so.

Had the Curecanti Project been constructed without the entry of this decree, it would have stood in exactly the same situation regarding water rights as did the Green Mountain Reservoir of the Big Thompson Project. This reservoir was substantially completed in about 1940. In 1949 the United States brought a suit in the United States District Court for the District of Colorado to quiet its title to rights to the use of water for the Green Mountain Reservoir and other units of the Colorado-Big Thompson Project. In those proceedings a statement of claim was filed by the United States, in which it asked that a priority date of 1909 be fixed for the Green Mountain Reservoir. This was the date when the Department of the Interior withdrew the Green Mountain damsite as a power site; and the contention that such withdrawal also had the effect of withdrawing and appropriating all of the water of the Blue River was based upon a decision by the United States Supreme Court known as the "Pelton Dam Decision" in the state of Oregon.

However, by the Blue River Stipulation, the United States abandoned that claim, insofar as the Green Mountain Reservoir was

concerned, accepting a priority date of August 1, 1935 in lieu thereof.

There have been power site withdrawals on the Gunnison River in past years. If the Curecanti Reservoirs had been constructed without a decree for the water rights, it would have meant that the priority date claimed in proceedings instituted by the United States itself in the federal district courts, would have been the date of these power site withdrawals. As stated before, the United States Supreme Court has held that such a claim is good. If the priority date of the Curecanti Reservoirs were fixed as of the date of those withdrawals, it would have precluded any such development as is planned by means of the Upper Gunnison Basin Project, unless the United States subordinated its prior and superior right to the junior and inferior rights for such use. The Fruitland Mesa Project, for example, could never have been built except at the sufferance of the United States.

Under the decrees sought by the District, all of the units of the Upper Gunnison Basin Project, including the Curecanti Reservoirs themselves, will have identical priority dates. All rights to the use of water for all units will be a part of one single decree.

*1/12
One decree*

It should be borne in mind at this point that decrees for the Bostwick Park and Dallas Creek Projects have conditional decrees which are senior to the rights of the Upper Gunnison Basin Project or any of its units.

50% not subordinated

2. At the time it became apparent that a decree should be requested for all of the units of the Upper Gunnison Basin Project, including the Curecanti Reservoirs, there was no entity which was qualified, under the provisions of the Reclamation Act or Public Law 485, to enter into a repayment contract with the United States for the construction of the various units, in existence; and we believed it to be unwise to delay taking the action the District did take until some such entity could be brought into existence, so that the activities of the District might properly be termed "interim" and were designed to carry on the work that had to be done until some entity or entities in the affected areas could be organized to take over and carry on the tasks.

It should be noted here that The Colorado River Water Conservation District has expended more than \$20,000 directly attributable to work on the Upper Gunnison Basin Project. This money came from tax revenues, and all of the thirteen counties of the District contributed to this fund.

WHAT DOES THE COLORADO RIVER WATER CONSERVATION DISTRICT PROPOSE TO DO WITH ITS DECREES?

By a Resolution of October 16, 1956, as amended January 15, 1957, and a further Resolution of October 15, 1957, the Board of Directors of The Colorado River Water Conservation District unanimously adopted a policy which authorized that the above outlined work be performed, and which provided that if and when decrees were entered for the Upper Gunnison Basin Project those decrees would be assigned, without cost or charge, to (a) The United States of America, insofar as water rights for holdover storage and power generation in the Curecanti Reservoirs are concerned, and (b) to conservancy districts later to be organized with which the United States could negotiate and enter into repayment contracts under the terms of which the water of the Gunnison River, by storage and direct flow diversion, would be put to beneficial uses within the natural basin of the Colorado River in Colorado.

Two such conservancy districts have since been organized, the Tri-County Water Conservancy District and the Upper Gunnison River Water Conservancy District. A third is in process of organization as the sponsoring entity for the Fruitland Mesa Project. Another such entity, which we believe will benefit from the development, has long been in existence, the Uncompahgre Valley Water Users Association.

Tri County ?

WHEN ARE THESE CONDITIONAL DECREES TO BE ASSIGNED?

Working out the allocation of water for various beneficial uses to cities, irrigators and other users, drafting and securing the approval by the United States of an assignment to it of the holdover storage and power generation facilities which are included in the decree, and other similar matters, will prove to be involved and complicated processes. It is highly important that the assignment to the United States in connection with the Curecanti Reservoirs be drafted with the greatest of care and that it be accepted by the United States, so that any possibility of a claim by the federal government of a priority date based upon its previous power site withdrawals will be ruled out permanently.

This is a task to which must be devoted a great deal of thought and time by The Colorado River Water Conservation District in collaboration with the conservancy districts of the Gunnison River Basin; and it should not be left to any one of these. It is suggested that legal and engineering representatives of the existing conservancy districts be directed to collaborate with the staff of The Colorado River Water Conservation District in drafting this assignment; and it is further urged

that this work be done in the immediate future, in view of the fact that quite probably actual construction work on the Curecanti Reservoirs will be commenced in calendar year 1960, certainly in fiscal year 1961.

We believe that the Board of Directors of The Colorado River Water Conservation District will authorize the execution by its officers of the necessary and proper assignments to effectuate the District's original intentions and plans as soon as the problem of the one assignment to the United States is satisfactorily worked out, and the affected conservancy districts are ready to accept these assignments together with the responsibility of carrying forward the plan of development which affects them.

WHAT WOULD YOUR RIGHTS BE TO THE USE OF WATER STORED IN THE CURECANTI RESERVOIRS WITHOUT THE DISTRICT'S DECREE?

At this point we want to emphasize this fact: Without the decrees which The Colorado River Water Conservation District is seeking for the Upper Gunnison Basin Project, whether or not water would be available for inbasin beneficial use would depend upon the willingness of the United States to permit such use. Such inbasin beneficial use would be merely an incident to the planned operation of the Curecanti Reservoirs by the Bureau of Reclamation, and would not exist as a matter of right.

✓ If water is used in Gunnison County above the Curecanti Reservoirs by a system of exchange, the right to make such use of the waters of the Gunnison River would be conditioned upon the acquisition, by the user or users, of storage capacity in the Curecanti Reservoirs themselves. The consumptive use made of such water, by exchange, would reduce the power generating potential at Curecanti Reservoirs. Therefore, the water user would be required to pay for storage capacity in the Curecanti Project itself in an amount to be determined by the United States and the entity which may execute the repayment contract. The amount required to be paid for the storage capacity would then be paid by the contracting agency. The individual water users would pay to the contracting agency that portion of the cost of storage capacity which they were able to pay; and the remainder would be paid out of the basin fund from power revenues. The amount which the individual water users would pay would be spread over a repayment period up to fifty years, and would be paid without interest.

It should be noted that, under the provisions of the Storage Project Act, the amount which must be repaid by the individual water

users may be a very small percentage of the total cost of the stored water; but in any event, the amount is to be fixed upon the basis of their ability to pay.

HOW IS INBASIN BENEFICIAL USE OF WATER TO BE ACCOMPLISHED?

Exclusive of the Curecanti Project proper, there are five local projects for which decrees are sought in the adjudication proceedings in Water Districts Nos. 28 and 59. These are: Tomichi, Cochetopa, East River, Ohio Creek and Fruitland Mesa projects. Of these, three are specifically named in the Storage Project Act, Public Law 485, the Tomichi, Ohio Creek and Fruitland Mesa Units. If the other two are found to be feasible, they may also be constructed as participating projects under Public Law 485, although not designated in the Act for the preparation of planning reports, as are the other three.

We shall explain how the water of the Gunnison River is to be utilized, under the Fruitland Mesa Unit. The same procedures, with variations, will be followed in connection with the other projects above named.

The benefited lands, to be served by the Fruitland Mesa Project, lie in Montrose and Delta Counties, north and east of Black Canyon. 11,700 acres of new land will be supplied with water, and a supplemental supply will be available for 7,700 acres, presently but inadequately irrigated.

The principal supply of water are Sapinero and Curecanti Creeks, although some water is to be taken from Crystal Creek in Water District No. 40. The Soap Park Reservoir is to be constructed on Sapinero Creek; and water will be impounded therein during the spring run-off period. The stored water, as well as the amount of direct flow water which is available over and above senior rights, will be conveyed to the benefited lands by means of the Soap Park Bench Flume, the Crystal Creek Tunnel and the Fruitland Highline Canal Enlargement and Extension.

Under the Upper Gunnison Basin Project claim for water rights it can be reasonably anticipated that Soap Park Reservoir will fill from unappropriated spring flood water. However, this would not be true if the Curecanti Reservoirs had a priority date for water right dating from an early power site withdrawal. The right to divert direct flow water through the tunnel and canal are, of course, junior to the decree of the

Uncompahgre Water Users Association to the Gunnison Tunnel. Therefore, in order that the Fruitland Mesa Project may divert water from the natural flow of these source streams at times when that water is required to fill the Gunnison Tunnel decree, it will be necessary for the project to acquire storage capacity in the Curecanti Reservoirs. When the demands of the Gunnison Tunnel would otherwise preclude diversion by the Fruitland Mesa facilities, water then can be released from the project's storage capacity in the Curecanti Reservoir. This is accomplished by a system of exchange, which is authorized by the statutes of the State of Colorado.

Thus, the cost of construction of the Fruitland Mesa Project would include the cost of the Soap Park Reservoir, Canals, Flumes, etc., and also the cost of storage in Curecanti to be utilized by exchange as above described. Before the project is constructed it will be necessary that a repayment contract be executed between the United States and the conservancy district which is in the process of organization in the affected area at the present time. Repayment of the cost of the project will be accomplished from two sources: First, the water users will pay such amount as is within their ability to pay; and, Second, the balance will be paid out of power revenues derived from the operation of power plants at Curecanti and the other holdover storage reservoirs being constructed under the Storage Project Act.

This outlines the general plan of operation of all the units of the Upper Gunnison Basin Project whereby the water of the stream will be put to the maximum beneficial use within the basin. It is probable that it will be necessary for each unit to acquire storage capacity in Curecanti; although the amount of such capacity and the terms upon which it is acquired cannot be definitely determined at this time.

HOW MUCH LAND WILL BE BENEFITED BY THE UPPER GUNNISON BASIN PROJECT?

According to the February 1951 Reconnaissance Report of the Bureau of Reclamation for the Gunnison River Project, the following units, with acreages to be served, are included as units of the Upper Gunnison Basin Project:

UNIT	NEW LANDS IN ACRES	SUPPLEMENTAL LANDS IN ACRES	TOTAL
Tomichi	12, 180	15, 400	27, 580
Cochetopa	13, 280	6, 190	19, 470
East River	1, 780	970	2, 750
Ohio Creek	6, 200	10, 710	16, 910
Fruitland Mesa	11, 700	7, 700	19, 400
Totals	45, 140	40, 970	86, 110

WHAT WILL BE THE STATUS OF TAYLOR PARK RESERVOIR?

The Taylor Park Reservoir has a decree, entered April 29, 1941, for the storage of 111, 260 acre feet of water to be used for two general beneficial uses, irrigation and generation of power. The decree for irrigation use is absolute, and that for power generation is conditional. The priority date is August 3, 1904. It is junior, in point of time, to the decree to the Gunnison Tunnel.

Water stored for irrigation purposes is utilized in the following manner: The Reservoir is filled to the extent that water is available, excepting in extremely dry years to its capacity, during the spring run-off. This water is retained until the normal flow of the Gunnison River at the East Portal of the Gunnison Tunnel falls below the amount required to fill the Tunnel or meet the needs of the water users under the Uncompahgre Project within the tunnel capacity. Taylor Park water is then released to make up the deficiency.

Because of the fact that releases of water stored in Taylor Park for irrigation use are made on a seasonal basis, that is, only during periods of low stream flow, it has been impractical to attempt to generate power at the dam. With development of a nearby firm source of energy generation at the Curecanti Unit Power Plants it may become practical to utilize the Taylor Park power right in the future, even though on a seasonal basis.

The District has requested the entry of a conditional decree to the Taylor River Canal, in the pending adjudication proceedings in the District Court of Gunnison County. The point of diversion of the canal is to be located on the Gunnison River below the confluence of that stream and the East and Taylor Rivers. Its proposed capacity is

302 second feet. The sources of supply are: (1) The direct flow of the Gunnison River at the point of diversion, and (2) Releases from Taylor Park Reservoir "by exchange for storage in Blue Mesa, Morrow Point, and Crystal Reservoirs." The water to be diverted by means of the canal will serve to irrigate new lands and provide supplemental irrigation for presently irrigated lands in the Ohio Creek area.

This plan is based upon the general proposition that it is of no consequence to the Uncompahgre Water Users Association whether its stored water comes from the Taylor Park Reservoir or from the Curecanti Reservoir, so long as it is assured of receiving the amount it now receives from Taylor Park, at the times it is entitled to water, and at no greater cost to that project. The plan comprehends that users of water through the Taylor River Canal will acquire storage rights to the Curecanti Reservoirs equal to the amount of water they will use from Taylor Park, at a cost to be determined by the Bureau of Reclamation and the Upper Gunnison River Water Conservancy District. It should be emphasized here that the cost of exchange water in Curecanti Reservoir, to make possible the use of Taylor Park water, by exchange, through the Taylor River Canal, would be paid by the water users according to the same formula as we have described in connection with the Fruitland Mesa Unit. That is, the water users themselves would pay, over a period up to fifty years, and without interest, the amount they are able to pay; and the balance of the cost will be paid out of power revenues from the Basin Fund established by Public Law 485. *paid*

To determine whether or not releases of water from the Taylor Park Reservoir can be made according to a schedule which will make practicable the generation of power will require additional studies which have not yet been made. Further, there may be modifications of present plans for the use of Taylor Park water; and these plans were so designed that such changes that appear to be necessary can be made.

Three apparent conditions should be emphasized here. They are:

First, in order to use Taylor Park water upstream from the Curecanti Reservoir, by exchange, it will be necessary that the entities using the water acquire storage capacity in the Curecanti structures; and this must be at their cost, and without cost to the Uncompahgre Water Users Association. To the extent of the use of water above Curecanti, the generation of power there will be curtailed; and this fact will be taken into consideration in establishing the cost of the storage. The return flow from upstream use will, of course, be available for power generation use at Curecanti.

Second, if it should develop that power can be generated at Taylor Park Reservoir, it appears clear that the net revenue from the sale of power will accrue to the benefit of the Uncompahgre Project, and cannot be considered in the matter of the payment to be made for exchange storage.

Third, no agreement with the United States for the use of Taylor Park water by exchange would be permitted to adversely affect the indebtedness of the Uncompahgre Project or that project's payment contract with the United States.

We wish to conclude our memorandum on the subject of the Upper Gunnison Basin Project by making some general observations and comments.

Everything The Colorado River Water Conservation District has done in the matter of this project has been done with two objectives, which are:

1. To make available for all types of beneficial use within the natural basin of the Gunnison River all of the water which can be put to use therein within the limits of feasibility; and this, obviously, for the benefit of the Gunnison Basin itself.

2. To protect the Gunnison River against invasion by transmountain diversionists. We have consistently, and wherever an opportunity presented itself, repeatedly explained that protecting any tributary of the Colorado River in Colorado against transmountain diversion protects the entire stream so far as western Colorado uses from that stream and its tributaries is concerned. If, for example, any water is taken from the Gunnison River to the Arkansas Valley, the amount of water taken represents total depletion to Colorado's share in the waters of the Colorado River as defined by the Colorado River Compact and the Upper Colorado River Basin Compact, and, therefore, reduces by the amount of water diverted the water supply available for potential development on the Gunnison River, as well as on all of the other streams of the Colorado River System in western Colorado. The Upper Gunnison Basin Project, including the Curecanti Reservoirs themselves, provides effective protection against such transmountain diversions.

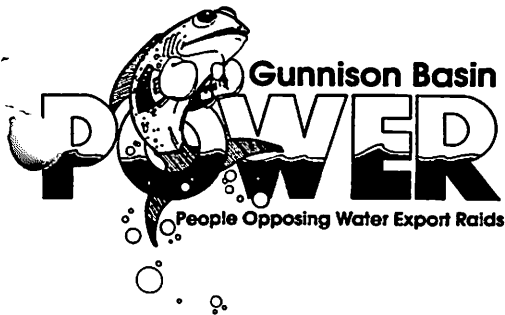
As we have indicated earlier herein, the entire Upper Gunnison Basin Project was designed with the idea in mind that rights to the use

of water for feasible projects in the entire Basin will be established. Details of any or all of the units of the project may and probably will be modified. But the basic decree for water rights for those units will be entered and may not be assailed.

