



United States Department of the Interior

BUREAU OF RECLAMATION
UPPER COLORADO REGION
GRAND JUNCTION PROJECTS OFFICE
P.O. BOX 60340
2764 COMPASS DRIVE
GRAND JUNCTION, COLORADO 81506



GJ-700

Mr. Tyler Martineau
Manager, Upper Gunnison River
Water Conservancy District,
120 North Boulevard
Gunnison CO 81230

MAR 19 1992

Subject: Summary of February 20, 1992, Meeting Regarding Wayne N. Aspinall
Unit Operations (General Correspondence Water Operation)

Dear Mr. Martineau:

Following is a summary of the results of a meeting held in the Upper Gunnison River Water Conservancy District Office, Gunnison, Colorado. An attendance list is enclosed.

The meeting was held to discuss the Bureau of Reclamation's (Reclamation) intent to pursue formal administration of Aspinall Unit water right decrees and present Reclamation's proposed "Substitute Supply Plan" (Plan). As presently contemplated, the Plan would potentially be made up of the following three major components:

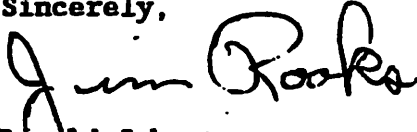
1. Protection against Aspinall Unit calls would be provided through a Memorandum of Understanding (MOU) between Reclamation and the Upper Gunnison River Water Conservancy District (UGRWCD). Under the terms of the proposed MOU, Reclamation would agree that all perfected junior water right decrees that were listed in the Plan would be considered equal or senior to the Aspinall Unit water right decrees for purposes of administration. Therefore, their diversions would not be curtailed to the benefit of the Aspinall Unit.

2. Protection for junior domestic, municipal and industrial water right decrees from downstream decrees senior to the Aspinall Unit would be provided through replacement releases of Aspinall Unit storage under the terms of a water service contract with the UGRWCD. Replacement releases would be made from the Aspinall Unit to permit continued out-of-priority diversions by the junior water right decrees when an administrative call from a downstream senior water right is in effect.

3. Protection for irrigation water right decrees would be provided through replacement releases of either Aspinall Unit or Taylor Park refill storage under the terms of a water service contract with the UGRWCD. Again, replacement releases would be made to permit continued out-of-priority diversions by the junior water right decrees when an administrative call from a downstream water right senior to the Aspinall Unit is in effect. Reclamation Reform Act (RRA) compliance provisions would be associated with irrigation replacement releases as part of an Aspinall Unit Contract. RRA requirements associated with Taylor Park refill storage may possibly be waived. This issue is being more fully researched.

The UGRWCD indicated it would solicit input from water users and interested members of the public before making a decision regarding the proposed Plan. The UGRWCD presented a number of reasons why the local community and the Board of Directors feel that it would be difficult to initiate the proposed plan in 1992. However, the UGRWCD expressed the desire to cooperatively work with Reclamation to resolve these issues. Questions or comments regarding this meeting summary or the proposed Plan should be directed to Brent Uilenberg at (303) 248-0641.

Sincerely,



For Ronald Johnston
Projects Manager

Enclosure

cc: Mr. Randy Seaholm
Colorado Water Conservation Board
721 State Centennial Building
1313 Sherman Street
Denver CO 80203

Mr. Lee Spann
36781 West Highway 50
Gunnison CO 81230

Mr. William Trampe
393 County Road 8
Gunnison CO 81230

Mr. Richard Bratton
P.O. Box 669
Gunnison CO 81230

Mr. Art Cannon
Manager, Tri-County Water
Conservancy District
P.O. Box 347
Montrose CO 81402

Mr. Jim Hokit
Manager, Uncompahgre Valley
Water Users Association
P.O. Box 69
Montrose CO 81402

Mr. Eric Kuhn
Colorado River Water
Conservation District
P.O. Box 1120
Glenwood Springs CO 81602
(each w/encl)

RECEIVED

JUN 16 1986

Colorado Water Resources
Power Development Authority

LBR-IM-0256

Memorandum

To: Regional Director, Bureau of Reclamation

From: Regional Solicitor, Intermountain Region

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

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

RECEIVED

NOV 09 1984

WATER RESOURCES
STATE - ENGINEER
COLOR.

Blue Mesa

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11-7
11-21
11-21

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 to 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 ~~provide for the 60,000 acre feet of storage capacity in the amount not to exceed 60,000 acre feet, that the Bureau of Reclamation does not intend to take any action to enforce its obligations;~~ and that the State Engineer, insofar as the Bureau of Reclamation is concerned, may administer upstream depletions in harmony with this position. 4

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



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF RECLAMATION
Washington, D.C. 20240

D-5200

NOV - 5 1999

MEMORANDUM

received
11-17-99

To: Regional Director, Salt Lake City, Utah
Attention: UC-442 (Cook)

From: Eluid L. Martinez
Commissioner

Subject: Delegation of Authority and Approval to Execute a Depletion Allowance Contract Among the Colorado State Engineer, Colorado River Water Conservation District, Upper Gunnison Water Conservancy District, and the Bureau of Reclamation, Wayne N. Aspinall Storage Unit, Colorado (Your Memorandum Dated February 8, 1999)

You have requested authority to enter into a depletion allowance contract (Contract) among the Bureau of Reclamation, the Colorado State Engineer, the Colorado River Water Conservation District, and the Upper Gunnison Water Conservancy District. We understand the purpose of the Contract is to formalize a long-standing oral commitment to effectuate a depletion allowance, if and when hydrologic conditions allow, that was made by the United States prior to the construction of the Curecanti Unit (now known as the Aspinall Unit) of the Colorado River Storage Project.

Background

Reclamation constructed the Aspinall Unit for the purpose, among other things, of regulating flows of the Colorado River to permit the Upper Colorado River Basin States to more fully utilize their allocation of Colorado River water as set forth in the Upper Colorado River Basin Compact.

The February 1959 Economic Justification Report for the Aspinall Unit recognized that upstream depletions from five potential participating projects (Bostwick Park, Fruitland Mesa, East River, Ohio Creek, Tomichi Creek) of the Colorado River Storage Project were assumed to begin in 1971 and increase until full depletion is reached in 2020. Of the five potential participating projects listed in the report, only the Bostwick Park Project was completed. The depletions outlined in the report are as follows: 40,000 acre-feet above Blue Mesa Dam, 10,000 acre-feet above Morrow Point Dam, and 10,000 acre-feet above Crystal Dam. A supplemental Economic Justification Report dated April 1962, reiterated these depletions.