In designing the project, we are building a foundation for the future. Whether or not the Tomichi Unit, for example, will prove to be a feasible thing has not been determined. If, upon full investigation, it is found not to be feasible at this time, certainly such a finding does not close the door to its ultimate development. What is infeasible today may become entirely practical ten or fifteen or twenty years from now. If it becomes feasible in the future, the right to the use of water for it will have been established.

The development of the project as designed or as it may be modified will not be completed in one year, ten years or perhaps in thirty years. But this fact should be borne in mind by those who will press for the construction of these various projects:

The Colorado-Big Thompson Project was first conceived in the twenties. Senate Document No. 80, which formed the basis for the project, was promulgated July 5, 1937. No water was delivered by means of the project until the Fall of 1951, fourteen years later. The intervening years were spent by those who sponsored the project in completing plans, obtaining authorization and appropriations by Congress, and in construction work on project facilities. So will it be with this project, although we venture the assertion that it will require more than fourteen years to complete and put into operation all of the project units and features.



January 29, 1996

L. Richard Bratton, Esq.
Bratton & McClow, L.L.C.
232 W. Tomichi Avenue
Suite 202
Gunnison, CO 81230

Re: Bureau of Reclamation - Curecanti Project

Dear Dick:

This letter is in further response to your letter to POWER, dated November 3, 1995. POWER has completed its examination of the documents which were furnished by you. We would like to first comment on your general remarks which appear at the beginning and ending of your letter.

First, the documents in its possession have certainly helped POWER to understand the 60,000 acre foot subordination concept as well as the historic operation by the Bureau of Reclamation (BOR) to release sufficient water to satisfy downstream calls which in turn protects the Upper Gunnison Basin water users' junior decrees. Those records, however, do not diminish POWER's long-held beliefs that promises of protection did exist and were relied upon by the people of Gunnison County, that they have been recognized by the BOR, and that those promises should be formalized and enforced.

Second, the papers you furnished, and other papers which must exist, substantiate POWER's position that promises were made to people of the Upper Gunnison Basin in return for the people's support for the Curecanti Project. POWER believes that the Upper Gunnison River Water Conservancy District (UGRWCD) should immediately commence the implementation of these agreements (and terminate your opposition to this action), and require the BOR to comply with its obligation to the people of this community. It is difficult to understand what "more important issues" would take precedence over requiring the BOR to honor its promises. What are the real water issues more important to the community to which you refer? Surely not agreements the UGRWCD is apparently working on that allow the people of this community to benefit from water stored in Blue Mesa Reservoir *by paying for it*. Perhaps if you could explain in detail to POWER what these issues are, it might help POWER to support the Board in its efforts to enhance the water rights of the people of this community. By this we do not mean to indicate that the Board is not dealing with other important issues, but surely none can be as or more important than those under discussion here.

P.O. Box 1742
Gunnison, CO 81230

We will now deal, in the order raised by you, with the six issues contained in your letter.

1. The BOR did indeed want to erect a much larger dam than the "small" dam now in existence which impounds about 940,000 acre feet of water. Its initial plan was to build a dam that would contain 2,500,000 acre feet of water or approximately two and a half times as much as the present Blue Mesa Reservoir holds. (See resolution of the Gunnison Watershed Conversation Committee relative to Curecanti Dam by E.L. Dutcher dated April 19, 1951 (1a))* . We will not argue engineering facts with you, but suffice to say this would have backed the water up into the south part of Gunnison. The Adams-Wilson ranch south of Highway 50 in the valley would have been inundated as well. The Montrose Water Committee recognized the essential accuracy of the Gunnison Watershed Conservation Committee statement. (See their memo to E.L. Dutcher of April 30, 1951 (1b)). At the second meeting of the Policy and Review Committee - Gunnison River Storage of December 14, 1951 (1c), it was confirmed that Plan A was the Bureau of Reclamation's study which provided for a dam backing up 2,500,000 acre feet, Plan B, 1,935,000 acre feet, and Plan C, (the small dam) 940,000 acre feet of water. In a letter from E.L. Dutcher to Judge Stone of March 24, 1952, several references are made to the 2,500,000 acre foot reservoir proposed by the BOR (1d). In a letter from Judge Stone to Mr. Dutcher, a reference was made to the proposed 2,500,000 acre foot reservoir, copy attached (1e).

These references appear to contradict your statement that there was "Never serious consideration given to the plans for a dam that would have flooded the town." The big dam was certainly a worry to Mr. Dutcher and to the other people who were concerned about the creation of the Curecanti Reservoir. The Gunnison Review Committee met on March 3, 1952 (1f), and we believe the document reviewed by that committee on February 23, 1952, would also shed light on the plan of the BOR in this regard. Please furnish that to us if it is in your possession and particularly "Plan E" thereof referred to at page 8 of document 1(c).

Typo
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1e
1c

2. We would not couch the wording of the first sentence of paragraph 2 of your letter in the same terms you have used. We know that without the consent and approval of the people of the Upper Gunnison River Basin, the Colorado River Water Conservation District would not have lent its approval to the project. Without it, the Colorado River Water Conservation Board would not have approved it. Without the approval of that board, Colorado's representatives in Congress would not have approved it, and without their approval, Congress would have never funded of the Curecanti project. As you note, "Political forces throughout the state" supported the project because the Gunnison community supported it. It is a disservice to many

* Numbers in parenthesis refer to attached exhibits. Exhibits only include pertinent material outlined.

people in the 1940's, 50's, and 60's who worked diligently on this project to imply that their efforts were not immensely important.

In fact, great blocks of Mr. Dutcher's time were spent on opposing the creation of the large dam, and in providing that this community would be protected, and compensated in various ways if the small dam was built. See the letter to Mr. Dutcher dated April 9, 1951 (2a) by the Colorado River Water Conservation District in which it was stated that:

"Finally, I hope that, no matter what their decision may be on their own particular problems the committee will give their consent to the Storage Project as a general proposition, ----."

On April 14, 1951, Mr. Dutcher commented that Mr. Merrill's argument was not very impressive with the local people as they were not close enough to the overall water picture (2b). Mr. Dutcher seemed to think that the feelings and opinions of the local people were important.

See also official comments and recommendations of the State of Colorado and the Colorado River Storage Project, page 3 and page 8 (2c). There was a Policy Review Committee - Gunnison River Storage meeting on September 28, 1951 (2d). This committee had the major task of ascertaining whether a plan could be worked out for storage on the Gunnison River which would preserve the best water development in Colorado. The approval of this committee was sought so that the project could go forward. Mr. Dutcher certainly believed that the approval of the Gunnison people was necessary for the project to proceed as shown by his letter of March 24, 1952 to Judge Stone (1d). He stated that the approval of the Gunnison Committee must be predicated on the premise that there will not be any material changes in the size and location of the dam, capacity of the reservoir, as such had to be approved by the committee. If the approval of the people of the Upper Gunnison Valley was not necessary, Mr. Dutcher was certainly misinformed and certainly did a lot of work which was unnecessary.

On April 15, 1952, Mr. Dutcher, in a letter to Judge Stone, regarding the report of the Policy and Review Committee, of the Colorado Water Board, even went so far as to say that if the report is finally amended,

" I will be in a position to approve it and I sincerely trust that the amendments can be made without another meeting" (2e).

Was Mr. Dutcher inappropriately assuming authority which he did not possess? In a letter to you, Dick, on March 15, 1962 (2f), Mr. Barnard, who was chairman of the Colorado River Water Conservancy District, stated that:

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

Following through with commitments from federal and state officials and political goodwill, as well as statutory requirements are all part of the equation in the approval process of a major project, and in that sense, local approval does mean "permission". Please consider the implications of Mr. Bernard's statement and our thoughts in connection with your position that the State was not required to obtain "permission" from our local community to build the Aspinall Unit. Next, consider what agreements were made to the people of the Gunnison Basin to protect the upper basin junior decree from a call by the Curecanti senior water decrees.

3. Discussions of 60,000 or more acre feet upstream protection from calls by the project occurred as early as April 9, 1951. See Merrill letter to Dutcher (2a). Mr. Dutcher in response was not persuaded that the project would not place a call on junior upstream decrees. See his letter to the Colorado River Water Conservation District of April 14, 1951 (2b). However, this does not mean the people of the upper basin gave up their demands for 60,000 acre feet, consumptive use of water against reservoir calls. On March 3, 1952, Mr. Dutcher indicated the Gunnison Watershed Conservation Committee, of which he was a chairman, would approve the construction of the reservoir provided that the waters of the Taylor Park Reservoir were transferred to the people of this district (1a, page 3). What Dutcher originally wanted was 106,000 + acre feet of protection to junior decrees above the reservoir by acquiring the Taylor Reservoir. This was later apparently withdrawn in consideration of receiving a 60,000 acre foot depletion out of the Curecanti Reservoir and downstream protection by planned water releases. See page 12 and 13 of BOR Reconnaissance Report, March 1964, (3a), a letter from John Barnard to L. Richard Bratton of March 15, 1962 (3b), letter from the Regional Solicitor, Department of Interior dated October 26, 1984 (3c), page 13 of the District Water Court Decree dated June 16, 1986 (3d), letter from BOR to Senator Tim Worth dated March 14, 1990, page 11 (3e), and The Case for the Curecanti Reservoir, page 8, paragraph 2 (3f) (circa April 1951). As a result of these general understandings, the transfer of the Taylor River rights to the Gunnison people was discontinued, (See letter of April 15, 1952 of Mr. Dutcher to Judge Stone (2e). (There are several other documents in POWER's files to support the 60,000 acre foot protection against reservoir calls.)

The terms of the initial contract setting forth these understandings and agreements was prepared in the early 1960s, probably by Mr. Porter and others (3g). In that statement of intent between the Upper Gunnison valley people and the BOR, the operating principals of the reservoir would be written in a way that would allow an amount of water to be determined by the United States, but in any event should "allow water depletion of not less than 60,000 acre feet of water upstream from the Blue Mesa Reservoir including the depletion of the Fruitland Mesa Project -", not to be subjected to call by the project under its decrees.

4. Moving to your fourth paragraph, there are several general statements made there with which POWER can agree. First, there should probably not be a lumping together of the 60,000 acre foot subordination promise and the agreement by the BOR to protect the upper Gunnison water users against downstream calls. The later was basically an understanding and agreement that whenever downstream calls were/are placed on the river, water would be released to satisfy these calls regardless of the amount. It was probably assumed that such protection could be afforded by the normal methodology of operating the reservoir without the necessity of quantifying the amount of water involved. This lumping, however, did not originate with POWER, but rather occurred much earlier, as shown by 4a, a 1957 letter from the Colorado River Water Conservation District.

We also applaud the statement that the UGRWCD should work effectively with the BOR,

"to provide an agreement with the Aspinall Unit operations that have existed for the past 30 years, which have in effect provided downstream senior call protection, can continue substantially (though not entirely) the same manner".

This agreement should have been entered into 30 years ago and the sooner it is completed and executed the better. We're not sure what you mean by saying "though not entirely"; we assume that you intended to say that in a very dry year there would be some potential limitation on this protection.

We also agree with your statement that everyone in the basin always expected one or both of the above (60,000 acre foot subordination and downstream protection) would occur. There is ample evidence to support these expectations, but the origins of these expectations took place considerably earlier than 1959. For example, in 1951 the Colorado River Water Conservancy District through E.C. Merrill, its secretary, wrote to Mr. Dutcher a long and explanatory letter (2a) concerning the reasons the Gunnison people should support the Curecanti Project, and enclosed a document entitled "The Case for Curecanti Reservoir" (3f). The essence of that document is the statement by the District that:

"However, if Curecanti Reservoir is built this cannot happen as the water the

Uncompahgre Project needs will be stored in that reservoir below all your uses and that Project will never bother you again."

The people of the upper Gunnison River District supported the building of the reservoir because they believed that:

- 1). " It will take care of your Upper Gunnison's debts to the Lower Basin, in the worst conditions ever known in the past;
- 2) It will remove the fear that the Uncompahgre Project can ever exercise its priority against you."(3f, page 8)

If the conclusions reached in 1951 were as clear and definite as it appears they were, surely these matters were under discussion prior to that time.

You state that downstream call protection was never promised for free. We believe Mr. Dutcher and others working on these matters in the 1950s would have been affronted by the suggestion that the people of the upper valley would have had to pay for releases by the BOR to satisfy downstream calls. Please examine Mr. Barnard's letter of July 29, 1957 to Mr. Porter, in which he discussed rights acquired by the BOR from the Colorado River Water Conservancy District (4a). He stated in paragraph 2 that, "Rights acquired in Curecanti Reservoir for irrigation purposes will be utilized by a system of exchange". The district would have the right to call on water stored in the Curecanti Reservoir to be released to meet downstream demands senior to certain junior decreed rights along the upper reaches of Gunnison and its tributaries. The most important and largest of these downstream senior rights, of course, is that of the Uncompahgre Water Users Association. In other words, *rather than pay for the water to be released to satisfy downstream uses, the water was to be supplied by exchanging water which the upper Gunnison District would control in the reservoir or above it.* POWER believes that the conditional decrees owned by the district are the source of water discussed by Mr. Barnard to be exchanged with BOR. Apparently if this was done, the immediate danger of losing this water by non-use would disappear.

Mr. Barnard, in that same letter to Mr. Porter, confirmed that one of the purposes of the Curecanti Reservoir would be to permit the upper Gunnison people to store water in the Curecanti Reservoir to be released to downstream demands senior to certain junior decreed rights along the upper reach of the Gunnison River. Mr. Barnard stated,

" Water stored in the Curecanti would be released when these demands are made, and these presently existing rights can then avail themselves of the amount of water flowing in their various sources of supply."

There was a combined report of the secretary-engineer and counsel of the Colorado River Water Conservation District dated July 21, 1959 (4b). In that report, at page 3, it is stated that the Curecanti Project would serve to provide water for other beneficial uses within the Gunnison Basin itself. Specifically,

" Water impounded in these reservoirs can be made available to supply the demands of the decrees of the Uncompahgre Project through the Gunnison Tunnel. Thus, the burden on the stream above the Blue Mesa Reservoir will be relieved; and water, which now must be released or bypassed to meet these demands, will be available for diversion in Gunnison County under existing decrees, and may be utilized for irrigation and other purposes, by exchange for stored water in the Blue Mesa Reservoir".

The statement makes clear that there was indeed an agreement with the people of the Upper Gunnison River to protection against calls by the reservoir. The water was to be furnished "by exchange", or in other words, "for free".

One of the important reasons the people of this community believed they had an agreement with the BOR to provide downstream protection was a result of the above combined report. In sum, it would certainly appear that by the agreed method of releasing water from the Curecanti Reservoir, the prior needs of the Uncompahgre Water Users Association and the Redlands Power and Water Company could be satisfied. Nothing in this report suggests that the people of the upper Gunnison valleys should pay for the water that the proper regulation of the release of water from Curecanti would make available.

5. Concerning your paragraph 5, although a final form of contract has not been drafted between the BOR and the people of the Upper Gunnison River Basin, sufficient evidence exists of promises made during the past 40 to 50 years to allow the terms of the agreement to be plainly shown. Dick, as you know, when parties act as though a contract exists, and act to their mutual benefit and detriment, a contract can be found and approved even though it has not been formalized.

You, as attorney for the UGRWCD engaged in many meetings, had much correspondence, and entered into negotiations concerning the agreements and understandings with the BOR which completely contradicts your statement that, "no such basis exists" to support a claim against the United States. You wrote to the BOR on December 4, 1962, (5a) and claimed there was a commitment to the upper Gunnison River of 60,000 acre feet. Surely you remember these events which occurred in 1962 and in which you played an important part.

If the UGRWCD does not perform its duty in persuading the BOR to keep its promises, the people of Gunnison County should be apprised of this fact and be given the opportunity to decide whether the BOR should be further encouraged to perform

its duties by suit. It seems untenable to allow the rights of the people of the upper Gunnison River district to lose the protection to which they are entitled, to be neglected, and perhaps substituted, by agreements which would only last a few years and which would require the people of this district to pay for water which was promised to them free. We believe that the people have not been informed as to their rights. You and the Board itself should reconsider your position and insist that the BOR perform on its promises to the people of the upper basin of the Gunnison River.

6. Your paragraph 6 repeats matters which we hope we have answered. We trust that POWER has furnished you information supporting its position that the Curecanti Project did promise call protection for the upper basin by providing a facility which would meet downstream senior demands through normal operation, that such protection has been provided, and an agreement should be drafted and executed so stating.