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We understand that in order to alleviate concern that a water project of this magnitude would preclude junior upstream development, Reclamation has agreed to allow up to 60,000 acre-feet of upstream junior depletions as a concession to the local users to gain support for the construction of the Aspinall Unit. Since the 1960's, Reclamation's practice concerning the Aspinall Unit has been to allow private development of up to 60,000 acre-feet, which would otherwise be subject to the Aspinall Unit water rights, by junior users within the natural basin of the Gunnison River.

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On June 28, 1963, the Commissioner approved the form of contract for in-basin development and authorized the Regional Director to execute subordination contracts up to a maximum of 60,000 acre-feet, which would include depletions by the Fruitland Mesa Project which was never built and exclude depletions by Bostwick Park Project since its water rights are senior. We understand that of the 60,000 acre-feet, 40,000 acre-feet of depletions are allowed above Blue Mesa Dam, 10,000 acre-feet of depletions are allowed between Morrow Point Dam and Blue Mesa Dam, and the remaining 10,000 acre-feet of depletions are allowed between Morrow Point Dam and Crystal Dam. Furthermore, four contracts for small amounts of water were executed in the early 1960's to allow the depletions pursuant to the Commissioner's June 28, 1963, approval. Other than these four contracts, Reclamation has effectuated the depletions by not placing a call when it might have been entitled to do so, which allowed junior in-basin users to continue diverting.

We understand that implementing these depletion allowances by Reclamation not calling its senior water rights when they came into priority became problematic when Arapahoe County wanted to divert water from the Upper Gunnison Basin to the Front Range via its proposed Union Park Project. Arapahoe County asserted that they had a "right" to count the subordinated Aspinall Unit project water or a portion of it that was not being used by water users upstream of the Aspinall Unit toward water available for their Union Park Project.

This issue was litigated in the 1980's based on Colorado's "can and will doctrine," whereby Arapahoe County would be required to demonstrate that a sufficient amount of water is available to appropriate. The United States won and Arapahoe County appealed to the Colorado Supreme Court which remanded the case for retrial under revised rules of water availability.

During retrial, the United States' position was that the depletions were authorized because Congress allowed construction of the Aspinall Unit to begin with the understanding that no more than 60,000 acre-feet would be depleted above the Aspinall Unit. Only the source of this depletion amount has changed, not its effects on the Aspinall Unit (upstream appropriations by junior users rather than depletions by the nonexistent projects). In addition, the United States further specified during litigation that the depletion was only for use in the Natural Basin of the Gunnison River to offset Aspinall's effects on upstream water users. Again the United States won, and the water court judge ruled that the commitment for the depletion allowance amounted to a condition on the construction of the Aspinall Unit and therefore, constituted an executory contract, binding on the United States.

The case is again before the Colorado Supreme Court, and the Colorado Attorney General has been an ally to Reclamation in this case, and is a proponent for memorializing Reclamation's commitment for the depletion allowance. Therefore, you are now requesting authority to enter into this Contract to formalize Reclamation's intention to allow such depletions.

Contractors

In addition to Reclamation, the other contractors include the Colorado State Engineer, the Colorado River Water Conservation District, and Upper Gunnison Water Conservancy District. Neither District receives Reclamation project water. The water users represented by the two Districts are upstream of the Aspinall Unit, and their water rights are equal or junior to the Aspinall Unit water rights. 1957?

Legal Authority

This Contract is authorized pursuant to the Reclamation Act of 1902 (32 Stat. 388) and all amendatory and supplemental acts, especially the Colorado River Storage Project Act (70 Stat. 105), which authorized the project. In addition, in related litigation, the United States took the position, which the Colorado State Water Court accepted, that specified amounts of Aspinall Unit water rights were intended to be subordinated to certain upper basin users. In the Matter of the Application for Water Rights of the Board of County Commissioners of the County of Arapaho, in Gunnison County (C88CW178) the United States has won on the position that Congress, based on legislative history, including the Economic Justification Report and its supplement which were presented to Congress in order to gain a concession from upstream water users in return for their support of the project, anticipated depletions of up to 60,000 acre-feet above the Aspinall Unit. Furthermore, Section 14 of the Reclamation Project Act of 1939 (43 U.S.C. § 389), is the appropriate vehicle to execute the subordination which Congress anticipated. This section authorizes the Secretary "... for the purposes of orderly and economical construction or operation and maintenance of any project, to enter into such contracts for the exchange or replacement of water, water rights, or electric energy, or for the adjustment of water rights, as in his judgement are necessary and in the interests of the United States and the project."

It is the combination of the legislative history of the Aspinall Unit, as recognized by the Colorado State Water Court in conjunction with Section 14 of the Reclamation Project Act that provide Reclamation with the authority to enter this Contract which will formalize a commitment made by Reclamation more than 30 years ago and which has already been implemented in the operation of the Aspinall Unit.

Environmental Compliance

You stated in your basis of negotiation that Reclamation will be responsible for conducting the environmental compliance for this Contract.

It is my understanding, that you will prepare an Environmental Assessment (EA) so that the potential environmental effects of executing the subordination can be analyzed. Upon completion of the EA a determination will be made as to whether the subordination will cause significant impacts to the environment. If there are no significant impacts then a Finding of No Significant Impact (FONSI) is appropriate, if there are significant impacts then an Environmental Impact Statement shall be prepared.

During our discussion with your office and the Field Solicitor, we were informed that the United States Fish and Wildlife Service (FWS) had some concerns over Endangered Species Act (ESA) compliance for this Contract. Since our conversation, we understand that your office has reached consensus with FWS that this depletion allowance is a preexisting commitment and not a new Federal action requiring consultation under Section 7 and that there is not a problem with entering this Contract at this time. You have also stated that this depletion allowance will be included in the consultation Reclamation has already committed to on the overall operations of the Aspinall Unit which is expected to be completed in the next year or two.

These understandings between Reclamation and FWS will be documented through an exchange of letters. In the first, Reclamation will explain the ESA compliance planned for this Contract, and in the second, we anticipate that FWS will acknowledge their acceptance of Reclamation's planned ESA compliance for this Contract. This Contract shall not be executed until Reclamation receives the letter from FWS, and the appropriate National Environmental Policy Act documentation is completed.

Term

This Contract, which was anticipated in the Economic Justification Reports for the Aspinall Unit, is formalizing a long-standing practice and commitment to the State of Colorado and the Upper Gunnison water users. You have stated that because this Contract does not involve a sale of Reclamation project water, the Contract shall remain in effect until termination by mutual agreement of all parties. In subsequent conversations with your staff and the Field Solicitor's Office, we understand that the Solicitor's Office is of the opinion that because this is not an adjustment of a water supply contract that this Contract should not be limited to a specific contract term. This Contract is a permanent adjustment to the project water rights which will be subordinated in order to allow junior users upstream of the project to continue water development up to the stated amounts.

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tection*

This basis of negotiation has been reviewed and approved by the Office of the Field Solicitor. In addition, we understand that the Field Solicitor worked closely with the contractual entities in drafting the Contract.

With the above understandings and upon receipt of the letter from FWS, you are authorized to execute the Contract.

~~705~~
J. H. Dulecki
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 ^{10%} 20% of the ranch land in this part of the Basin and that the ranches affected are some of the finest

anywhere in the State of Colorado; that it will completely inundate two towns, Sapinero and Iola, and twenty-three resorts and many private homes along the Gunnison River; U.S. Highway No. 50, all approach roads, and approximately 27 miles of railroad.

2. That the inundation of said lands will result in a loss of actual revenue to the County of Gunnison from ad valorem taxes amounting to approximately ~~\$50,000.00~~ ^{27,000.00} per year, ~~or about 20% of the total operating budget of Gunnison County.~~

3. That the lands which will be inundated by the reservoir, as now planned, carry and support about ~~5,000~~ ^{7,000} head of cattle and ~~1,000~~ ^{5,000} head of sheep, and that this livestock will be lost to the tax structure and economy of Gunnison County.

4. That the proposed reservoir, as now planned, will completely destroy approximately 40 miles of the finest trout stream fishing in the United States and about ~~50%~~ ^{between 33% and} of the winter range for big game in the upper Gunnison River Basin.

5. That the major industries in Gunnison County are livestock raising and recreation or tourist business, and that the proposed reservoir will decrease the economy in Gunnison County approximately 25%.

6. It will cause the dispersal of ~~eighteen~~ ²² herds of famous Gunnison Herefords which have required two generations of improved breeding to bring up to the present high standards.

7. That there is no certainty whatsoever that the proposed projects in the upper Gunnison River Basin will be found feasible as the surveys have not yet been completed; the appropriations for the construction of said projects rest with Congress alone; and it is problematical if the local people would be willing to burden themselves with the necessary indebtedness to develop said projects even though appropriations are eventually made for their construction, and

Whereas, notwithstanding the seriousness of the situation and the loss and irreparable injury that will result to the people in the upper Gunnison River Basin, it is their sincere desire to consider the problems fairly, altruistically and broadly, particularly with respect to the benefits that will result from the construction of the dam to other people in western Colorado, and to the people in the rest of the State and Nation as well, but by the same token the people in the upper Gunnison River Basin, who will be

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 ^{under} 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

student load during the construction period.

as part of project

6. That the Government ~~re-locate~~ and construct U.S. Highway No. 50 in accordance with the standard specifications pertaining to a transcontinental road of that character, and that ~~Gunnison be the terminus on the east and Montrose the terminus on the west.~~ *and road continues to run through Gunnison*

JN

7. That the Government construct a hard surfaced, modern highway, from the City of Gunnison into the Powderhorn and Lake Fork areas to the Hinsdale County line, and all other access roads on both sides of the reservoir as may be destroyed by the reservoir and as may be found necessary to properly serve the people in this area;

8. That a definite agreement be made between representatives of the Bureau of Reclamation, the Fish and Wild Life Service, the Colorado Game and Fish Commission, the Colorado Water Conservation Board, and the people in the upper Gunnison River Basin for the formulation of policies relative to the protection and preservation of fish and wild life and for the regulation of the waters in the reservoirs, and all other matters pertaining to projects directly affecting the local people.

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9. That surveys be made and completed in the upper Gunnison River Basin, using whatever material and information are available in the offices of existing federal agencies, before the construction of the Curecanti Dam, for the purpose of determining the best manner and method of irrigating and re-seeding mountain ranges in order to prevent erosion and to provide additional grass and forage for livestock and all wild life and upon the completion of the surveys and investigations some definite arrangement be made to use a reasonable amount of revenues annually from the sale of power developed under the Colorado River Storage Projects for the development and irrigation of such ranges.

BE IT FURTHER RESOLVED, that in addition to the requirements above mentioned, that the following adjustments be provided if the legal considerations will permit:

1. That definite arrangements be made for those ranchers whose lands are to be inundated by the Curecanti Reservoir to have the first priority and right to re-locate on other arable lands under participating projects in Gunnison County, and that the provisions of the present law with respect to the 160 acre tract limitation be waived or changed to meet the economic conditions in this area.

average size in Gen of 921 acres and 2790 acres longer than 1000 acres

2. That proper arrangements be made for the transfer, without

By: E. L. Dutcher, Chairman

Attest:

Guy Cox, Secretary

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/ 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:

Guy Cox, Secretary

**OFFICERS**

JOHN L. HEUSCHKEL
PRESIDENT
CARBONDALE

JME S. WHITE, ESQ.
VICE-PRESIDENT
EAGLE

FRANK DELANEY, ESQ.
COUNSEL
GLENWOOD SPRINGS

F. C. MERRIELL
SECRETARY
GRAND JUNCTION

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ANTON DANNI -----GUNNISON
ALMONT

**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 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

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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 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:

	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

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Eastern and Western Colorado. It seems also to be the only and certainly the quickest use Western Colorado can make of this water anywhere near the place of its origin in Gunnison County. Once we have put this water to this necessary use, it is difficult to see how very much, if any, of it can be diverted out of the natural basin.

With Curecanti built, Mr. Dutcher, this does not mean the Arkansas folks are going to give up. The first thing they will do is to question that you need the water you are using. This puts you up against a real problem because there is probably not a person in Gunnison County who can tell how much water he does use, even though he is quite sure he is only using what he needs and must have.

But it seems clear that Curecanti greatly reduces the water that can be, by and construction, said not to be needed and usable in Gunnison County. The result would be that the only water the Arkansas folks could claim as divertible would be in a few places, high up, where it occurs in divertible amounts and locations and this might very well limit them to not over 100,000 acre-feet. Perhaps, due to the high cost of so small an amount of water this would prevent it entirely. I hesitate to claim that Curecanti would entirely prevent diversion, for the Arkansas people have not given up, even if Curecanti is built. The last thing in the initial volume of their January 1950 report is a map showing Curecanti, with a notation that reads, "Western Colorado development and replacement to be integrated with Gunnison-Arkansas Project." This indicates that they still hope to get some water even if Curecanti is built. The only ways you folks can stop that are: first, to measure the water you use and defend that use; second, if you do not have the decrees for your use, get them; third, build Curecanti and all the projects Jex has worked out that you can afford or need.