Finally, POWER is frustrated in its investigation of the agreements and understanding that went into effect many years ago. We would appreciate documents which are needed and should be made available to us, as follows:

1. Mr. Dutcher's statement to the Colorado Water Conservation Board of June 11, 1951.
2. Plan E, developed by the Gunnison Watershed Conservation Committee, which is referred to in Mr. Dutcher's letter of March 3, 1952.
3. Final report of the Policy and Review Committee of the Gunnison River Storage and Appendix A referred to in Mr. Dutcher's letters of March 24, 1952, and April 8, 1952.
4. BOR's correspondence and plans from 1945 forward. Specifically, its report on the Colorado River project. (See statement of Colorado of June 1954)
5. The 1951 reconnaissance report of the BOR referred to in the October 1957 study.
6. The 1959 Bylaws of the UGRWCD.
7. Later drafts of the statement of intent and agreement with the BOR

We will look forward to the above documents being made available to POWER.

POWER wants to be in a position to cooperate particularly with the UGRWCD and avoid an adversarial position. However, this should be a two-way street in which your cooperation is needed. Let's set up an early meeting to discuss these important issues.

Thank you for your consideration.

Sincerely yours,
POWER STEERING COMMITTEE

By: _____

Secretary

Maureen E. Stevens

Judy P. Clark

Judy P. Clark

By: _____

Chairman

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J. H. Dulek

RESOLUTION OF THE GUNNISON WATERSHED CONSERVATION
COMMITTEE RELATIVE TO THE CURECANTI DAM

WHEREAS, officials of the Bureau of Reclamation under the sponsorship of the Colorado Water Conservation Board have submitted to the citizenry of the upper Gunnison River Basin (which means that area from Crystal Creek east to the Continental Divide) their plans for the construction of certain dams under the Colorado River Storage Project report, for the storage of water in the upper Colorado River Basin, and

Whereas, one of the dams proposed, known as the Curecanti Dam, will, if constructed, impound approximately 2,500,000 acre feet of water, and the reservoir will extend from the dam site east to within one mile of the city limits of the City of Gunnison, Colorado, and all of the ranches, resorts, and other property along the Gunnison River Basin between the dam site and the City of Gunnison will be inundated, and

Whereas, a series of meetings have been held in the upper Gunnison River Basin by the various groups and organizations for the purpose of determining whether the construction of the Curecanti Dam would be beneficial or detrimental to the people in the upper part of the Gunnison River Basin, and

Whereas, the Gunnison Watershed Conservation Committee was organized and selected for the purpose of representing the interested organizations and people in the upper part of the Basin in connection with said matter, and

Whereas, after careful and thorough consideration it is the opinion of the people represented by said Committee that the losses and damages that will result from the construction of the Curecanti Reservoir, as now planned, will far outweigh any benefits that might accrue to the people in this area, and that the construction of the said Curecanti Dam as now planned and the reservoir which will result therefrom will cause irreparable injury and loss to the people and property in this area for the following reasons, to-wit:

1. That it will inundate approximately ²⁰20% of the ranch land in this part of the Basin and that the ranches affected are some of the finest

the only ones injured, are entitled to fair treatment and consideration and have definitely concluded that certain adjustments must be made and that the same must be ratified and confirmed by congressional act as a part and parcel of the proposed projects if the construction of the Curecanti Dam is authorized.

THEREFORE, BE IT RESOLVED by the Gunnison Watershed Conservation Committee, representing the people in the upper Gunnison River Basin, that the following adjustments be made and incorporated as a part and parcel of the Colorado River Storage Project plans and that the same be sanctioned and approved by congressional act:

1. That a coffer dam be constructed at some suitable point below Iola for the purpose of preventing the water in the reservoir from inundating that part of the Gunnison River Basin above the coffer dam.

2. That the Taylor Park dam, reservoir, waters and increased storage rights be transferred and conveyed to the people in the upper Gunnison River Basin for domestic, irrigation and industrial purposes and that the water stored therein be used to firm the Curecanti Reservoir, thereby permitting and supporting the construction of the coffer dam lower down the river.

3. That the engineering surveys and investigations of projects in the upper Gunnison River Basin be completed as quickly as possible and prior to any congressional action on the Curecanti Dam, and if the surveys disclose that one or more of the proposed projects is found to be feasible that the people thereby affected shall have the right to insist upon the construction and completion of said project or projects prior to or concurrently with the construction of the Curecanti Dam and as a participating project or projects.

4. That the Government as compensation for the loss of revenue in the form of taxes and for lowering the economy of Gunnison County, pay to Gunnison County the sum of \$500,000.00, prior to the construction of the dam, and a reasonable amount annually thereafter as may be determined by a survey and investigation of an impartial committee or group working in conjunction with the local people.

5. That the Government provide whatever funds are necessary for the additional school facilities in Gunnison as well as maintenance and operation of the same, as may be required to take care of the additional

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reduction, of range rights and privileges on the National Forest and Public Domain, from the ranches that will be inundated, to any new lands that will be taken up by the permittees or their assignees.

3. It is questionable whether there will be any good resort sites bordering the Curecanti Reservoir yet the resort owners whose lands will be inundated should be given a preferential right to new locations on Government lands bordering this reservoir, and on other reservoirs which may be constructed in the upper Gunnison River Basin.

4. That in the acquisition of the lands that will be inundated, and other property affected by the proposed Curecanti Reservoir, the Government shall take into consideration the effect of the income tax burden and the devaluation of the dollar in awarding its compensation to the owners of said properties.

5. That arrangements be made in the regulation of the water from the Taylor Park reservoir to prevent, as much as possible, the injury to and adverse effect upon the fish life and fishing conditions along the streams affected, and that the local people have a permanent voice in such regulatory measures.

BE IT FURTHER RESOLVED, that as the above conclusions and requirements have been made after careful, thorough and complete study, debate and consideration, that it is the firm belief of the people in this area that such requirements are fair, reasonable and just.

BE IT FURTHER RESOLVED, that copies of these resolutions be Gov. Dan Thornton, transmitted to/the Colorado Water Conservation Board, to the Colorado River Conservancy District, to the Delta County Agricultural Planning Committee, to the Board of Directors of the Montrose Chamber of Commerce, to the Colorado State Agricultural Planning Committee, and to the press.

Upon motion duly made and seconded the above and foregoing resolution was unanimously passed, approved and adopted by the Gunnison Watershed Conservation Committee representing the people in the upper Gunnison River Basin, this 19th day of April, A.D. 1951.

GUNNISON WATERSHED CONSERVATION COMMITTEE

By: E. L. Dutcher, Chairman

Attest:

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April 30, 1951

Gunnison Watershed Conservation Committee
Gunnison, Colorado

Attention Mr. E. L. Dutcher, Chairman

Gentlemen:

In response to your letter of recent date enclosing copy of the resolution passed by the Gunnison Watershed Conservation Committee relative to the building of the Curecanti Dam, we wish to say that while the Montrose Water Committee goes along with Gunnison in some of their requests and demands, it is felt that these requests and demands should be considered as subsequent to the building of the Curecanti Dam. The Montrose Water Committee does urge the Colorado River Water Board to approve the construction of the Curecanti Project in the initial phase of the Colorado River Water Development.

In meeting, the Montrose Water Committee took up the Gunnison resolution, point by point, and its conclusions were as follows:

1. COFFER DAM: It is ~~was~~ not believed that the Montrose Water Committee was capable of passing on the engineering problems involved in the construction of such a coffer dam. It was felt, however, that the additional cost of construction, together with the decreased capacity of the reservoir might be a prohibitive factor.

2. TAYLOR PARK RESERVOIR: The Committee was agreeable to any mutual understanding that might be reached between the parties concerned in the transfer of storage rights in the Taylor Park Reservoir to the Curecanti Reservoir, but believes that such an agreement should not be a condition precedent to the construction of the Curecanti Dam.

3. ENGINEERING SURVEYS & INVESTIGATIONS: It was agreed that these should be completed as rapidly as possible when requested by those concerned.

4. COMPENSATION FOR LOSS OF REVENUE: It is believed that Gunnison County and the individuals concerned should be properly re-imbursed for all losses sustained as a result of construction of the Curecanti Dam.

5. PROVISION FOR SCHOOL FACILITIES; It is the understanding of the Montrose Committee that in the case of the construction of such projects as the Curecanti Dam it is customary for the Government to provide a town with full facilities to take care of the working force.

C O P Y

6. RELOCATION OF HIGHWAY 50: The Committee is in agreement with Gunnison on this matter but feels that it is a matter for the Government agencies and the Colorado State Highway Board to decide. Experience has shown that the Government in reconstruction of roads on such projects usually replaces with better roads than those originally in use.

7. HIGHWAY FROM GUNNISON TO HINSDALE COUNTY LINE; Committee is in agreement with Gunnison, but reference to Point #6, above, will also cover this matter.

8. FISH AND WILDLIFE: It is reasonable to expect that the general policy followed by the various services in the creation of other reservoirs will be followed in the construction of the Curecanti Dam.

9. SURVEYS FOR THE UPPER GUNNISON: STUDY OF RE-SEEDING AND METHOD OF IRRIGATING: The Montrose Committee is in agreement with this to the extent that it requires a pledge that participating projects in this area be given priority on the revenues from power development for survey projects, but believe that these surveys should not be a condition precedent to the construction of the Curecanti Dam.

On the matter of the five points outlined on page 4 of the Gunnison resolution relative to further adjustments "provided legal consideration will permit", the Montrose Committee reports to you the following conclusions:

1. It is agreed that the ranchers whose lands have been inundated shall have first right to re-location.

2. It is agreed that proper arrangements should be made for the transfer, without reduction, of range rights on National Forest lands and the Public Domain lands, for those whose land is inundated.

3. It is agreed that the resort owners whose property is affected by the building of the dam at Curecanti be given preferential right to new sites.

4. It is agreed that in cases of property owners affected by the Curecanti Dam the effect of Income Tax and the devaluation of the dollar should be considered.

5. Regulation of the Taylor Park Reservoir is a matter for a mutual understanding between those parties directly concerned and the Government agencies.

In closing, the Montrose Water Committee would be glad to meet at any time with the Gunnison Watershed Conservation Committee if the latter Committee so desires, in the event that said committee is in possession of information not available to the Montrose Water Committee that would enable the Montrose committee to go along with

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MINUTES OF THE SECOND MEETING

POLICY AND REVIEW COMMITTEE--GUNNISON RIVER STORAGE

December 14, 1951

Attendance

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

Members of Committee

Clifford H. Stone, Chairman--Director, Colorado Water Conservation Board, Denver, Colorado

George Cory--Montrose, Colorado, representing Montrose County

F. M. Peterson--Delta, Colorado, representing Delta County

Ed L. Dutcher--Gunnison, Colorado, representing Gunnison County

Silmon Smith--Grand Junction, Colorado, representing the Colorado River water Conservation District Board

R. M. Gildersleeve--Chief Engineer, Colorado Water Conservation Board, Denver, Colorado

Jean S. Breitenstein--Attorney, Colorado Water Conservation Board Denver, Colorado

Absent:

C. N. Feast--Director, Colorado Game and Fish Commission, Denver, Colorado

Royce J. Tipton--Consulting Engineer, Colorado water Conservation Board, Denver, Colorado

Secretary

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

Federal Observers

Bureau of Reclamation

C. B. Jacobson--Engineer in charge of Colorado River Storage Project investigations, Region 4, Salt Lake City, Utah

R. W. Jennings--Area Engineer, Region 4, Grand Junction, Colorado

L. E. Holmes--Region 4, Salt Lake City, Utah

Fish and Wildlife Service

A. B. Eustis--Denver, Colorado

RESERVOIR SITE	PLAN A*	PLAN B*	PLAN C*
Curecanti	2,500,000 A.F.	1,935,000 A.F.	940,000 A.F.
Crystal	40,000 A.F.	510,000 A.F.	510,000 A.F.
Whitewater	880,000 A.F.	880,000 A.F.	880,000 A.F.
Taylor Park			760,000 A.F.
Gateview			308,000 A.F.

*Active storage capacity of 2,480,000 acre-feet held constant in all combinations.

The study disclosed that the only increased service over the Bureau plan from these alternatives is added output of electrical energy (Plan B: 21.9 percent initially and 26.8 percent ultimately over Plan A; and for Plan C: 16.8 percent initially and 26.2 percent ultimately over Plan A). The cost of this additional generation varied from 13.1 to 22.4 mills per kilowatt hour, showing these alternatives to be relatively less feasible from an economic standpoint than the Bureau plan.

6. Question 2: What is the relative effect of decreased storage capacity in the Curecanti Reservoir on power production of Gunnison River units of the Colorado River Storage Project?

The results of the studies show the following power potential of the Gunnison River with various capacities for Curecanti Reservoir:

MEAN ANNUAL ENERGY GENERATION

Units: Million kwhr

	Curecanti 2,500,000 af		Curecanti 1,935,000 af		Curecanti 940,000 af		Curecanti Eliminated	
	Ini- tial	Ulti- mate	Ini- tial	Ulti- mate	Ini- tial	Ulti- mate	Ini- tial	Ulti- mate
Curecanti	327.9	196.1	296.5	173.2	224.7	139.3		
Crystal	284.1	176.6	277.8	175.0	243.7	158.1	189.0	145.0
Whitewater	290.0	164.6	288.8	168.0	274.7	156.1	245.6	152.5
TOTAL	902.0	542.3	865.1	516.2	743.1	453.5	434.6	297.5

7. Question 3: What is the amount of regulatory storage required at the Curecanti Reservoir site to facilitate full irrigation development in the Gunnison River Basin from its mouth to the headwaters?

The Region 4 studies of storage required to facilitate irrigation use in the Gunnison Basin assumed that: (1) no allowance was made for a diversion to the Arkansas River Basin, (2) a demand on the proposed Whitewater Reservoir to replace water now being applied to Grand Valley from the Colorado River was not considered, (3) full irrigation development was assumed to include all the pro-

General Discussion

13. Messrs. Cory and Peterson observed that the studies made at the request of the Committee show no alternatives in the Gunnison Basin to have an economic feasibility comparable to the Curecanti Reservoir site. Mr. Dutcher stated that he thought the studies would include all other possible reservoir sites in the Upper Gunnison and wondered whether any information was available to determine the aggregate amount of water that could be impounded in the Basin. He also felt that provision for some storage, but not necessarily in the amount of 2,500,000 acre-feet, might be feasibly substituted for the Curecanti. Bureau representatives pointed out the needs for the regulatory system of reservoirs in the Colorado River Storage Project plan and of the high favorability of the Curecanti site as one of the important points of regulatory control in the Upper Colorado River Basin System, and the relationship of providing regulation of water for within-use of the Gunnison River Basin.

14. Mr. Gildersleeve obtained from the Board's files and read to the Committee a list of reservoir sites in the Gunnison Basin compiled from various Bureau reports and other sources showing reservoir capacities, estimated dam and reservoir (only) construction costs based on 1949 prices, and unit costs per acre-foot of capacity. The list comprised 22 sites, totalling 1,917,400 acre-feet exclusive of the Curecanti (2,500,000 acre-feet) and the Parlin site (2,550,000 acre-feet), and ranging in capacities from 1,000 acre-feet to 750,000 acre-feet, and in unit cost per acre-foot storage from .638 to .26. Mr. Jacobson called the Committee's attention to the probability that sufficient water might not be available to develop the total capacities of these reservoirs and cited certain instances where the water supply would not be adequate, such as the Parlin site.

15. The Chairman called attention to the fact that the storage to be provided in the Basin must consider the following four items: (a) existing uses of water, (b) the additional projects in the Gunnison River Project reconnaissance report, (c) water required to round out the supply and provide supplemental water for existing projects, and (d) industrial development, keeping in mind the coal reserves within the basin. In response to Mr. Smith's question, whether the presently available draft of report on synthetic fuels was considered in the studies on questions relating to industrial use of water, the Region 4 representatives stated that the report was not available at the time of the studies, and although they now have a copy it has not yet been studied in detail. The Chairman clarified questions the members had about the use of holdover storage water that might be converted to consumptive use purposes under provisions of the Upper Colorado River Compact, by reading and explaining Section V (c) of that compact. He also described Congressional procedures necessary before the Colorado River Storage Project can be authorized and expressed hope that the State of Colorado might arrive at a conclusion on the Gunnison Basin problem before Congressional hearings are concluded.