While it seems clear that by building Curecanti we will effectually have taken the greatest step to reduce or prevent diversion, we have no assurance that the two regions of the Bureau will not collaborate on some scheme that would yield water for diversion. Your only defense, I repeat, aside from Curecanti, is to prove use and get decrees for what you can demonstrate are your actual needs. This may seem like a lot of work. It is nothing to the work you will have to do if Curecanti is not built and you have to defend your use against the Arkansas folks without any large use to be made of water in your immediate vicinity.

Now, Mr. Dutcher, I do not enjoy saying these things. I realize they are not the sort of thing that will be popular in Gunnison County. I learn from Judge Stone and some Gunnison people that many of them resented what I have already said. My only reason is that these are things your people should know, and so somebody has to say them. There is no use of their approaching this problem uninformed or without every fact, for or against, that will and should affect their decision. If they understand this perhaps they will not be so bitter toward me as they might be tempted to be. It would seem that Curecanti is the almost providential answer to all the problems, both above and below them on their rivers with which Gunnison people are now beset, and its advantages to

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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,

F. C. Merriell
F. 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.

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 Ohio 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. 62, 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

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 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 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

C O P Y

some of the matters on which it was unable to support the Gunnison resolution.

Yours very truly,

THE MONTROSE WATER COMMITTEE

By (Signed) L. F. Flower, Jr.
L. F. Flower, Jr., Chairman

CC

Governor Dan Thornton
Colorado Water Conservation Board
Colorado River Water Conservancy Dist. Board
Colorado State Agricultural Planning Committee
Delta County Agricultural Planning Committee
Montrose County Agricultural Planning Committee

C O P Y

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 9th, 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

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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 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

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Mr. F. C. Merriell

4/14/51

recall, that in answer to a direct question of mine, we were told that each of the projects in the upper Gunnison Basin would have to be approved by Congress and appropriations made, and that it is possible that some of the costs could be paid by the revenue obtained from the sale of power, however, sufficient investigation has not yet been made so that these costs can be allocated. In other words, it depends entirely upon Congress.

Tony Danni, your local Board Member, consulted with the writer several days ago about having a joint meeting with the members of our committee and your group next Monday afternoon, and I told him that we would be very happy to meet with your group; however, there are thirty-nine members of our committee and I suggested to Tony that a sub-committee of five or more of our group be selected to meet with your group, as nothing would be accomplished by having a meeting of the entire group, so, we have arranged for this meeting at 3:00 o'clock Monday afternoon.

The reason that I am writing you this letter, and giving you some of my ideas in a more or less blunt way, is so that you might have the attitude of the local people when you come to Gunnison. Frankly, your talk before the group in Gunnison on the 8th, did not meet with wholehearted approval. The local people are trying to be very broad minded about this matter and I think that you will find them willing to sit down and try to work it out, and if we can avoid some of the statements from being a matter that will antagonize them it will be a tremendous help for the local committee to arrive at conclusions that will be fair, reasonable and just, and I am sure that that is what all of us are interested in. I assure you that I am writing this frank and candid letter in a spirit of helpfulness. We all realize that this question is probably not only the most important that will have to be answered by the local people during our lifetime, but it is an extremely delicate one to handle. I have enough confidence in the local people to feel that they will come out with the proper answer and recommendations and I am certainly willing to go along with them.

We will see you next Monday.

Sincerely yours,

ELD:jb

COPY

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.

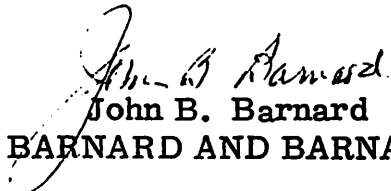
In our conversation, I asked Mr. Jennings whether or not the Secretary wished that you and I present proof of diligence in connection with the Curecanti Units on April 16; and he stated that he felt that such would be the case. Those proofs will, of course, closely parallel the proof we presented at 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 ^{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

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.

I.

THE UNCOMPAGRE VALLEY

Filings have been made by the Tri-County Water Conservancy District in the Office of the State Engineer for the Ridgway Reservoir at the confluence of Dallas Creek and the Uncompahgre River, and for the Rams Horn Reservoir on Cow Creek, which stream enters the Uncompahgre from the east between the Ridgway Reservoir and the diversion works of the Montrose and Delta Canal. Water stored in these reservoirs will irrigate approximately 16,000 acres of new land, principally on Log Hill Mesa, south of Montrose, and will provide supplemental water for the entire Uncompahgre Project, now served by the water of that stream, and by water diverted into the valley by means of the Gunnison Tunnel. Supplemental water will also be provided for lands now irrigated from Dallas and Cow Creeks. In pending adjudication proceedings in Water District No. 68, the Tri-County District has filed statements of claim for these two reservoirs, wherein it seeks conditional decrees therefor, and has presented evidence in support of these statements.

Filings have been made by the Cimarron Ditch Company in the Office of the State Engineer for the Silver Jack Reservoir on Big Cimarron Creek above the point of diversion of the existing Cimarron Ditch Company, which serves Bostwick Park and also two other areas, Shinn Park and Kinnikin Heights. Water stored in this reservoir will be used for the irrigation of approximately 1,000 acres of new land and will provide a supplemental supply for 6,000 acres of land presently but inadequately irrigated in these three areas. In pending adjudication proceedings in Water District No. 62, the Cimarron Ditch Company has filed a statement of claim for water for this project and has submitted evidence in support thereof.

If conditional decrees are entered for water for these reservoirs in the Uncompahgre and Cimarron Valleys, the result will be to make impossible the diversion of any water from these streams into the Rio Grande Basin. Such trans-basin diversions have been and are being proposed.

II.

GUNNISON COUNTY

The Upper Gunnison Basin Project, for which filings have been made in the Office of the State Engineer, included these proposed developments in Gunnison County: The Curecanti Unit; the Tomichi Unit; the Cochetopa Unit; the Ohio Creek Unit; and the East River Unit.

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

both sides of Tomichi Creek for full service and supplemental irrigation purposes.

III.