Doc #14

1d

March 24, 1952

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

Dear Judge Stone:

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

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

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

#3: Hon. Clifford H. Stone

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

7. In sub-paragraph (d) on Page 11, reference is made to 5,049 acres of land estimated by the Bureau as land being presently irrigated which would be inundated in Gunnison County by the 2,500,000 ft. reservoir. It is my understanding that such a figure 5,049 was the figure stipulated by the Bureau of Reclamation under its old survey of irrigated lands in the areas affected, and that since the old survey was made the Bureau found an additional 1,219 acres in that area, making a total of 6,268 acres of irrigated land that would be inundated by the 2,500,000 acre ft. reservoir, and if this latter figure is used, it would mean about 82% of the presently irrigated land would be inundated by the 940,000 acre ft. reservoir. The 5,049 figure was also used in the latter part of the paragraph and perhaps this also should be corrected.

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

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

#4: Hon. Clifford H. Stone

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

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

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

#7: Hon. Clifford H. Stone

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

With kindest personal regards, I am

Yours very truly,

DUTCHER AND SERAPHINE

by:

FLD/cmp

What is Plan E?

APPENDIX P

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

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

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

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

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

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

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

1. That the road be changed, that it continue to be designated as U. S. Highway No. 50, and that it continue to run through the Cities of Montrose and Gunnison.
2. That the government make certain arrangements and provide certain facilities to take care of the influx of school children who will be in the affected areas during the construction period.
3. That some arrangement be made with the Upper Gunnison River Basin people concerning the transfer of the Taylor Park Reservoir. water rights and storage rights to them.
4. That Montrose and Gunnison Counties be reimbursed for their tax loss during their construction period and thereafter either by the Bureau of Reclamation or some other federal agency.
5. That some definite agreement be made with the Game and Fish Department and the Fish and Wildlife Service to regulate the flow of the Gunnison River below the Taylor Park Reservoir and to regulate the draw-down of the Crystal and Curecanti Reservoirs so as to cause as little damage to the fish and wildlife as is possible.
6. That if a committee is selected for that purpose, some representative of Gunnison County be appointed and selected to serve on the committee.
7. That the people who are dispossessed by reason of the acquisition of lands for the construction of the reservoirs, either ranchers or resort owners, be given some kind of priority to locate on public lands elsewhere in that area, or if they so desire, around the shores of the reservoirs.

JOHN L. HEUSCHKEL
PRESIDENT
GARFIELD
EAGLE

FRANK DELANEY, ESQ.
COUNSEL
GLENWOOD SPRINGS

F. C. MERRIELL
SECRETARY
GRAND JUNCTION



THE COLORADO RIVER
WATER CONSERVATION DISTRICT

Grand Junction, Colo.
9 April 1951.

BOARD OF DIRECTORS
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ALMONT

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

My Dear Mr. Dutcher:

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

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

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

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

A MUNICIPAL DISTRICT
ORGANIZED UNDER STATE LAW
FOR DEVELOPMENT UPON AND
CONSERVATION OF
COLORADO RIVER IN COLORADO

Mr. Dutcher

9 April 1951

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

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

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

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

Mr. Dutcher

9 April 1951

large extent from non-irrigation season flow.

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

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

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

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

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

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

Mr. Dutcher

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

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

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

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

Sincerely yours,

A. C. Merriell
A. C. Merriell
Secretary

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

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April 14, 1951

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

Dear Mr. Merriell:

I have your letter of the 7th, with the enclosures which you have entitled, "The Case For Curecanti Reservoir". I have read your letter and your arguments very carefully.

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

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

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

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

COPY

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

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

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

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

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

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

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

C O P Y

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OFFICIAL COMMENTS AND RECOMMENDATIONS

of the

STATE OF COLORADO

on the

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

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

June 12, 1950

The Secretary of the Interior

Sir:

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

Preliminary Statement

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

General Comments

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

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

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

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

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

Participating Projects

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

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

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

September 28, 1951

Attendance

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

Members of Committee

Clifford H. Stone, Chairman--Director, Colorado Water Conservation Board, Denver, Colorado

George Cory--Montrose, Colorado, representing Montrose County

F. M. Peterson--Delta, Colorado, representing Delta County

Ed L. Dutcher--Gunnison, Colorado, representing Gunnison County

Simon Smith--Grand Junction, Colorado, representing the Colorado River Water Conservation District Board

C. H. Feast--Director, Colorado Game and Fish Commission, Denver, Colorado

R. M. Gildersleeve--Chief Engineer, Colorado Water Conservation Board, Denver, Colorado

Jean S. Breitenstein--Attorney, Colorado Water Conservation Board, Denver, Colorado

Royce J. Tipton--Consulting Engineer, Colorado Water Conservation Board, Denver (afternoon session only)

Federal Observers

Bureau of Reclamation

A. A. Batson--Regional Director, Region 7, Denver, Colorado

C. B. Jacobson--Engineer in charge of Colorado River Storage Project Investigations, Region 4, Salt Lake City, Utah

C. H. Jex--Area Planning Engineer, Region 4, Grand Junction, Colorado

L. E. Holmes--Region 4, Salt Lake City, Utah

Leon F. Maca, Temporary Secretary--Hydrology Branch, Project Planning Division, Denver, Colorado

Fish and Wildlife Service

R. A. Schmidt--Albuquerque, New Mexico

A. B. Eustis--Denver, Colorado

Others Present

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

W. A. Groom—President, Redlands Water and Power Company, Grand Junction, Colorado

Introductions

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

Purpose of the Committee

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

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

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

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

TMD
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April 15, 1952

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

RE POLI. & RESERVE COM. CO. 100-11
GUNNISON R. STORAGE

Dear Judge:

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

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

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

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

#2: Hon. Clifford H. Stone, Director

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

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

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

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

#3: Hon. Clifford H. Stone, Director

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

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

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

With best wishes, I am

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DUANE L. BARNARD

BARNARD AND BARNARD
ATTORNEYS AT LAW
GRANBY, COLORADO
TUCKER 7-3362
March 15, 1962



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

Dear Dick:

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

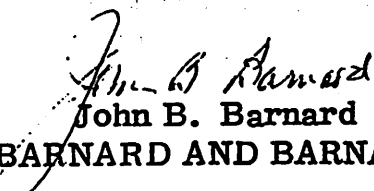
In our conversation, I asked Mr. Jennings whether or not the Secretary wished that you and I present proof of diligence in connection with the Curecanti Units on April 16; and he stated that he felt that such would be the case. Those proofs will, of course, closely parallel the proof we presented at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

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

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

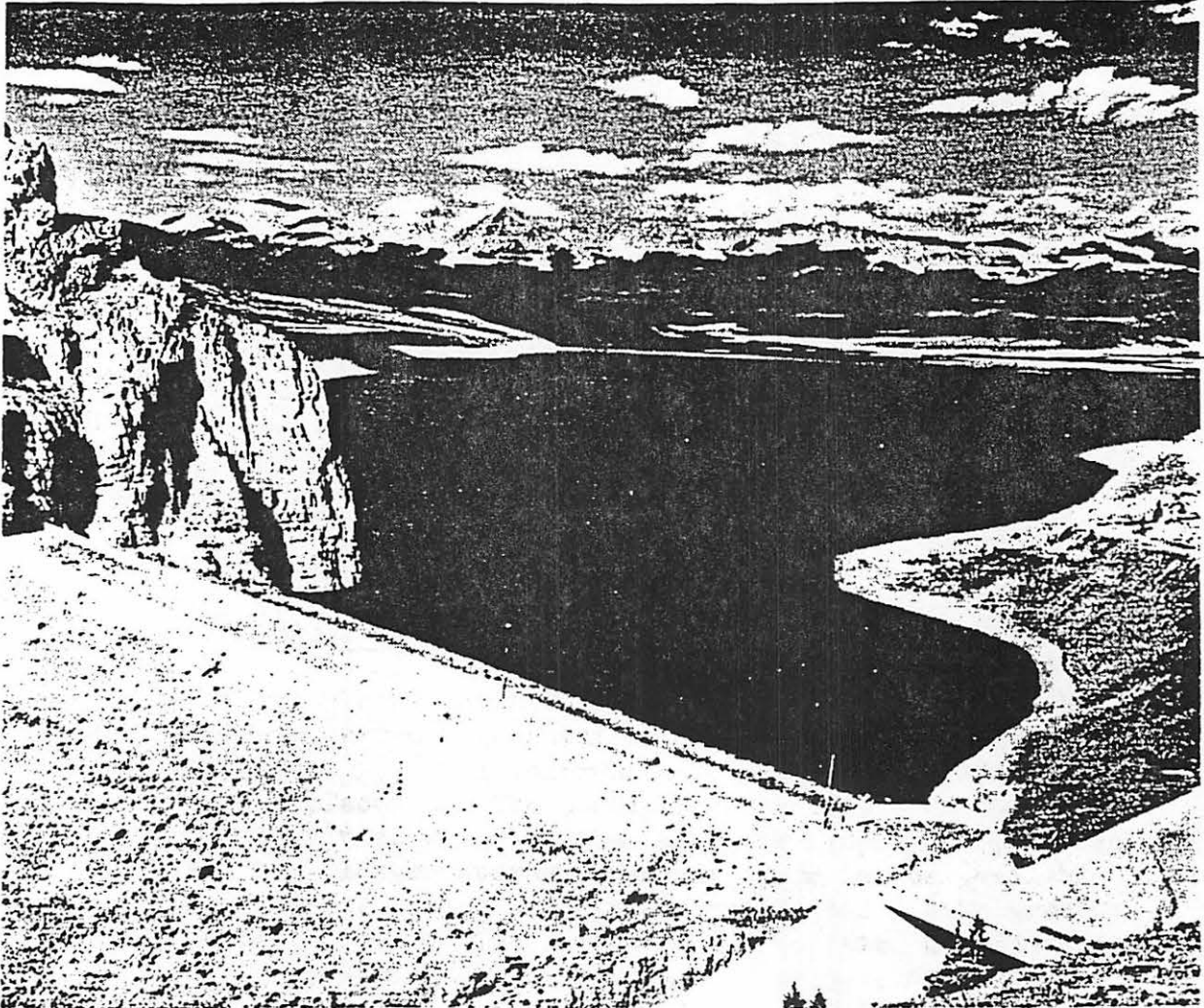
If you have any questions or suggestions, I would be glad to hear from you.

Yours very truly,


John B. Barnard
For BARNARD AND BARNARD

JBB:jb

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Taylor Park Reservoir on headwaters of Taylor River.

Subordination of Curecanti Unit Rights

Rights for the Curecanti unit were granted by the State of Colorado to the Colorado River Water Conservation District with a priority date of November 13, 1957. These rights were assigned by the district to the United States in January 1962 subject to the condition that the unit would be developed and operated in a manner consistent with beneficial use of the waters in the Gunnison River Basin. In order that future developments in the Upper Gunnison Basin may be assured of rights to use of water, a form of contract has been developed for execution between the United States Government, the Upper Gunnison River Water Conservancy District, and water users in the upper basin subordinating the diversion and storage rights of the Curecanti unit to future developments upstream, both private and Federal, even though the rights of the upstream developments may be junior to

the Curecanti unit right. The aggregate amount of upstream depletions for which the priority of the Curecanti right may be waived has not yet been determined. An upstream depletion of 60,000 acre-feet was allowed in the operation studies for the Curecanti unit in the determination of the water supply available for power generation.

Use of Curecanti Reservoir Storage

Special contracts would be required for use of storage in Curecanti reservoirs for developments above or below the reservoirs. Charges would be made for the storage but the rate for payments has not yet been determined. No payment would be required for depletions of the streamflow at Curecanti reservoirs from upstream developments unless storage space in the reservoirs were substituted for storage required upstream.

Possible Exchanges with Uncompahgre Project

In the three plans outlined in this report water of the Uncompahgre project has been assumed to be available to the Upper Gunnison project on an exchange basis. In the comprehensive and intermediate developments water would be replaced to the Uncompahgre project from the Upper Gunnison project facilities while in the small development replacement would be made from the large storage reserves soon to be available in the Curecanti reservoirs. In all the plans considered the Uncompahgre project water users would continue to receive the same quantities of water and in the same pattern as in the past. Of course, no exchanges involving the Uncompahgre project could actually be made until prior agreements had been negotiated with the Uncompahgre Water Users Association which is responsible for administration of that project.

Although charges that would be made for use of replacement storage in Curecanti reservoirs have not yet been established, certain charges have been estimated for analyses of the small plan requiring use of the storage. These charges have been based on the actual costs of providing storage in Blue Mesa Reservoir and, for each acre-foot of active reservoir capacity, they amount to \$52 for construction, \$4 for interest during construction where applicable, and \$0.10 annually for operation, maintenance, and replacements. These estimated charges may be either higher or lower than those finally established. The estimated costs for use of replacement storage were included in the repayment analyses of the small plan and were considered a part of the project repayment obligation. The costs were excluded from the benefit-cost analyses, however, as they are considered sunk costs and therefore not properly a factor in the comparison of benefits and costs from future construction.

As additional studies are made in the Upper Gunnison Basin, further consideration will be required of the possible use of Uncompahgre project

water, the most desirable means of providing replacement storage, and the charges that would be required for replacement storage in Curecanti reservoirs if such storage is used. A study also will be needed of coordinated operation of Taylor Park and Curecanti reservoirs for power production. Such a study has not been made but indications are that coordinated operation would be beneficial to both the Upper Gunnison project and the Curecanti unit.

Upper Gunnison Project Water Rights

Conditional water rights for the Upper Gunnison project along with rights for the Curecanti unit were granted by the State of Colorado to the Colorado River Water Conservation District with a priority date of November 13, 1957. The project rights were later conveyed by the district to the Upper Gunnison River Water Conservancy District. The project rights were acquired for the development plans presented in the 1951 Gunnison River Project Reconnaissance Report. Additional filings or modifications of the previous filings may be necessary for the project plan as finally formulated and adopted. Water exchanges required for optimum project operation are permitted by Colorado law and, with the anticipated cooperation of the water users, could be arranged in a satisfactory manner.

36
DUANE L. BARNARD

BARNARD AND BARNARD
ATTORNEYS AT LAW
GRANBY, COLORADO
TUCKER 7-3362
March 15, 1962



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

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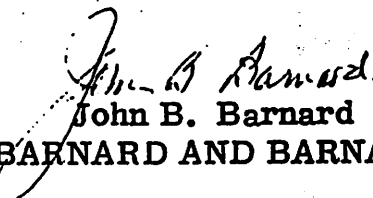
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Sometime ago I submitted an affidavit to the Secretary of the necessity of having Mr. Jennings attend and testify at numerous diligence hearings, including the one at Gunnison. Permission has been granted him in line with that affidavit. However, it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

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

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

Yours very truly,


John B. Barnard
For BARNARD AND BARNARD

JBB:jb

RECEIVED

OFFICE OF THE SOLICITOR
INTERMOUNTAIN REGION
SUITE 6201, FEDERAL BUILDING
125 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84138-1180
October 26, 1984

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WATER RESOURCES
STATE ENGINEER
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Colorado Water Resources
Power Development Authority

Blue Mesa

10/30
11-7
11-21

LBR.IM.0256

Memorandum

To: Regional Director, Bureau of Reclamation
From: Regional Solicitor, Intermountain Region
Subject: Depletion of Water Above Wayne Aspinall Unit
(Curecanti)

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

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

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

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

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

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

W. P. ELLIOTT, JR.
Acting Regional Solicitor

By *William Robert McConkie*
WILLIAM ROBERT MC CONKIE
Attorney

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

STATEMENT OF INTENT

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

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

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

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

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

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

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

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

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

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

2. The operating ~~principles~~ ^{allow for} of said Curecanti Unit will con-
tinued to promote ^{of} future water resources development in the Upper Gunnison
Basin by the terms of the operating principles which shall ~~be drawn up~~
~~be~~ provided for the waiver by the United States of ^{its} their priority to
the use of water under the decrees set out in paragraph 3 of the attached
contract in an amount to be determined by the United States but in any
event shall ^{allow} water depletion of not less than 60,000 acre feet of water ^{upstream from}
~~above~~ the Blue Mesa Reservoir, including the depletion of the Fruitland
Mesa Project, ^{which is now estimated at 20,000 acre feet of water.} In the event the ^{results of the} current water survey shows that there is
sufficient water, the United States will waive ^{its} their priority to the
above mentioned decrees for the ^{use of} water ~~users~~ in the Upper Gunnison River
Basin ^{upstream from the Blue Mesa Reservoir} for an amount in excess of said depletion of 60,000 acre feet of
water to the extent water is available ^{therefor} without impairing the economic
feasibility of said Curecanti Unit.

IN WITNESS WHEREOF (see last page
of k)

U S - - -
By _____

Upper Gunnison - - -

By _____

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and due to the relocation of Crystal dam, new decree granting a reduced water right for reservoir and for Crystal Power Plant.

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

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

JUDGMENT AND DECREE

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED

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

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

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

3

ANSWER TO QUESTION 5.

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

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

ANSWER TO QUESTION 6.

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

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

ANSWER TO QUESTION 7.

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

3F

THE CASE FOR CURECANTI RESERVOIR

Foreword

The purpose of this meeting is to discuss the wisdom of building a large reservoir on Gunnison river below Gunnison, which will store for long periods of years all the water of the river that Gunnison County does not use. So far you have heard only the side of the problem, here in Gunnison, of those who do not want the reservoir built. There is another side, with many weighty arguments why building this reservoir will really benefit Gunnison County. We want you to hear and weigh the arguments both for and against before you make up your minds. Once you decide you will probably be bound by that decision from this time on.

Colorado River Storage Project

In order properly to lay the ground work for understanding the Colorado River Storage Project we must go back to the time when people from the seven Colorado Basin states were writing the 1922 Compact. Those people did not know too much about Colorado river. The river was not measured in nearly so many places as it is today, and in some places where it was very essential to know what the river flowed, there were no measurements at all. One of these was the place which the Commission chose to divide the flow of the river between the Upper and Lower Basins, at Lee Ferry, near the Arizona line. No measurements had ever been taken anywhere near there, in spite of which fact the Commission chose that point to divide the river.

They decided to divide somewhat less than the total quantity of water they believed the river flowed between the Upper and Lower Basins, after months spent in trying to divide the water to each single state. It was very evident that California and Arizona, at least, could not agree upon a proper division of water to each of them, so the whole question of division by states was waived for division between the two principal basins into which the river naturally divides itself. This division point, at Lee Ferry is 28 miles below the Utah-Arizona line. Above this point over 90 percent of the flow originates, and not too far below Lee Ferry, Colorado river becomes a losing stream, that is, the further it flows the less water there is in it, because of stream losses.

The great canons of Colorado river are generally below Lee Ferry, although it flows in pretty considerable canons for many miles above. The tributaries that enter it above Lee Ferry are many of them large and most have a constant flow, while those that enter below are small and often dry. Lee Ferry is probably the proper place to make such a division, and since it was chosen, we are bound by that fact.

As has been said, there were no measurements of the river anywhere near Lee Ferry. The nearest place below was at Topock, Arizona, 470 miles below. The nearest place above, was on San Juan river 135 miles upstream from Lee Ferry. Colorado and Green rivers were measured many miles further upstream. None of these places had then, a very long record of runoff so the guess the Commission made was liable to be considerably in error. It was in fact, wrong by just about 32 percent. They estimated from the short records they had that the flow at Lee Ferry would average, before any use above, 20,000,000 acre-feet a year. When an estimate was made in 1946, upon the basis of much more information, including a

THE CASE FOR CURECANTI RESERVOIR

the Colorado River Storage Project the people of the Upper Basin including you people on Gunnison river, are only taking out an insurance policy on your supply of water. If part of this water is stored in Curecanti reservoir everybody above that reservoir can continue to use his water as he always has. If Curecanti is not built another reservoir will have to be built to take its place in the scheme, somewhere downstream where the evaporation is greater, and you with all the other people in the Upper Basin will lose the difference in evaporation which might be a good many thousands of acre-feet a year. But this is not the only gain from building Curecanti.

Another Danger — Uncompahgre Project

Some of you can remember what happened in 1934, when the rivers generally only flowed about one-third of their average. The Uncompahgre Project at Montrose claimed it had priorities old enough to shut a lot of you people down. You believed them and after a meeting here, both parties went over to Denver, and in the State Engineer's office came to an agreement. This was that you would use water in your customary manner until July 15th, on your meadow hay and then turn it down for use on the Uncompahgre Project for the rest of the summer. When you did turn this water down the river, without using it, the river rose in a few hours from 400 second-feet to 850 second-feet, but within a week had fallen again to about 400 second-feet. This led to the building of Taylor Park reservoir. You needed this water at least a month longer than you had it, and might not then have produced an average crop of hay. This can still happen, even with Taylor Park reservoir, since in a year like 1934 it would not fill, and you might very well be called upon for some of the late summer flow, which you would need for your own crops. However, if Curecanti reservoir is built this cannot happen as the water the Uncompahgre Project needs will be stored in that reservoir below all your uses and that Project will never bother you again.

Modern Road — Now

These are two ways in which Curecanti reservoir will be of positive benefit to all Gunnison County, so perhaps we should talk a little more about it. The dam which will make the reservoir will probably be of concrete, about 475 feet above present river level, $3\frac{1}{2}$ miles below Sapinero. Probably the highway to Montrose will cross the dam and in that case will be moved above high water line along the north side of the reservoir, which of course, will be done at the expense of the Storage Project. The present highway is being slowly rebuilt to the necessary standard for present traffic, but by this means a new highway of a type equal to the best of the present highway will all be built at once. This is a small gain, perhaps, but it is badly needed right now.

Stream Fishing vs. Lake Fishing

Built to the height stated above the dam will impound water in a lake that will reach to a point about one mile below Gunnison. It will fill the canon of Lake Fork and the valley of Sapinero creek for several miles and extend up the smaller creeks for greater or less distances and will afford reservoir fishing for many more people than can at present use the river. There will be just as much opportunity to build camps and resorts along it, and maybe more.

THE CASE FOR CURECANTI RESERVOIR

Summary

This has been a pretty long explanation, to come on top of all the bad things some of your own people have told you Curecanti would do to you. Suppose we make a list of the benefits this reservoir will actually bring you:

- 1) It will take care of your debts to the Lower Basin, in the worst conditions ever known in the past.
- 2) It will remove the fear that the Uncompahgre Project can ever exercise its priority against you. ✓
- 3) You will get a new and modern highway as far as the dam all in one lump, while the Highway Dept., could only build it piecemeal.
- 4) You will get electricity in quantities as great as all the demand you can develop.
- 5) You can have, if you want it, twice as many acres of new land as will be lost in Curecanti reservoir.
- 6) It will ^{probably} ~~definitely~~ prevent the Arkansas diversion. —
- 7) The Storage Project should help pay for the more expensive of the new projects, if you want them.
- 8) Other advantages can be worked out, which may be a real help to Gunnison County.

The Problem

What will you lose for all these advantages? About 30 miles of Gunnison river will be converted into a lake instead of a stream. As was said in discussing the Arkansas diversion the only way to hold onto your water is to make use of it, before the other fellow can. When you start out to make use of water the first thing you find is that it involves change — things cannot stay as they were. You expect us engineers to furnish you projects that will make your country grow, make it a better place to live, but if you tell us that nothing can be changed we cannot furnish you with projects because growth itself involves change.

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BARNARD AND BARNARD
ATTORNEYS AT LAW
GRANBY, COLORADO

JOHN B. BARNARD
DUANE L. BARNARD

July 29, 1957

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

Dear Mr. Porter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Yours very truly,

John E. Barnard
John E. Barnard

for Barnard and Barnard

JBB:sc
cc Phil Smith

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COMBINED REPORT
of the
SECRETARY-ENGINEER and COUNSEL
of
THE COLORADO RIVER WATER CONSERVATION DISTRICT

July 21, 1959

Over three years have elapsed since the passage of the Colorado River Storage Project and Participating Projects Act, Public Law 485. During that period, the Board of Directors and the staff of the District have directed their efforts toward the establishment and firming up of rights to the use of water for the storage and participating projects which are designed, primarily, to develop the water resources of the Colorado River and its tributaries within the district boundaries. Your secretary-engineer and counsel feel that their report, to be submitted at the third quarterly meeting in 1959, should review the activities and accomplishments of the District during these three years, in order that the Board may be advised as to the status of water rights for these projects, in determining its future course of action.

The report divides itself into river basins. In considering it, the members of the Board should have in mind the fact that, as to some of the filings which have been made and decrees which have been obtained or are sought in pending adjudication proceedings, competition with transmountain diversions, either existing, planned, or possible, is of prime importance. Some of the District's conditional decrees, for example that to the West Divide Project, not only establish rights to the use of water for the project involved, but also protect the sources of supply therefor against such diversions to the Eastern Slope as are planned or may be possible.

THE GUNNISON BASIN

Development of water resources in the Gunnison Basin will be made in five general areas, the Uncompahgre Valley, including Bostwick Park, Gunnison County proper, the North Fork, the cities of Delta and Grand Junction, and the Redlands Project, west of Grand Junction.

THE CURECANTI UNIT.

1. This is actually the Curecanti Project, authorized by Public Law 485, upon which the feasibility report required by that Act has been completed by the Bureau of Reclamation and submitted through the Secretary of the Interior to the President of the United States. In passing, it should be noted that the President has not yet officially advised the Congress that the report of the Bureau of Reclamation establishes the feasibility of the project, as he is required to do by the Storage Project Act; and, for that reason, appropriations for construction of the project may not be included in the budget for fiscal 1960. It is noteworthy, however, that the Senate has appropriated \$1,000,000 for initiation of construction of the Curecanti Unit in fiscal year 1960.

The Curecanti Project is designed, primarily, as a hold-over storage and power generation facility, performing the same function as do the Glen Canyon and Flaming Gorge reservoirs. In addition, however, as planned by the District, as a part of the Upper Gunnison Project, the Curecanti Project will also serve to provide water for irrigation and other beneficial uses within the Gunnison Basin itself. These uses may be made in the following manner:

The Curecanti Project, as now planned by the Bureau of Reclamation, includes two reservoirs, plus a third which is still under investigation and study, and which may or may not form a unit of the completed project. These are: (a) The Blue Mesa Reservoir, located below the confluence of the Gunnison and Lake Fork, which is the principal storage structure of the project, and is designed to impound 939,204 acre feet of water; (b) Morrow Point Reservoir, which is to be located immediately above the confluence of the Gunnison and Cimarron Rivers. The amount of storage in this reservoir is comparatively small, 114,706 acre feet; and it will serve primarily as a power generation generating facility; (c) the Crystal Reservoir, the exact location of which has not yet been determined. If built, the Crystal Reservoir will be located in the Black Canyon of the Gunnison River a short distance above the East Portal of the Gunnison Tunnel. It also is primarily a power generation facility. In-basin use of stored water will be made possible by the following procedures:

(1) Water impounded in these reservoirs can be made available to supply the demands of the decrees to the Uncompahgre Project through the Gunnison Tunnel. Thus, the burden on the stream above the Blue Mesa Reservoir will be relieved; and water, which now must be released or bypassed to meet these demands, will be available for diversion in Gunnison County under existing decrees, and may be utili-

zed for irrigation and other purposes, by exchange for stored water in Blue Mesa Reservoir.

(2) Water stored in these reservoirs may be used to provide stored water for the Uncompahgre Project, which is now made available by the Taylor Park Reservoir. This will make possible the use of Taylor Park water for the generation of power, by the Taylor Park Power Plant. It should be noted that a power house and penstocks have been constructed at the Taylor Park Dam; but, by reason of the seasonal nature of releases of water on the reservoir to meet the demands of the Uncompahgre Project, it has not been feasible to install or to operate power generating machinery. With the Curecanti water available for this purpose, releases from Taylor Park Reservoir may be made according to such a schedule as will permit power generation. By exchange, water for irrigation use in the Ohio Creek Unit area may be made available by means of the proposed Taylor River Canal, diverting below the confluence of the East River and Taylor River.

(3) Storage of water in the reservoirs of the Curecanti Project, and releases therefrom for power generation, will so regulate the flow of the Gunnison River downstream therefrom that a full supply for domestic and municipal use in Delta, Grand Junction, and other towns and cities served by the water from the Gunnison River or its tributaries will be assured. These cities now have decrees, conditional and absolute, for sufficient water for their present and reasonable future needs; but, during the low-flow period each year, there is insufficient water in the river to fill these decrees. With the operation of the Curecanti Reservoir sufficient water will be provided for these and other decrees for domestic and municipal uses.

(4) The regulation of the flow of the Gunnison River at the headgate and diversion works of the Redlands Power and Water Company, west of Grand Junction, will permit that company to divert sufficient water at all periods of the year to meet its present and future needs and requirement for water irrigation, domestic, and power generation purposes.

THE TOMICHI UNIT.

The Tomichi Unit includes the following structures and facilities: Ohio City Reservoir; Quartz Creek Canal; Monarch Reservoir; South Crookton Canal. The two reservoirs will impound the water of Quartz Creek and Tomichi Creek, and the water stored in the reservoirs, together with direct flow diversions from the two streams and their tributaries, intercepted in the course of the canals, will serve lands on

December 4, 1962

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

Dear Bob,

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

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

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

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

Very truly yours,

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

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November 3, 1995

Gerald Lain
POWER
Post Office Box 1742
Gunnison, Colorado 81230

Dear Gerald:

In my letter to you, as President of POWER, of March 13, 1995 (a copy of which is enclosed), I specified that I would make certain office files available for inspection by POWER on the condition that a written report of the examination of those files would be prepared by POWER and furnished to the Upper Gunnison River Water Conservancy District and our office. POWER agreed to that condition. Your examination of my files has recently been completed. I would, therefore, appreciate it if you would prepare the report as outlined at the bottom of Page 2 and the top of Page 3 of my March 13 letter, pursuant to our prior agreement.

My hope in allowing POWER to inspect my files was that it would do so in good faith and that the information therein would assist POWER to understand the "60,000 acre feet subordination" concept. My objective was to bring to a conclusion the contentious public discussions so that the people of this basin could work together on more productive issues. The recent article in the *Times* reporting on POWER'S annual meeting indicates that no progress has been made toward that objective because POWER continues to publish inaccurate and misleading information, i.e.:

1. ***That the Bureau wanted to erect a dam so large as to "effectively flood the town."*** There was never serious consideration given to a plan for a dam that would have flooded the town. An early proposal to back water to the edge of town was dropped in favor of a smaller project that was ultimately constructed which has a high water line approximately 5 miles west of town.
2. ***That a perusal of Dutcher's files shows that the Bureau had to have permission from the people of this community or the project would have never been built.*** There is nothing in the Dutcher files that would remotely support this position. The United States was not required to obtain "permission" from the local community to build the Aspinall Unit. Further, POWER's published

Gerald Lain
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November 3, 1995

position that such permission was sought prior to construction of the project is neither accurate nor a correct political assessment of that time. Political forces throughout the state, which had far more influence on Congress than the Gunnison community, were actively supporting the project, as was Congressman Wayne Aspinall (then Chairman of the House Insular and Interior Affairs Committee). The files which you reviewed amply demonstrate that the decision to build the project was made in response to that political influence rather than "permission" from the Gunnison community. It is a disservice to this community for POWER to imply otherwise.

3. ***That the Upper Gunnison River Watershed Conservation Committee (Committee of 39) agreed to support the construction of Blue Mesa Reservoir in return for 60,000 acre-feet of water stored in Blue Mesa Reservoir to be used to keep downstream senior calls, such as from the Gunnison tunnel, off the Upper Gunnison Basin.*** The written record which POWER examined shows that the Committee of 39 did pass resolutions in 1952 and 1954 in favor of the smaller reservoir prior to the passage by Congress of the Colorado River Storage Project Act in 1956. The record also shows that the Committee's support for the construction of the Aspinall Unit was initially conditioned upon the Upper Gunnison Basin receiving compensation in the form of roads, schools, wildlife, new lands for dispossessed landowners, reduced taxes, as well as the use of Taylor Park Reservoir. However, there is no mention in the resolutions of protection against downstream calls or about any reservation of water for the Upper Gunnison Basin in Blue Mesa Reservoir, and even the conditions itemized here were later withdrawn by the Committee.
4. ***That the so-called "60,000 acre-foot subordination" includes protection against downstream senior calls such as from the 1906 Gunnison Tunnel decrees.*** The attempt to lump these issues together is misleading and confusing. The 60,000 acre foot subordination is completely separate from the issue of protection against downstream senior calls. In the first place, the origin of the 60,000 acre feet is the Bureau's *Economic Justification Study* completed in 1959, three years after passage of CRSPA in 1956. The 1959 study concluded that 60,000 acre feet of water depletion could occur above the Aspinall Unit without affecting the project's feasibility.

BRATTON & McCLOW LLC

Gerald Lain

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The subordination thereof relates to the resulting agreement of the Bureau not to place a call upstream, within our basin, to fill the demand of the 1957 Aspinall Unit water rights to the extent of 60,000 acre feet. Contracts to implement that subordination for individual water projects were worked out with the Bureau in the early 1960's. Such subordination is still available for individual projects, for free, though there are legal issues associated with it that were not foreseen 30 years ago.