THE COCHETOPA UNIT

The Cochetopa Unit is also located in both Saguache and Gunnison Counties, deriving its water supply from Cochetopa Creek and its tributaries in Water District No. 28. It includes the following works and facilities: Banana Ranch Reservoir; Flying M Reservoir; Upper Cochetopa Reservoir; Cochetopa Meadows Ditch and Enlargement; Cochetopa Canal; Pass Creek Canal; Los Pinos Canal; and the Stubbs Gulch Canal.

Water is to be impounded in the three reservoirs, during the spring run-off periods; and the stored water, together with the direct flow water of the stream and its tributaries will be conveyed and distributed to the lands to be irrigated by means of the canals which form parts of the Unit, except the Cochetopa Meadows Ditch and Enlargement, which is a feeder canal for the Flying M Reservoir.

IV.

FRUITLAND MESA UNIT

The water supply for this Unit is primarily in Gunnison County, in Water District No. 59; and, for this reason, has been included in the Upper Gunnison Basin Project. The benefited lands are located in Montrose and Delta Counties, in Water District No. 40; and the water of Crystal Creek, in that water district, also forms a part of the source of supply to the project.

The features and units which are located in Water District No. 59 are the Soap Park Reservoir, the Soap Park Bench Flume, and the Crystal Creek Tunnel, including an adit for the interception of the water of Curecanti Creek. The facility located in Water District No. 40 is the Fruitland Highland Canal Enlargement and Extension, which conveys the water stored in the reservoir, and transmitted through the tunnel, together with the water of Crystal Creek, to the lands to be irrigated.

V.

THE OHIO CREEK UNIT

Water for this unit is supplied by Ohio Creek and its tributaries, the water of Taylor River and its tributaries, and, by exchange,

water stored in Taylor Park Reservoir. Its features and facilities consist of the Castleton Reservoir, Ohio Creek Canal and the Taylor River Canal.

The Castleton Reservoir is to be located on Castle Creek. Water stored therein, together with the direct flow of Ohio Creek, Castle Creek and Pass Creek, will be delivered to the lands to be irrigated by means of the Ohio Creek Canal.

The water of the Taylor River and its tributaries, and also water stored in the Taylor Park Reservoir will be diverted by means of the Taylor River Canal, which has its point of diversion on the right bank of the Gunnison River immediately below the confluence of the Taylor and East Rivers, and conveys to the lands in the Ohio Creek Basin which are to be irrigated. In exchange for the water of Taylor Park Reservoir, ~~which~~ if so used, water may be released from the Blue Mesa Reservoir to meet the demands of the Uncompahgre Project through the Gunnison Tunnel.

STATUS OF ADJUDICATION PROCEEDINGS IN CONNECTION WITH THE UPPER GUNNISON BASIN PROJECT

The District has assisted the Tri-County Water Conservancy District and the Cimarron Ditch Company in making filings for water for their projects, described briefly above. The District has made filings, in the Office of the State Engineer, for the entire Upper Gunnison Basin Project and is participating in adjudication proceedings for the purpose of obtaining conditional decrees for the various units which are described herein.

1. WATER DISTRICT No. 62: In pending adjudication proceedings in this District we have filed statements of claim for the Curecanti Unit. Evidence in support of this statement has been submitted to the referee. The proceedings have been closed for the filing of further claims. Findings are being prepared by the referee, which, when completed, will be submitted to the Court for the entry of the proper decrees.

2. WATER DISTRICTS Nos. 28 and 59. The District has commenced adjudication proceedings in both of these districts in Gunnison County, and has filed statements of claim for those portions of the Upper Gunnison Basin Project which are located therein. Evidence will be presented, in Water District No. 28, in support of the statement of claim for the Tomichi and Cochetopa Units on August 10th, 1959. Evidence will also be submitted, on August 10th, 1959, in support of the statements of claim for the Curecanti, Fruitland Mesa, Ohio Creek and

East River Units. It is of importance that the Regional Director of Region 4 of the Bureau of Reclamation has agreed that either Mr. Jacobson or Mr. De Long will be present on August 10th, at Gunnison, to testify as to the present status of the Curecanti Project. *J.R. Riter*

3. WATER DISTRICT No. 40. There are no adjudication proceedings pending in Water District No. 40. The Smith Fork Project is located in that district; and we are advised by the officials of the Crawford Water Conservancy District that that district proposes to petition the District Court of Delta County for a general adjudication proceeding in the near future. When that is done, a statement of claim will be filed by this District for the water of Crystal Creek for the Fruitland Mesa Project, and evidence supporting that claim statement will be submitted.

In the matter of the Upper Gunnison Basin Project, it should be noted that, if conditional decrees are entered as are sought by our statements of claim, such decrees, to each unit and feature of the entire project, will bear the same priority date, November 13, 1957. This will make for the most efficient coordination and integration of the administration of the water supply for the various units. If the decrees sought are entered, as requested by the District, construction work on the Curecanti Project will serve to constitute due diligence in the prosecution of work on the entire project. Since the water of Taylor Park Reservoir is claimed as a part of the source of supply for the entire Upper Gunnison Basin Project, these conditional decrees will fully protect the water of the Gunnison River and of all its tributaries, and the water stored in Taylor Park Reservoir against any and all transmountain diversions from the Gunnison Basin.

III.

THE NORTH FORK OF THE GUNNISON RIVER.

Three participating projects are located in this area, the Paonia, Smith Fork and Fruitland Mesa. Paonia is under construction; Smith Fork is approaching the construction stage; and investigation work on the Fruitland Mesa Project is being pressed to the point of actual construction. Water rights for the Paonia Project have been established, and those for Smith Fork and Fruitland Mesa have been discussed previously herein. There does not appear to be any possibility of any transmountain diversions which could affect or interfere with these water rights.

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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

National Park Service

Richard D. Sias--Santa Fe, New Mexico

Others Present

J. G. Will--Upper Colorado River Commission, Grand Junction, Colorado, (Morning session only)

Appointment of Secretary

2. There being no objections by the members present, the Chairman appointed Leon F. Maca, Hydrology Branch, Project Planning Division, Bureau of Reclamation, to act as Secretary for the Committee and prepare minutes of its meetings.

Minutes of First Meeting

3. Following the adoption of corrections suggested by the Chairman which were transmitted with his October 4 letter to the Secretary, the Committee approved the minutes of the September 28, 1951 meeting for duplication and distribution.