Downstream call protection, on the other hand, would require the Bureau to release water from the Aspinall Unit to meet downstream senior rights such as the Gunnison Tunnel that would otherwise call (shut down) junior water rights in our basin above Blue Mesa Reservoir. This was never promised for free. There is abundant written evidence beginning with correspondence in 1960 which shows that it was always understood that contracts would be required whereby compensation would have to be paid if downstream call protection were to be provided to the Upper Gunnison Basin by the Aspinall Unit. The reason for this is that the Reclamation Act of 1902, then and now, requires compensation for such use of a federal facility, and Federal reclamation law prohibits "free" use of Aspinall Unit water for the purposes you suggest. In addition, even if evidence of an oral promise to provide downstream call protection exists, such a "promise" would not be legally enforceable against the United States without the existence of requisite contract formalities.

The general public misunderstanding of the downstream call issue was possibly caused by two assumptions. The first was the assumption, by everyone including the Bureau and our community, based on Bureau studies, that the normal operation of the Aspinall Unit would release sufficient water to fill anticipated downstream senior rights. It was expected that this would have avoided a call most (but not all) of the time with no cost to the Upper Gunnison water users. This assumption is documented in the records related to the application for the Aspinall Unit water rights. This is also what has actually occurred for the past thirty years. The second was the assumption that the Upper Gunnison Project would be constructed as a participating project, funded mostly by power revenues under the 1956 Colorado River Storage Project Act. This project contemplated several medium size reservoirs in the headwaters of Upper Gunnison

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streams, mostly for protection and development of water for irrigation. These reservoirs would have satisfied most needs for irrigation water in the Upper Gunnison Basin. The Upper Gunnison reservoirs were never constructed under the 1956 Act because no project could be found which met the cost/benefit requirements of the Federal reclamation law, even though several hundred thousand dollars were expended over several years searching for qualified projects.

Although these assumptions never reached the level of a promise or an agreement, everyone in the Basin always expected one or both of the above would occur. As you know, the Bureau has recently been working with the Upper Gunnison District Board to provide an agreement where the Aspinall Unit operations that have existed for the past 30 years, which have in effect provided the downstream senior call protection, can continue in substantially (though not entirely) the same manner. Such an agreement will have certain limitations because of the provisions of Federal reclamation law referred to above. In all probability, part of the reason for the Bureau's current effort to help us is related to the past assumptions identified above. Also, the 1975 Taylor Park Reservoir Operation and Storage Exchange Agreement was developed as a part of the Bureau efforts to assist this basin to obtain real water benefits when it first appeared that the Upper Gunnison Project might not meet the requirements of the 1956 Act.

5. ***That people of the Gunnison Basin could file a lawsuit against the Bureau in federal court.*** Such a statement implies that there is a basis in law and in fact to support a claim against the United States regarding unwritten and unspecified promises related to construction of the Aspinall Unit. As I have pointed out at length above, no such bases exist. If POWER has documentation to the contrary, it should be fully disclosed and publicly reviewed. Without such documentation, it is irresponsible and counterproductive for you to suggest the possibility of litigation.
6. ***That an old "contract" to provide downstream call protection exists and is in force today.*** This is not factually correct; however, because they have been misinformed, a number of honorable people in Gunnison now sincerely believe that certain "promises" were made by the United States regarding construction of the Aspinall Unit, and

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that this community had the power to veto the project forty years ago. There is no valid evidence which supports this position. If you have documents of which I am not aware, the written report, which you agreed to as outlined in my letter of March 13, 1995, should include copies of them. If you do not have such documents, it is incumbent upon POWER to obtain publication of a clarification on the subject of "promises" in order to dispel the confusion created by previously published remarks about these unfounded claims.

If, in fact, you have reliable facts of a quality that could be utilized in court to substantiate POWER's position, the entire community will be forever indebted to you, including me. Based on my long direct involvement in all of these issues and with many of the people who were actively involved in the 1950's, I don't believe such facts exist. I do believe that the actual facts are as I have outlined them above.

This letter is intended to bring the issues discussed above into a clearer focus. The fuzzy representations of the past have secured for you substantial political coverage the past couple of years, often at the expense of the UGRWCD or this office, by stating or implying we have been inept or covered up facts. That has not been beneficial to our community. It has raised unrealistic public expectations about a "promise" that never existed. It has caused unfounded doubts about the Board and a consequent diversion of effort from more important issues. It is now time to bring this to a close and move forward in a responsible and productive way to address real water issues of importance to the community. If you have the specific reliable evidence you claim to have, produce it. If not, let's move on.

I look forward to your report.

Very truly yours,



L. Richard Bratton

LRB/dst

Enclosure

cc: Ramon Reed, President of POWER

March 13, 1995

Gerald Lain, President
POWER
P.O. Box 1742
Gunnison, CO 81230

Dear Gerald:

On February 28, 1995 you wrote a letter to the Upper Gunnison River Water Conservancy District. In that letter you advised the District that you want the opportunity to peruse what you referred to as "...some of Judge Dutcher's records made during the 1940's and 1950's....". Please be advised that all of Judge Dutcher's records are owned by this office and are not the property of the Upper Gunnison River Water Conservancy District or public records. We have recently located some of Judge Dutcher's files related to his position as a member of the Colorado Water Conservation Board, Colorado's representative on the Upper Colorado River Commission and miscellaneous local water records.

We have advised the President and Manager of the District that if they request it we will make these files available to POWER under the following conditions:

1. POWER must prepare and deliver to this office and the Upper Gunnison River Water Conservancy District, a written statement which specifies what you seek to locate in Judge Dutcher's files;
2. They may be examined only in our offices by not more than two (2) representatives of POWER;
3. At all times while the POWER representatives are examining the records a third party acceptable to us must be present. If there is a cost for such person's time, it must be paid for in advance by POWER;
4. As this will be somewhat disruptive to our office, we will require that the examination of the files may not extend over more than two (2) days;
5. We will not allow any of the records to be removed from the office.

However, as long as it is not an undue burden, we will be willing to copy any items from the files at our usual cost which is 15¢ per page;

6. A written report of the examination of these files must be prepared by POWER and furnished to the District and to our office.

I believe that it will best serve the water interest of this community if you and the other persons from POWER who are continuing to push this issue, make a bona fide effort to understand the issues that you are raising and the possible consequences thereof even if everything you allege is correct. The District and our office has made every effort to investigate each of your claims, including a review of all the Board's minutes by Lee Spann and a presentation to the District Board by John McCLOW. In addition, I personally suggested to you that I thought there was some confusion and I would be glad to sit down and review it with you. You have not followed up on my offer nor did you attend the meeting at which John McCLOW made his presentation. It appears to me there is still some basic misunderstanding of the distinction between 60,000 acre feet subordination above the Aspinall unit and the downstream call protection. Furthermore your letter of February 28 makes it clear that you do not understand even the basic terminology which you are using to explain your objections. This is a principal reason for requiring a written statement of your objections and the results of your search.

As you probably know, I have personally represented the District since January of 1961. I have attended numerous meetings with both the Bureau of Reclamation officials and a number of people who have served on what you referred to as "the Committee of 33". I do not recall, nor do the Board Minutes reflect, any discussions along the line that you suggest.

There are two separate issues involved. The first relates to what representations were, in fact, made by the Bureau of Reclamation prior to the authorization of the Upper Colorado River Storage Project Act in 1956, or subsequently. The second, and distinct, issue relates to what are the legal consequences of such representations. Although these topics have been discussed at various times and various contexts, we have not been able to locate any representations which could be construed as "promises" or what has been referred to by one of your other members as "oral contracts". In addition, and even more significant, even if such representations can be located, we do not believe that they could be enforced against the United States.

We therefore require that the written report that you prepare after reviewing Judge Dutcher's records, if you accept our proposal as outlined above, should address:

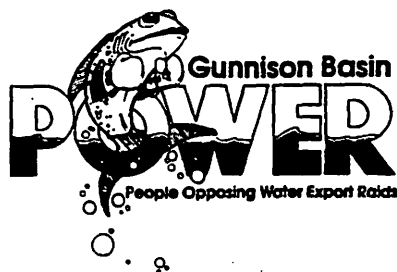
1. Any factual support for your belief that such oral or written representations were made by the Bureau of Reclamation and form the basis for any legal rights that could be utilized against the Bureau at the present time; and

2. Your legal justification for enforceability. I would request that you specify exactly what your position is in both instances, and that you no longer focus on vague generalities.

Very truly yours,

L. Richard Bratton

LRB/kam



11th
DRAFT

L. Richard Bratton, Esq.
Bratton & McClow, L.L.C.
232 W. Tomichi Avenue
Suite 202
Gunnison, CO 81230

Re: Bureau of Reclamation - Curecanti Project

Dear Dick:

This letter is in further response to your letter to POWER, dated November 3, 1995. POWER has completed its examination of the documents which were furnished by you. We would like to first comment on your general remarks which appear at the beginning and ending of your letter.

First, the documents in its possession have certainly helped POWER to understand the 60,000 acre foot subordination concept as well as the agreement by the Bureau of Reclamation (BOR) to release sufficient water to satisfy downstream calls and to protect the Upper Gunnison Basin water users' junior decrees. Those records, however, do not diminish POWER's long held beliefs that promises of protection did exist and were relied upon by the people of Gunnison County, that they have been recognized by the BOR, and that said promises should be formalized and enforced.

Second, the papers you furnished, and other papers which must exist, substantiate POWER's position that promises were made to people of the Upper Gunnison Basin in return for the people's support for the Curecanti project. POWER believes that the Upper Gunnison River Water Conservancy District (UGRWCD) should immediately commence the implementation of these agreements (and terminate your unfounded opposition to this action), and require the BOR to comply with its obligation to the people of this community. It is difficult to understand what "more important issues" would take precedence over requiring the BOR to honor its promises. What are the real water issues more important to the community to which

you refer? Surely not the 3 and 5 year agreements the UGRWCD is apparently working on that allow the people of this community to benefit from water stored in Blue Mesa Reservoir *by paying for it*. Perhaps if you could explain in detail to POWER what these issues are, it might help POWER to support the Board in its efforts to enhance the water rights of the people of this community. We do not by this mean to indicate that the Board is not dealing with other important issues, but surely none can be as or more important than those under discussion here.

We will now deal, in the order raised by you, with the six issues contained in your letter.

1. The BOR did indeed want to erect a much larger dam than the "small" dam now in existence which impounds about 940,000 acre feet of water. Its initial plan was to build a dam that would contain 2,500,000 acre feet of water or approximately two and a half times as much as the present Blue Mesa Reservoir holds. (See resolution of the Gunnison Watershed Conversation Committee relative to Curecanti Dam by E.L. Dutcher dated April 19, 1951 (1a))* . We will not argue engineering facts with you, but suffice to say this would have backed the water up unto the south part of Gunnison. We presume the Adams-Wilson ranch south of Highway 50 in the valley would have been inundated as well. The Montrose Water Committee recognized the essential accuracy of the Gunnison Watershed Conservation Committee statement. (See their memo to E.L. Dutcher of April 30, 1951 (1b)). At the second meeting of the Policy and Review Committee - Gunnison River Storage of December 14, 1951 (1c), it was confirmed that Plan A was the Bureau of Reclamation's study which provided for a dam backing up 2,500,000 acre feet, Plan B 1,935,000 acre feet, and Plan C (the small dam) 940,000 acre feet of water. In a letter from E.L. Dutcher to Judge Stone of March 24, 1952, several references are made to the 2,500,000 acre feet reservoir proposed by the BOR. In a letter from Judge Stone to Mr. Dutcher, a reference was made to the proposed 2,500,000 acre foot reservoir (1d) copy attached.

** Numbers in parenthesis refer to attached exhibits. Exhibits only include pertinent material outlined.*

These references appear to contradict your statement that there was "Never serious consideration given to the plans for a dam that would have flooded the town". The big dam was certainly a worry to Mr. Dutcher and the other people who were concerned about the creation of the Curecanti Reservoir. The Gunnison Review Committee met on March 3, 1952 (1e), and we believe the document reviewed by that committee on February 23, 1952, would also shed light on the plan of the BOR in this regard. Please furnish that to us if it is in your possession and particularly "Plan E" thereof referred to at page 8 of document 1(c).

2. We would not couch the wording of the first sentence of paragraph 2 of your letter in the same terms you have used. We would suggest that without the consent and approval of the people of the Upper Gunnison River Basin, the Colorado River Water Conservation District would not have lent its approval to the project. Without it, the Colorado Water Conservation Board would not have approved it. Without the approval of that board, Colorado's representatives in Congress would not have approved it, and without their approval Congress would have never funded of the Curecanti project. "Political forces throughout the state" supported the project because the Gunnison community supported it. It is a disservice to many people in the 1940's, 50's, and 60's who worked diligently on this project to imply that their efforts were not immensely important.

In fact, it would appear that great blocks of Mr. Dutcher's time were spent on opposing the creation of the large dam, and in providing that this community would be protected, and compensated in various ways if the small dam was built. See the letter to Mr. Dutcher dated April 9, 1951 (2a) by the Colorado River Water Conservation District in which it was stated that:

"Finally, I hope that, no matter what their decision may be on their own particular problems the committee will give their consent to the Storage Project of the general proposition."

Indeed, on April 14, 1951, Mr. Dutcher commented that Mr. Merrill's argument was not very impressive with the local people as they were not close enough to the overall water picture (2b). Mr. Dutcher seemed to think that the feelings and opinions

of the local people were important.

See also official comments and recommendations of the State of Colorado and the Colorado River Storage Project, page 3 and page 8 (2c). There was a Policy Review Committee - Gunnison River Storage meeting on September 28, 1951 (2d). This committee had the major task of ascertaining whether a plan could be worked out for storage on the Gunnison River which would preserve the best water development in Colorado. The approval of this committee was sought so that the project could go forward. Mr. Dutcher certainly believed that the approval of the Gunnison people was necessary for the project to proceed as shown by his letter of March 24, 1952 to Judge Stone (1d). He stated that the approval of the Gunnison Committee must be predicated on the premise that there will not be any material changes in the size and location of the dam, capacity of the reservoir, as such had to be approved by the committee. If the approval of the people of the Upper Gunnison Valley was not necessary, Mr. Dutcher was certainly misinformed and certainly did a lot of work which was unnecessary.

On April 15, 1952, Mr. Dutcher, in a letter to Judge Stone, regarding the report of the Policy and Review Committee, of the Colorado Water Board, even went so far as to say that if the report is finally amended,

" I will be in a position to approve it and I sincerely trust that the amendments can be made without another meeting" (2e).

Was Mr. Dutcher inappropriately assuming authority which he did not possess? In a letter to you, Dick, on March 15, 1962 (2f), Mr. Barnard, who was chairman of the Colorado River Water Conservancy District, stated that:

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

Please consider the implications of this statement in connection with your position that the State was not required to obtain "permission" from our local community to build the Aspinall Unit.

Next, consider what agreements were made to the people of the Gunnison Basin to protect the upper basin junior decree from a call by the Curecanti senior water decrees.

3. Discussions of 60,000 or more acre feet upstream protection from calls by the project occurred as early as April 9, 1951. See Merrill letter to Dutcher (2a). Mr. Dutcher in response was not persuaded that the project would not place a call on junior upstream decrees. See his letter to the Colorado River Water Conservation District of April 14, 1951 (2b). However, this does not mean the people of the upper basin gave up their demands for 60,000 acre feet, consumptive use of water against reservoir calls. On March 3, 1952, Mr. Dutcher indicated the Gunnison Watershed Conservation Committee, of which he was a chairman, would approve the construction of the reservoir provided that the waters of the Taylor Park Reservoir were transferred to the people of this district (1e). It appears clear what Dutcher originally wanted was 106,000 + acre feet of protection to junior decrees above the reservoir by acquiring the Taylor Reservoir, which was later apparently withdrawn in consideration of receiving a 60,000 acre foot depletion out of the Curecanti Reservoir and downstream protection by planned water releases. See page 12 and 13 of BOR Reconnaissance Report (3a), a letter from John Barnard to L. Richard Bratton of March 15, 1962 (3b), letter from the Regional Solicitor, Department of Interior dated October 26, 1984 (3c), page 13 of the District Water Court Decree dated June 16, 1986 (3d), letter from BOR to Senator Tim Worth dated March 14, 1990, page 11 (3e), and the cases for the Curecanti Reservoir, page 8, paragraph 2 (3f). As a result of these general understandings, the transfer of the Taylor River rights to the Gunnison people was discontinued, (See letter of April 15, 1952 of Mr. Dutcher to Judge Stone (2e). (There are several other documents in POWER's files to support the 60,000 acre foot protection against reservoir calls.)

The terms of the initial contract setting forth these understandings and agreements was prepared in the early 1960's, probably by Mr. Porter and others (3g). In that statement of intent between the Upper Gunnison valley people and the BOR, the operating principals of the reservoir would be written in a way that would allow an amount of water to be determined by the United States, but in any event should "allow water depletion of not less than 60,000 acre feet of water upstream from the Blue Mesa Reservoir including the depletion of the Fruitland Mesa Project -", not to be subjected to call by the project under it's decrees.

4. Moving to your fourth paragraph, there are several general statements made there with which POWER can agree. First, there should probably not be a lumping together of the 60,000 acre foot subordination promise and the agreement by the BOR to protect the upper Gunnison water users against downstream calls. The later was basically an understanding and agreement that whenever downstream calls were/are placed on the stream, water would be released to satisfy these calls regardless of the amount. It was probably assumed that such protection could be afforded by the normal methodology of operating the reservoir without the necessity of quantifying the amount of water involved. This lumping, however, did not originate with POWER but rather occurred much earlier as shown by 4a.

We also applaud the statement that the UGRWCD should work effectively with the BOR to,

"to provide an agreement with the Aspinall Unit operations that have existed for the past 30 years, which have in effect provided downstream senior call protection, can continue substantially (though not entirely) the same manner".

This agreement should have been entered into 30 years ago, and the sooner it is completed and executed the better. We're not sure what you mean by saying "though not entirely"; we assume that in a very dry year there would be some potential limitation on this protection.

We also agree with your statement that everyone in the basin always expected one or both of the above (60,000 acre foot subordination and downstream protection) would occur. There is ample evidence to support these expectations, but the origins

of these expectations took place considerably earlier than 1959. For example, in 1951 the Colorado River Water Conservancy District through E.C. Merrill, its secretary, wrote to Mr. Dutcher a long and explanatory letter (2a) concerning the reasons the Gunnison people should support the Curecanti Project, and enclosed a document entitled "The Case for Curecanti Reservoir" (3f). The essence of that document is the statement by the District that:

"However, if Curecanti Reservoir is built this cannot happen as the water the Uncompahgre Project needs will be stored in that reservoir below all your uses and that Project will never bother you again."

The people of the upper Gunnison River District supported the building of the reservoir because they believed that:

- 1). " It will take care of your debts to the Lower Basin, in the worse conditions ever known in the past;
- 2) It will remove the fear that the Uncompahgre Project can ever exercise it's priority against you."(3f, page 8)

If the conclusions reached in 1951 were as clear and definite as it appears they were, surely these matters were under discussion prior to that time.

You state that downstream call protection was never promised for free. We believe Mr. Dutcher and others working on these matters in the 50's would have been affronted by the suggestion that the people of the upper valleys would have had to pay for releases by the BOR to satisfy downstream calls. Please examine Mr. Barnard's letter of July 29, 1957 to Mr. Porter, in which he discussed rights acquired by the BOR from the River Water Conservancy District (4a). He stated in paragraph 2 that, "Rights acquired in Curecanti Reservoir for irrigation purposes will be utilized by a system of exchange". The district would have the right to store water in the Curecanti Reservoir to be released to meet downstream demands senior to certain junior decreed rights along the upper reaches of Gunnison and it's tributaries. The most important and largest of these downstream senior rights, of course, is that of the Uncompahgre Water User's Association. In other words, *rather than pay for the water to be released to satisfy downstream uses, the water was to be supplied by*

exchanging water which the upper Gunnison District would control in the reservoir or above it which it could require the BOR to release. POWER believes that the conditional decrees owned by the district are the source of water discussed by Mr. Barnard to be exchanged with BOR. Apparently if this was done, the immediate danger of losing this water by non-use would disappear.

Mr. Barnard, in that same letter to Mr. Porter, confirmed that one of the purposes of the Curecanti Reservoir would be to permit upper Gunnison people to store water in the Curecanti Reservoir to be released to downstream demands senior to certain junior decreed rights along the upper reach of the Gunnison River. Mr. Barnard stated,

" Water stored in the Curecanti would be released when these demands are made, and these presently existing rights can then avail themselves of the amount of water flowing in their various sources of supply."

There was a combined report of the secretary-engineer and counsel of the Colorado River Water Conservation District dated July 21, 1959 (4b). In that report, at page 3, it is stated that the Curecanti Project will serve to provide water for other beneficial uses within the Gunnison Basin itself. Specifically,

" Water impounded in these reservoirs can be made available to supply the demands of the decrees of the Uncompahgre Project to the Gunnison Tunnel. Thus, the burden on the stream above the Blue Mesa Reservoir will be relieved; and water, which now must be released and bypassed to meet these demands, will be available for diversion in Gunnison County under existing decrees, and may be utilized for irrigation and other purposes, by exchange for stored water in the Blue Mesa Reservoir".

The statement makes clear that there was indeed an agreement with the people of the Upper Gunnison River to protection against calls by the reservoir. The water was to be furnished "in exchange", or in other words, "for free".

One of the important reasons the people of this community believed they had an agreement with the BOR to provide downstream protection was a result of the above combined report. In sum, it would certainly appear that by the agreed method of releasing water from the Curecanti Reservoir, the prior needs of the Uncompahgre Water Users and the Redlands Power and Water Company could be satisfied. Nothing

in this report suggests that the people of the upper Gunnison valleys should pay for the water that the proper regulation of the release of water from Curecanti would generate.

5. Concerning your paragraph 5, although a final form of contract has not been drafted between the BOR and the people of the Upper Gunnison River Basin, sufficient evidence exists of promises made during the past forty to fifty years to allow the terms of the agreement to be plainly shown. As you know, when parties act as though a contract exists, and act to their mutual benefit and detriment, a contract can be found and approved even though it has not been formalized.

You, yourself, as attorney for the UGRWCD, engaged in many meetings, had much correspondence, and engaged in negotiations concerning the agreements and understandings with the BOR which completely contradicts your statement that, "no such basis exists" to support a claim against the United States. You, yourself, wrote to the BOR on December 4, 1962, (4c) and claimed there was a commitment to the upper Gunnison River of 60,000 acre feet. Do you not remember these events which occurred in 1962 and in which you played an important part?

If the UGRWCD does not perform its duty in persuading the BOR to keep its promises, then the people of Gunnison County should be apprised of this fact and be given the opportunity to decide whether the BOR should be further encouraged to perform its duties by suit. It seems untenable to allow the rights of the people of the upper Gunnison River district to lose the protection to which they are entitled, to be neglected, and perhaps substituted, by agreements which would only last a few years, and which would require the people of this district to pay for water which was promised to them free. POWER suggests that the people have not been informed as to their rights. We strongly suggest that you and the Board itself reconsider your position, and insist that the BOR perform on its promises to the people of the upper basin of the Gunnison River.

6. Your paragraph 6 repeats matters which we hope we have answered. We trust that POWER has furnished you information supporting it's position that downstream call protection was promised, that it has been provided, and an

agreement should be drafted and executed so stating.

Finally, POWER is frustrated in its investigation of the agreements and understanding that went into effect many years ago. We would appreciate documents which are needed and should be made available to us, as follows:

1. Mr. Dutcher's statement to the Colorado Water Conservation Board of June 11, 1951.
2. Plan E, developed by the Gunnison Watershed Conservation Committee, which is referred to in Mr. Dutcher's letter of March 3, 1952.
3. Report of the Policy and Review Committee of the Gunnison River Storage and Appendix A referred to in Mr. Dutcher's letters of March 24, 1952, and April 8, 1952.
4. BOR's correspondence and plans from 1945 forward. Specifically, it's report on the Colorado River project. (See statement of Colorado of June 1954)
5. The 1951 reconnaissance report of the BOR referred to in the October 1957 study.
6. The 1959 Bylaws of the UGRWCD.
7. Later drafts of the statement of intent and agreement with the BOR

We will look forward to the above documents being made available to POWER.

Thank you for your consideration.

Sincerely yours,

POWER

By: _____

January 2, 1996



L. Richard Bratton, Esq.
Bratton & McClow, L.L.C.
232 W. Tomichi Avenue
Suite 202
Gunnison, CO 81230

Re: Bureau of Reclamation - Curecanti Project

Dear Dick:

This letter is in further response to your letter to POWER, dated November 3, 1995. POWER has completed it's examination of the documents which were furnished by you. We would like to first comment on your general remarks at the beginning and ending of your letter.

First, the documents it now has certainly helped POWER to understand the 60,000 acre foot subordination concept as well as the agreement by the Bureau of Reclamation (BOR) to release sufficient water to satisfy downstream calls to protect the Upper Gunnison Basin water users' junior decrees. Those records, however, do not diminish POWER's long held beliefs that promises of protection did exist and were relied upon by the people of Gunnison County, that they have been recognized by the BOR, and that said promises should be formalized and enforced.

Second, the papers you furnished, and other papers which must exist, substantiate POWER's position that promises were made to people of the Upper Gunnison Basin in return for the people's support for the Curecanti project. POWER believes that the Upper Gunnison River Water Conservancy District (UGRWCD) and yourself should immediately commence the implementation of these agreements (and terminate your unfounded opposition to this action), and require the BOR to comply with it's obligation to the people of this community. It is difficult for *POWER* to understand what more important issues you have in mind that would take precedence over requiring the BOR to honor it's promises. What are the real water issues more important to the community which you refer to? Surely not the 3 and 5 year

agreements the UGRWCD is apparently working on that allow the people of this community to benefit from water stored in Blue Mesa Reservoir *by paying for it*. Perhaps if you could explain in detail to POWER what these issues are, it might help POWER to support the Board in it's efforts to enhance the water rights of the people of this community. We do not by this mean to indicate that the Board is not dealing with other important issues, but surely none can be as or more important than those under discussion here.

We will now deal, in the order raised by you, with the six issues contained in your letter.

1. The BOR did indeed want to erect a much larger dam than the "small" dam now in existence which impounds about 940,000 acre feet of water. It's initial plan was to build a dam that would contain 2,500,000 acre feet of water or approximately two and a half times as much as the present Blue Mesa Reservoir holds. (See resolution of the Gunnison Watershed Conversation Committee relative to Curecanti Dam by E.L. Dutcher dated April 19, 1951 (1a))* . We will not argue engineering facts with you, but suffice to say this would have backed the water up unto the south part of Gunnison. We presume the Adams-Wilson ranch south of Highway 50 in the valley would have been inundated as well. The Montrose Water Committee recognized the essential accuracy of the Gunnison Watershed Conservation Committee statement. (See their memo to E.L. Dutcher of April 30, 1951 (1b)). At the second meeting of the Policy and Review Committee - Gunnison River Storage of December 14, 1951 (1c), it was confirmed that Plan A was the Bureau of Reclamation's study which provided for a dam backing up 2,500,000 acre feet, Plan B 1,935,000 acre feet, and Plan C (the small dam) 940,000 acre feet of water. In a letter from E.L. Dutcher to Judge Stone of March 24, 1952, several references are made to the 2,500,000 acre feet reservoir proposed by the BOR. In a letter from Judge Stone to Mr. Dutcher, a reference was made to the proposed 2,500,000 acre foot reservoir (1d) copy attached.

** Numbers in parenthesis refer to attached exhibits. Exhibits only include pertinent material outlined.*

These references belie your statement that there was "Never serious consideration given to the plans for a dam that would have flooded the town". On the contrary the big dam was certainly a worry to Mr. Dutcher and the other people who were concerned about the creation of the Curecanti Reservoir. The Gunnison Review Committee met on March 3, 1952 (1e), and we believe the document reviewed by that committee on February 23, 1952, would also shed light on the plan of the BOR in this regard. Please furnish that to us ^{as} it is in your possession and particularly "Plan E" thereof referred to at page 8 of document 1(c). g?

2. We would not couch the wording of the first sentence of paragraph 2 of your letter as you have put them. We would simply state that without the consent and approval of the people of the Upper Gunnison River Basin, the Colorado River Water Conservation District would not have lent it's approval to the project. Without it, the Colorado Water Conservation Board would not have approved it. Without the approval of that board, Colorado's representatives in Congress would not have approved it and without their approval Congress would have never funded of the Curecanti project. "Political forces throughout the state" supported the project because the Gunnison community supported it. It is a disservice to many people in the 1940's, 50's, and 60's who worked diligently on this project to imply that their efforts were not immensely important. It would appear that great blocks of Mr. Dutcher's time were spent on opposing the creation of the large dam, and in providing that the people of this community would be protected, and compensated in various ways if the small dam was built. See the letter to Mr. Dutcher dated April 9, 1951 (2a) by the Colorado River Water Conservation District in which it was stated that "Finally, I hope that, no matter what their decision may be on their own particular problems the committee will give their consent to the Storage Project of the general proposition." On April 14, 1951, Mr. Dutcher commented that Mr. Merrill's argument was not very impressive with the local people as they were not close enough to the overall water picture (2b). Mr. Dutcher seemed to think that the feeling of the local people was important. See also official comments and recommendations of the State of Colorado and the Colorado River Storage Project, page 3 and page 8 (2c). There

was a Policy Review Committee - Gunnison River Storage meeting on September 28, 1951 (2d). This committee had a major task of ascertaining whether a plan could be worked out for storage on the Gunnison River which will preserve the best water development in Colorado. The approval of this committee was sought so that the project could go forward. Mr. Dutcher certainly believed that the approval of the Gunnison people was necessary for the project to proceed as shown by his letter of March 24, 1952 to Judge Stone (1d). He stated that the approval of the Gunnison Committee must be predicated on the premise that there will not be any material changes in the size and location of the dam, capacity of the reservoir, as such had to be approved by the committee. If the approval of the people of the Upper Gunnison Valley was not necessary, Mr. Dutcher was certainly misinformed and certainly did a lot of work which was unnecessary. On April 15, 1952, Mr. Dutcher, in a letter to Judge Stone, regarding the report of the Policy and Review Committee, of the Colorado Water Board, even went so far as to say that if the report is finally amended, "I will be in a position to approve it and I sincerely trust that the amendments can be made without another meeting"(2e). Was Mr. Dutcher foolishly assuming authority that he did not have? Whatever you may think of Mr. Dutcher, he was no fool. In a letter to Mr. Bratton himself on March 15, 1962 (2f), Mr. Barnard, who was chairman of the Colorado River Water Conservancy District, stated that the *Secretary of the Interior agreed that negotiations should be carried forward with the people of the Gunnison Basin concerning the effect of which subordination of the Curecanti rights would have in the consumptive use requirement and project for this area.* Please consider the implications of this statement in connection with your position "that the state was not required to obtain "permission" from our local community to build the Aspinell Unit.

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been done"

Let us now consider what agreements were made to the people of the Gunnison Basin to protect the upper basin junior decree from a call by the Curecanti senior water decrees.

3. Discussions of 60,000 or more acre feet upstream protection from calls by the project occurred as early as April 9, 1951. See Merrill letter to Dutcher (2a). Mr.

Dutcher in response was not persuaded that the project would not plan a call on junior upstream decrees. See his letter to the Colorado River Water Conservation District of April 14, 1951 (2b). However, this does not mean the people of the upper basin gave up their demands for 60,000 acre feet, consumptive use of water against reservoir calls. On March 3, 1952, Mr. Dutcher indicated that Gunnison Watershed Conservation Committee of which he was a chairman, would approve the construction of the reservoir provided that the waters of the Taylor Park Reservoir were transferred to the people of this district (1e). What the people of this community originally wanted was 106,000 + acre feet of downstream protection by acquiring the Taylor Reservoir which they later apparently withdrew in consideration of receiving a 60,000 acre foot protection out of the Curecanti Reservoir. See page 12 and 13 of BOR Reconnaissance Report (3a), a letter from John Barnard to L. Richard Bratton of March 15, 1962 (3b), letter from the Regional Solicitor, Department of Interior dated October 26, 1984 (3c), page 13 of the District Water Court Decree dated June 16, 1986 (3d), letter from BOR to Senator Tim Worth dated March 14, 1990, page 11 (3e), and the cases for the Curecanti Reservoir, page 8, paragraph 2 (3f). (The transfer of the Taylor River rights to the Gunnison people was discontinued, (See letter of April 15, 1952 of Mr. Dutcher to Judge Stone (2e).) There are several other documents in POWER's files to support the 60,000 acre foot protection against reservoir calls. For the UGRWCD, yourself and Mr. McCLOW to imply and state that no such agreement existed would be to badly misinform the people of Gunnison as to what they were entitled to and what they should now wish for.