Report on Assignments

BUREAU OF RECLAMATION

4. The Chairman acknowledged receipt by him of the December 12, 1951 letter from Regional Director, E. O. Larson transmitting results of the special studies made by Region 4 to answer questions on five specific items requested by the Committee. Copies of the letter and enclosure were made available to those present. At the suggestion of the Chairman, Mr. Jacobson read and explained details of the material enclosed with the letter. Results of the studies are summarized in following paragraphs.

5. Question 1: What is the relative feasibility of placing a part or all of the proposed Curecanti storage at other sites in the Gunnison River Basin?

Of several possibilities for alternatives, the following two most favorable combinations, Plans B and C, were compared with Plan A which is the same as the Colorado River Storage Project plan:

<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-

jects listed in the Gunnison River Reconnaissance Report of February 1951 (the Jex Report) and also assumed full operation of the water-use project reservoirs listed in the report, and, (4) the run-off pattern in the future will be no worse than that which occurred between 1931 and 1940. Under these assumptions, and assuming further that Taylor Park Reservoir would be operated only to facilitate irrigation in the Uncompahgre Valley, the capacity required at Curecanti Reservoir Site:

- (a) For full irrigation use without shortage 84,000 acre-feet
- (b) For full supply in 8 years out of ten 49,000 acre-feet
and 50 percent shortage in remaining
2 years

Mr. Jacobson pointed out that because of influencing factors involving the assumptions, coordinated operations, and economic justification, the requirement might vary from 50,000 acre-feet to 100,000 acre-feet, or 0 acre-feet to 150,000 acre-feet.

8. Question 4: What amount of storage and at what location is storage needed to provide a firm water supply for potential industrial development in the Gunnison River Basin?

The Bureau studies assumed that future industrial development will most logically take place near Cory where advantage can be taken of combined flows of the North Fork and the Gunnison, and selected the Curecanti Reservoir site for assurance of an upstream firm supply because pertinent information was more readily available. A curve was presented, based on historic stream flow conditions, to show the additional storage required at the Curecanti site to assure various firm deliveries that could be available for potential industrial use. The following summary depicts the curve:

(UNITS ACRE-FEET)

<u>Monthly Firm</u> <u>Delivery at Cory</u>	<u>Required Active Storage</u> <u>to supply firm delivery</u>
4,000	0
20,000	75,000
25,000	101,000
30,000	146,000
35,000	191,000
38,000	217,000
40,000	270,000
45,000	389,000

9. Question 5: What would be the effect on the Colorado River Storage Project plan if proposed hold-over storage capacity at the Curecanti site were reduced or eliminated?

As is pointed out in the Colorado River Storage Project report, a regulatory reservoir system consisting of ten reservoirs was designed to provide a total of 23,000,000 acre-feet of regulatory capacity. Bureau of Reclamation studies indicate a regulatory storage requirement of that amount in connection with the full use of the water allotted to the Upper Basin. The effect, therefore, of eliminating or reducing the 2 million acre-feet of regulatory storage planned for Curecanti Reservoir would result in a requirement for substitution of an equal amount of storage at some other point within the Upper Colorado River basin. The Curecanti Reservoir from several aspects is one of the most favorable points of regulatory control in the Upper Colorado River Basin system. Its characteristics with respect to evaporation are exceedingly attractive. To acquire an equal amount of capacity at alternative sites in the Upper Colorado River basin could be accomplished only at the cost of additional evaporation losses. This, of course, would result in an equal loss of water for use by the Upper Basin for beneficial consumptive purposes.

10. Following his reading of the material, Mr. Jacobson answered Committee questions and clarified points as were in doubt by the members. In these responses and discussions it developed, concerning Question 3, that (a) the requirements for the Redlands area mentioned in the Groom statement presented at the First Meeting were not included and would be an additional demand as the area was not included in the Jex report; that (b) use of "excessive storage" in Taylor Park Reservoir to alleviate irrigation shortages would require coordinated operation of that reservoir on an annual "fill and empty" basis; that (c) as to the maximum quantity of water that might be developed at Taylor Park Reservoir an upper limit total of about 760,000 acre-feet could be obtained with importation of water, but at considerable expense and in competition with other potential projects; that (d) irrigation requirements for all projects of the Gunnison River Reconnaissance Report were included in the studies; that (e) historical flows were used for operational and routing studies; and that (f) the determination of storage requirements does not provide for improvement of existing water rights. Concerning studies for Question 4, discussions revealed that (a) from a quality standpoint water developed at the Nado reservoir site used in the studies would be desirable for domestic and industrial use because of its being above North Fork; that (b) the Nado site was drilled and explored by the Bureau when considering a revision of the Uncompahgre Project; and that (c) about 100,000 acre-feet can be impounded there.

COLORADO WATER CONSERVATION BOARD

11. The Chairman distributed copies of the December 10 memorandum from R. M. Gildersleeve, subject: "Storage possibilities on Gunnison River which might inundate a portion of Black Canyon National Monument," which was read and explained to the Committee by Mr. Gildersleeve. This memorandum covered studies assigned to the Board for answer to Question 1. It was found that adequate topographic maps were not available; however, on the basis of a 1905-06 reconnaissance-type topographic and irrigation map of the Uncompahgre Project published by the Geological Survey, it was believed that a good indication of optimum storage possibilities in the river basin directly below the Monument could be determined. A 300-foot dam at Nado (Austin) site, the only practicable site between the Smith Fork and the town of Delta, would impound about 110,000 acre-feet and would back water about 2 miles inside the Monument. Because of physical conditions at this site, an increase of height of dam would result in a disproportionate increase in crest length and cost, and the geological formation would not be suitable for more than a nominal height increase. However, for hypothetical purposes of exploring full possibilities of the reservoir basin the following comparison was made from the studies to show progressive loss of reservoir capacity by moving the sites upstream:

<u>Reservoir site</u>	<u>Height of Dam - feet</u>	<u>Approximate Capacity Acre-feet</u>	<u>Inundation</u>
Nado (Austin)	300	110,000	About 2 miles inside Monument
Nado (Austin)	500*	460,000	More than 3 miles inside Monument
Just below next major tributary upstream from Smith Fork	500*	405,000	
West boundary of Monument	500*	170,000	

*Would be 25 feet higher than Blue Mesa site of Curecanti Reservoir and in contrast, provide relatively minor capacity.

12. In answer to Mr. Dutcher's question whether it was felt that on the basis of the sketchy data all possible remedies were exhausted in the selection of alternative storage sites and whether the dam at the Nado site could be higher than 300 feet, Mr. Gildersleeve replied that detailed surveys would not disclose any material difference in the results and that the maximum feasible height at this site would be about 325 to 330 feet because of the contour of the canyon walls. Mr. Sias observed that the Committee is well aware of the National Park Service attitude on violations of the Black Canyon Monument and pointed out that any violation must be justified from the standpoint of the respective values of the reservoir sites especially since only a small increase in capacity would be obtained from these particular reservoir sites.

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 .426. 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.

He assured the Committee, however, that this timing is not a controlling factor in the Committee's responsibilities for studying the facts, resolving the problem and making recommendations to the Board to provide the greatest possible benefits to the people of the Western Slope and enable the State of Colorado to make best use of its allocated waters. Members of the Committee acknowledged these responsibilities. Appreciation was expressed by the Committee for the studies and report presented by the Region 4 representatives.

Additional Studies

16. The Chairman asked whether the Committee had developed all the studies needed to work out the problem. Following considerable discussion on ways and means of obtaining additional engineering data on other storage alternatives to the Bureau plan for the Gunnison, it was agreed by the Committee that additional studies were required by it and that Region 4 be requested to furnish additional data similar to studies made in answer to Question 1, on the following combinations of gross storage:

<u>Plan D</u> -- Curecanti	330,000 acre-feet
Taylor Park	Enlarge to a capacity within reasonable costs
Crystal	510,000 acre-feet
Gateview	308,000 acre-feet
Whitewater	<u>880,000</u> acre-feet
TOTAL	*
<u>Plan E</u> -- Curecanti	940,000 acre-feet
Whitewater	880,000 acre-feet
Crystal	<u>510,000</u> acre-feet
TOTAL	*
<u>Plan F</u> -- Curecanti	330,000 acre-feet
Whitewater	880,000 acre-feet
Crystal	<u>510,000</u> acre-feet
TOTAL	*

* The remaining capacity required to bring the total of these combinations to a base comparable with the Bureau plan (total active capacity of 2,480,000 acre-feet) would be placed in the most favorable sites elsewhere in the Colorado River Basin in the State of Colorado.

Representatives of Region 4 agreed to take steps toward the accomplishment of the requested studies and to report the results at the next meeting.

Next Meeting

17. The Committee agreed to hold its Third Meeting in Denver on January 22 and 23, 1952.

Adjournment

18. The Committee adjourned at 5:00 p.m.

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

been well said that the Colorado River is Colorado's "last water hole."

The need for water in Colorado is ever present. Many of the important cities and towns of the state need substantial additional quantities of water if they are to grow and prosper. Denver, Grand Junction, Pueblo, Colorado Springs, Boulder, and other communities all look to the Colorado River water to sustain their growing populations. In all areas of the state more water is needed for agricultural pursuits. The livestock growers demand more irrigated pasture and meadow land. Industrial needs are rapidly increasing. Vast oil shale and coal deposits are available for synthetic liquid fuel production. Enormous timber reserves await development under a sane conservation program. The industrialist, the farmer, and the city dweller demand more and more hydroelectric power. The satisfaction of these demands will enhance both state and national welfare. Colorado sees in the Colorado River Storage Project a means of expediting the attainment of the desired development.

Colorado greatly appreciates the expeditious manner in which the Secretary of the Interior and the Bureau of Reclamation have prepared and submitted the report now under consideration. It has quickly followed the consummation of the Upper Colorado River Basin Compact. The Bureau of Reclamation, in full compliance with the spirit and intent of the Flood Control Act of 1944, has kept the states directly affected fully informed during the course of its investigations. The Department of the Interior and its several agencies, particularly the Bureau of Reclamation, are to be commended for the manner in which this important undertaking has been handled.

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

by the project. In particular instances it may be found desirable to adjust these criteria to meet unusual situations.

Included among the participating projects in the State of Utah is a project, the Central Utah, which will utilize water exported from the natural basin of the Colorado River. No such exportation project in the State of Colorado is mentioned in the Report. Perhaps this results from the fact that Colorado exportation projects are located in an area outside of the jurisdiction of Region 4 which prepared the Report. It is suggested that there should be full and complete cooperation between Region 4 and Region 7 to determine what, if any, Colorado exportation projects should be approved as participating projects.

To conclude these general observations Colorado says that the development in the Upper Division States must, so far as is possible, move forward on an even basis. This should be possible because the plan contains a desirable flexibility which will permit the states, the Department of the Interior, and the Congress to consider from time to time the addition of worthy units and participating projects.

The Applicable Law

With reference to particular matters Colorado agrees that the project should be constructed by the Bureau of Reclamation. This construction and the subsequent operation of the Project, and of its various units and participating projects, should be in accord with the Federal Reclamation laws and acts amendatory thereof or supplementary thereto, the Colorado River Compact of 1922, the Upper Colorado River Basin Compact of 1948, and the applicable laws of the various states. Colorado directs particular attention to the following compact provisions:

(a) Article V (c) of the 1948 Compact which reads thus:

"In the event the Commission finds that a reservoir site is available both to assure deliveries at Lee Ferry and to store water for consumptive use in a State of the Upper Division, the storage of water for consumptive use shall be given preference. Any reservoir or reservoir capacity hereafter used to assure deliveries at Lee Ferry shall by order of the Commission be used to store water for consumptive use in a State, provided the Commission finds that such storage is reasonably necessary to permit such State to make the use of the water apportioned to it by this Compact."

The right to convert part of the storage capacity of the project reservoirs from hold-over use to storage use for consumptive purposes in an Upper Division State must be recognized and given full effect.

(b) Article IX (a) of the 1948 Compact provides:

"No State shall deny the right of the United States of America and, subject to the conditions hereinafter contained, no State shall deny the right of another signatory State, any person, or entity of any signatory State to acquire rights to the use of water, or to construct or participate in the construction and use of diversion works and storage reservoirs with appurtenant works, canals and conduits in one State for the purpose of diverting, conveying, storing, regulating and releasing water to satisfy the provisions of the Colorado River Compact relating to the obligation of the States of the Upper Division to make deliveries of water at Lee Ferry, or for the purpose of diverting, conveying, storing or regulating water in an upper signatory State for consumptive use in a lower signatory State, when such use is within the apportionment to such lower State made by this Compact. Such rights shall be subject to the rights of water users, in a State in which such reservoir or works are located, to receive and use water, the use of which is within the apportionment to such State by this Compact."

It is plain under this provision that the rights of water users in a state in which a hold-over reservoir is located to receive and use water within the apportionment of the state must be recognized.