The terms of the initial contract setting forth these understandings and agreements was prepared in the early 1960's, probably by Mr. Porter and yourself (3g). In that statement of intent between the Upper Gunnison valley people and the BOR, the operating principals of the reservoir would be written in a way that would allow an amount of water to be determined by the United States but in any event should "allow water depletion of not less than 60,000 acre feet of water upstream from the Blue Mesa Reservoir including the depletion of the Fruitland Mesa Project -", to be not subject to call by the project under it's decrees.

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4. Moving to your fourth paragraph, there are several general statements made there that POWER can agree with. First, there should probably not be a lumping together of the 60,000 acre foot subordination promise and the agreement by the BOR to protect the upper Gunnison water users against downstream calls. The later was basically an understanding and agreement that whenever downstream calls are placed on the stream, water would be released to satisfy these calls regardless of the amount. It was probably assumed that such protection could be afforded by the normal methodology of operating the reservoir without the necessity of quantifying the amount of water involved. This lumping, however, did not originate with POWER as shown by 4a, but rather occurred much earlier. ← *by CRWCD in 1957*

We also applaud the statement that the UGRWCD should work effectively with the BOR to, "to provide an agreement with the Aspinell Unit operations that have existed for the past 30 years, which have in effect provided downstream senior call protection, can continue substantially (though not entirely) the same manner". This agreement should have been entered into 30 years ago, and the sooner it is completed and executed the better. We're not sure what you mean by saying "though not entirely"; we assume that in a very dry year there would be some potential limitation on this protection.

We also agree with your statement that everyone in the basin always expected one or both of the above (60,000 acre foot subordination and downstream protection) would occur. There is ample evidence to support these expectations, but the origins of these expectations took place considerably earlier than 1959. For example, in 1951 the Colorado River Water Conservancy District through E.C. Merrill, it's secretary wrote to Mr. Dutcher a long and explanatory letter (2a) concerning the reasons the Gunnison people should support the Curecanti Project and enclosed a document entitled "The Case for Curecanti Reservoir" (3f). The long and the short of that document is the statement by the District that "However, if Curecanti Reservoir is built this cannot happen as the water the Uncompahgre Project needs will be stored in that reservoir below all your uses and that Project will never bother you again." The people of the upper Gunnison river district supported the building of the reservoir

*IP
Casper*

? (with care?)

because they believed that 1) " It will take care of your debts to the Lower Basin, in the worse conditions ever known in the past; 2) It will remove the fear that the Uncompahgre Project can ever exercise it's priority against you."(3f, page 8) If the conclusions reached in 1951 were as clear and definite as it appears they were, surely these matters were under discussion prior to that time.

You state that downstream call protection was never promised for free. We believe Mr. Dutcher and others working on these matters in the 50's would have been affronted by the suggestion that the people of the upper valleys would have had to pay for releases by the BOR to satisfy downstream calls. Please examine Mr. Barnard's letter of July 29, 1957 to Mr. Porter, in which he discussed rights acquired by the BOR from the River Water Conservancy District (4a). He stated in paragraph 2 that, "Rights acquired in Curecanti Reservoir for irrigation purposes will be utilized by a system of exchange". The district would have the right to store water in the Curecanti Reservoir to be released to meet downstream demands senior to certain junior decreed rights along the upper reaches of Gunnison and it's tributaries. The most important and largest of these downstream senior rights, of course, is that of the Uncompahgre Water User's Association. In other words, *rather than pay for the water to be released to satisfy downstream uses the water was to be supplied by exchanging water which the upper Gunnison^D district would control in the reservoir or above it which it could require the BOR to release.* POWER would believe that the conditional decrees owned by the district should be the source the water discussed by Mr. Barnard to be exchanged with BOR. Apparently if this was done, the immediate danger of losing this water by non-use would disappear.

Mr. Barnard, in that same letter to Mr. Porter, confirmed that one of the purposes of the Curecanti Reservoir would be to permit upper Gunnison people to store water in the Curecanti Reservoir to be released to downstream demands senior to certain junior decreed rights along the upper reach of the Gunnison River. Mr. Barnard stated, "Water stored in the Curecanti would be released when these demands are made, and these presently existing rights can then avail themselves of the amount of water flowing in their various sources of supply.

There was a combined report of the secretary-engineer and counsel of the Colorado River Water Conservation District dated July 21, 1959 (4b). In that report on page 3 it is stated that the Curecanti Project will serve to provide water for other beneficial uses within the Gunnison Basin itself. Specifically, "Water impounded in these reservoirs can be made available to supply the demands of the decrees of the Uncompahgre Project to the Gunnison Tunnel. Thus, the burden on the stream above the Blue Mesa Reservoir will be relieved; and water, which now must be released to bypassed to meet these demands, will be available for diversion in Gunnison County under existing decrees, and may be utilized for irrigation and other purposes, by exchange for stored water in the Blue Mesa Reservoir". The statement makes clear that there was indeed an agreement with the people of the Upper Gunnison River to protection against calls by the reservoir. The water was to be furnished "in exchange", or in other words, "for free".

One of the important reasons the people of this community believed they had an agreement with the BOR to provide downstream protection was a result of the above combined report. In sum, it would certainly appear that by the agreed method of releasing water from the Curecanti Reservoir, the prior needs of the Uncompahgre Water Users and the Redlands Power and Water Company could be satisfied. Nothing in this report suggests that the people of The upper Gunnison valleys should pay for the water that the proper regulation of the release of water from Curecanti would generate.

5. Concerning your paragraph 5, although a final form of contract has not been drafted between the BOR and the people of the upper Gunnison river basin, sufficient evidence exists of promises made during the past forty to fifty years to allow the terms of the agreement to be plainly shown. When parties act as though a contract exists, and act to their detriment, a contract can be found and approved even though it has not been formalized.

You, yourself, as attorney for the UGRWCD, engaged in many meetings, had much correspondence, and engaged in negotiations concerning the agreements and understandings with the BOR which completely contradicts your statement that, "no

such basis exists" to support a claim against the United States. You, yourself, wrote to the BOR on October 23, 1962, and claimed there was a commitment to the upper Gunnison River of 60,000 acre feet. Do you not remember these events which occurred in 1962 and in which you played an important part?

If the UGRWCD does not perform it's duty in persuading the BOR to keep it's promises, then the people of Gunnison County should be apprised of this fact and be given the opportunity to decide whether the BOR should be forced to perform it's duties by suit. It is incomprehensible to us to understand how the Gunnison River Board would allow the rights of the people of the upper Gunnison River district to the protection to which they are entitled, to be neglected, and perhaps substituted, by agreements which would only last a few years and which would require the people of this district to pay for water which was promised to them free. POWER suggests that the people have not been informed as to their rights and that Mr. Trampe's, your's, and Mr. McClow's responses have been counter productive. We strongly suggest that you as the Board's attorney and the Board itself consider your duties under the law to the people of Gunnison County, and insist that the BOR be held to it's promises to the people of the upper basin of the Gunnison River.

6. Your paragraph 6 rehashes matters which you took up in some of your earlier paragraphs. We trust that POWER has furnished you information supporting it's position that downstream call protection was promised, that it has been provided, and an agreement should be drafted and executed so stating.

POWER is hampered in it's investigation of the agreements and understanding that went into effect many years ago by its lack of access to documents. We would appreciate you furnishing us with the documents you have or the district must have which are needed and should be made available to us, as follows:

1. Mr. Dutcher's statement to the Colorado Water Conservation Board of June 11, 1951.
2. Plan E, developed by the Gunnison Watershed Conservation Committee, which is referred to in Mr. Dutcher's letter of March 3, 1952.

3. Report of the Policy and Review Committee of the Gunnison River Storage and Appendix A referred to in Mr. Dutcher's letters of March 24, 1952, and April 8, 1952.

4. BOR's correspondence and plans from 1945 forward. Specifically, it's report on the Colorado River project. (See statement of Colorado of June 1954)

5. The 1951 reconnaissance report of the BOR referred to in the October 1957 study.

6. The 1959 Bylaws of the UGRWCD.

7. Later drafts of the statement of intent and agreement with the BOR

Surely all of these documents are in the possession of yourself or the UGRWCD and we will look forward to them being made available to POWER.

Thank you for your consideration.

Sincerely yours,

POWER

By: _____

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November 3, 1995

Gerald Lain
POWER
Post Office Box 1742
Gunnison, Colorado 81230

Dear Gerald:

In my letter to you, as President of POWER, of March 13, 1995 (a copy of which is enclosed), I specified that I would make certain office files available for inspection by POWER on the condition that a written report of the examination of those files would be prepared by POWER and furnished to the Upper Gunnison River Water Conservancy District and our office. POWER agreed to that condition. Your examination of my files has recently been completed. I would, therefore, appreciate it if you would prepare the report as outlined at the bottom of Page 2 and the top of Page 3 of my March 13 letter, pursuant to our prior agreement.

My hope in allowing POWER to inspect my files was that it would do so in good faith and that the information therein would assist POWER to understand the "60,000 acre feet subordination" concept. My objective was to bring to a conclusion the contentious public discussions so that the people of this basin could work together on more productive issues. The recent article in the *Times* reporting on POWER'S annual meeting indicates that no progress has been made toward that objective because POWER continues to publish inaccurate and misleading information, i.e.:

1. ***That the Bureau wanted to erect a dam so large as to "effectively flood the town."*** There was never serious consideration given to a plan for a dam that would have flooded the town. An early proposal to back water to the edge of town was dropped in favor of a smaller project that was ultimately constructed which has a high water line approximately 5 miles west of town.
2. ***That a perusal of Dutcher's files shows that the Bureau had to have permission from the people of this community or the project would have never been built.*** There is nothing in the Dutcher files that would remotely support this position. The United States was not required to obtain "permission" from the local community to build the Aspinall Unit. Further, POWER's published

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position that such permission was sought prior to construction of the project is neither accurate nor a correct political assessment of that time. Political forces throughout the state, which had far more influence on Congress than the Gunnison community, were actively supporting the project, as was Congressman Wayne Aspinall (then Chairman of the House Insular and Interior Affairs Committee). The files which you reviewed amply demonstrate that the decision to build the project was made in response to that political influence rather than "permission" from the Gunnison community. It is a disservice to this community for POWER to imply otherwise.

3. ***That the Upper Gunnison River Watershed Conservation Committee (Committee of 39) agreed to support the construction of Blue Mesa Reservoir in return for 60,000 acre-feet of water stored in Blue Mesa Reservoir to be used to keep downstream senior calls, such as from the Gunnison tunnel, off the Upper Gunnison Basin.*** The written record which POWER examined shows that the Committee of 39 did pass resolutions in 1952 and 1954 in favor of the smaller reservoir prior to the passage by Congress of the Colorado River Storage Project Act in 1956. The record also shows that the Committee's support for the construction of the Aspinall Unit was initially conditioned upon the Upper Gunnison Basin receiving compensation in the form of roads, schools, wildlife, new lands for dispossessed landowners, reduced taxes, as well as the use of Taylor Park Reservoir. However, there is no mention in the resolutions of protection against downstream calls or about any reservation of water for the Upper Gunnison Basin in Blue Mesa Reservoir, and even the conditions itemized here were later withdrawn by the Committee.

4. ***That the so-called "60,000 acre-foot subordination" includes protection against downstream senior calls such as from the 1906 Gunnison Tunnel decrees.*** The attempt to lump these issues together is misleading and confusing. The 60,000 acre foot subordination is completely separate from the issue of protection against downstream senior calls. In the first place, the origin of the 60,000 acre feet is the Bureau's *Economic Justification Study* completed in 1959, three years after passage of CRSPA in 1956. The 1959 study concluded that 60,000 acre feet of water depletion could occur above the Aspinall Unit without affecting the project's feasibility.

see attached
1/21/59
CRWCO

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The subordination thereof relates to the resulting agreement of the Bureau not to place a call upstream, within our basin, to fill the demand of the 1957 Aspinall Unit water rights to the extent of 60,000 acre feet. Contracts to implement that subordination for individual water projects were worked out with the Bureau in the early 1960's. Such subordination is still available for individual projects, for free, though there are legal issues associated with it that were not foreseen 30 years ago.

Downstream call protection, on the other hand, would require the Bureau to release water from the Aspinall Unit to meet downstream senior rights such as the Gunnison Tunnel that would otherwise call (shut down) junior water rights in our basin above Blue Mesa Reservoir. This was never promised for free. There is abundant written evidence beginning with correspondence in 1960 which shows that it was always understood that contracts would be required whereby compensation would have to be paid if downstream call protection were to be provided to the Upper Gunnison Basin by the Aspinall Unit. The reason for this is that the Reclamation Act of 1902, then and now, requires compensation for such use of a federal facility, and Federal reclamation law prohibits "free" use of Aspinall Unit water for the purposes you suggest. In addition, even if evidence of an oral promise to provide downstream call protection exists, such a "promise" would not be legally enforceable against the United States without the existence of requisite contract formalities.

The general public misunderstanding of the downstream call issue was possibly caused by two assumptions. The first was the assumption, by everyone including the Bureau and our community, based on Bureau studies, that the normal operation of the Aspinall Unit would release sufficient water to fill anticipated downstream senior rights. It was expected that this would have avoided a call most (but not all) of the time with no cost to the Upper Gunnison water users. This assumption is documented in the records related to the application for the Aspinall Unit water rights. This is also what has actually occurred for the past thirty years. The second was the assumption that the Upper Gunnison Project would be constructed as a participating project, funded mostly by power revenues under the 1956 Colorado River Storage Project Act. This project contemplated several medium size reservoirs in the headwaters of Upper Gunnison

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streams, mostly for protection and development of water for irrigation. These reservoirs would have satisfied most needs for irrigation water in the Upper Gunnison Basin. The Upper Gunnison reservoirs were never constructed under the 1956 Act because no project could be found which met the cost/benefit requirements of the Federal reclamation law, even though several hundred thousand dollars were expended over several years searching for qualified projects.

Although these assumptions never reached the level of a promise or an agreement, everyone in the Basin always expected one or both of the above would occur. As you know, the Bureau has recently been working with the Upper Gunnison District Board to provide an agreement where the Aspinall Unit operations that have existed for the past 30 years, which have in effect provided the downstream senior call protection, can continue in substantially (though not entirely) the same manner. Such an agreement will have certain limitations because of the provisions of Federal reclamation law referred to above. In all probability, part of the reason for the Bureau's current effort to help us is related to the past assumptions identified above. Also, the 1975 Taylor Park Reservoir Operation and Storage Exchange Agreement was developed as a part of the Bureau efforts to assist this basin to obtain real water benefits when it first appeared that the Upper Gunnison Project might not meet the requirements of the 1956 Act.

5. ***That people of the Gunnison Basin could file a lawsuit against the Bureau in federal court.*** Such a statement implies that there is a basis in law and in fact to support a claim against the United States regarding unwritten and unspecified promises related to construction of the Aspinall Unit. As I have pointed out at length above, no such bases exist. If POWER has documentation to the contrary, it should be fully disclosed and publicly reviewed. Without such documentation, it is irresponsible and counterproductive for you to suggest the possibility of litigation.
6. ***That an old "contract" to provide downstream call protection exists and is in force today.*** This is not factually correct; however, because they have been misinformed, a number of honorable people in Gunnison now sincerely believe that certain "promises" were made by the United States regarding construction of the Aspinall Unit, and

BRATTON & McCLOW LLC

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that this community had the power to veto the project forty years ago. There is no valid evidence which supports this position. If you have documents of which I am not aware, the written report, which you agreed to as outlined in my letter of March 13, 1995, should include copies of them. If you do not have such documents, it is incumbent upon POWER to obtain publication of a clarification on the subject of "promises" in order to dispel the confusion created by previously published remarks about these unfounded claims.

If, in fact, you have reliable facts of a quality that could be utilized in court to substantiate POWER's position, the entire community will be forever indebted to you, including me. Based on my long direct involvement in all of these issues and with many of the people who were actively involved in the 1950's, I don't believe such facts exist. I do believe that the actual facts are as I have outlined them above.

This letter is intended to bring the issues discussed above into a clearer focus. The fuzzy representations of the past have secured for you substantial political coverage the past couple of years, often at the expense of the UGRWCD or this office, by stating or implying we have been inept or covered up facts. That has not been beneficial to our community. It has raised unrealistic public expectations about a "promise" that never existed. It has caused unfounded doubts about the Board and a consequent diversion of effort from more important issues. It is now time to bring this to a close and move forward in a responsible and productive way to address real water issues of importance to the community. If you have the specific reliable evidence you claim to have, produce it. If not, let's move on.

I look forward to your report.

Very truly yours,



L. Richard Bratton

LRB/dst

Enclosure

cc: Ramon Reed, President of POWER