(c) Article IV (b) of the 1922 Compact states:

"Subject to the provisions of this compact, water of the Colorado River System may be impounded and used for the generation of electrical power, but such impounding and use

shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes."

This provision must be considered in connection with its counterpart in the 1948 compact to which reference is next made.

(d) Article XV (a) of the 1948 compact reads as follows:

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

The last two mentioned compact provisions must be given effect. They require that the use of project water for power generation purposes is subservient to domestic and agricultural uses and that no firm rights can be secured which will preclude the use within any Upper Basin state of that state's apportioned share even though such use develops after the power generation use has been perfected. It is entirely correct for the report to recognize a diminishing power use as consumptive use projects come into being.

(e) Article XV (b) says:

"The provisions of this Compact shall not apply to or interfere with the right or power of any signatory State to regulate within its boundaries the appropriation, use and control of water, the consumptive use of which is apportioned and available to such State by this Compact."

This provision is tied into the comments under (c) and (d) above. Most obviously the hold-over storage reservoirs will not fulfill their primary function if they are so used as to prevent the authorization and construction of junior Upper Basin projects which use water within the apportioned share of any state. Due regard for this important matter must be made in all priorities awarded any of the units of the project.

Storage Project Units

With reference to the storage units proposed for immediate authorization and construction, Colorado has no comment as to the Flaming Gorge and Navajo units. Their positions in the over-all plan seem well established.

In regard to the Echo Park unit, Colorado emphasizes the need for immediate authorization and construction. The wise decision of the Secretary of the Interior approving this unit even though it is located within the Dinosaur National Monument is to be commended. The question of access roads to the Echo Park reservoir, and also to the Split Mountain unit, is a matter of great importance to Colorado. These roads should be of such a nature that they are useful not only during construction but also thereafter for recreational development in this remote region of unusual attractions which will be made available to the public for the first time by the construction of the proposed reservoirs. Colorado firmly believes that access roads from Colorado points will satisfy all requirements, and requests that before any final decisions are made as to road locations full opportunity be afforded Colorado to be heard on this subject.

The proposed Glen Canyon unit is recognized as an important and essential feature of the project. Colorado does not object to its inclusion as a unit for initial authorization and construction. Its capabilities for hold-over storage, power generation, and silt retention are outstanding. Its location at the extreme lower end of the Upper Basin may possibly raise questions of inter-basin relations upon which Colorado may desire to be heard in connection with the authorizing legislation.

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

among the participating projects for initial authorization. This project is desperately needed to provide a dependable water supply for lands lying in the La Plata Valley and located in both Colorado and New Mexico. The limited and erratic water supply of the La Plata is apportioned between Colorado and New Mexico by the La Plata River Compact. This compact was recognized and approved by the Upper Colorado River Basin Compact. The La Plata Project is of relatively small cost and does not materially or adversely affect other proposed developments, or materially disturb the economic feasibility of the entire basin development. At the request of the States of Colorado and New Mexico, the Bureau of Reclamation commenced investigation of the La Plata Project many years ago. At least two reports have been issued by the Bureau. The Colorado land owners have organized a district under the Colorado Conservancy District Act. The La Plata water users have expended considerable money and put forth every effort to obtain a project only to be faced with years of delay and disappointment. Fair treatment of the La Plata farmers requires the inclusion of the La Plata Project for initial authorization as a participating project under the Colorado River Storage Project plan.

Attention is directed to the fact that the Paonia Project, which is included in the list of participating projects recommended for initial authorization, has twice been authorized by Congress. The increase in construction costs, the addition of certain acreage, and the relocation of the proposed storage reservoir have resulted in substantially increasing the project cost. This necessitates either reauthorization or amended authorization. The report on the revised project plan has been pending before the Bureau of the Budget for some time. A bill has been introduced

in the Congress for amended authorization. This legislation provides that the Paonia Project shall become a participating project under the Colorado River Storage plan. Colorado expresses its intent to proceed with the legislation for amended authorization of the Paonia Project in advance of the approval of the Colorado River Storage Project in order that there may be no cessation of construction activities.

Paragraph (d) of the Commissioner's letter of December 22, 1950, makes reference to the Shiprock Indian Project. This is of vital concern to both Colorado and New Mexico in view of the provisions of Article XIV of the Upper Colorado River Basin Compact and particularly paragraph (c) thereof providing for curtailment of uses of San Juan River water in times of water shortages. Colorado has not been provided with a planning report on the proposed Shiprock Indian Project. It is not advised as to its cost, size, the water users' ability to return operation and maintenance costs, or any other essential data. The extent of the Indian land proposed to be irrigated under the project, the amount of water required for such irrigation, and the relationship of the use of such water to other proposed New Mexico projects are all matters of conjecture. While the project may be a desirable one and may well constitute an essential part of the plan for the development of the San Juan River, Colorado says that no appropriation for, or construction of, the project should be authorized or made until there has been made available to the affected States, and approved by the Congress, a report on the project comparable to the reports already prepared for the other participating projects.

Power Contracts

Hydroelectric power plants comprehended within the plan should be operated in conjunction with other federal power plants, present and potential, on the Colorado River and its tributaries so as to produce the greatest practical amount of power and energy that can be sold at firm power and energy rates. The Secretary of the Interior should, so far as practicable, make contracts for furnishing firm power and energy at firm power and energy rates from such plants and other federal power plants on the Colorado River operated conjointly. Provision should be made for the termination, upon a reasonable notice, of all contracts relating to the disposition for use, outside the Upper Division States and outside that portion of the State of Arizona within and from which waters naturally drain into the Colorado River System above Lee Ferry, of power and energy generated at such plants to the extent that the power and energy so contracted for is required to satisfy the need of consumers in the mentioned areas.

Investigation Funds

While Colorado approves the recommendation made in paragraph (j) of the Commissioner's letter of December 22, 1950, relating to the establishment of a fund from which money may be appropriated for studies and investigations relating to the development of the waters of the Upper Colorado River Basin, it points out that it will be a number of years before the necessary fund will be accumulated to finance needed investigations. During the interim period investigations on a large and expedited scale should be carried forward to provide information concerning prospective participating projects. The situation has

particular significance to Colorado because it is desirous of determining at as early a date as possible the potential uses of water in the natural river basin in Colorado. At the present time the only money available for this purpose comes from the Colorado River Development Fund and the Upper Colorado River share of general investigation funds. These funds have proven inadequate to accomplish the desired purpose. If a well conceived program for the development of the Colorado River is to be realized in accordance with the recommendations of the report, then increased annual appropriations of money must be made to expedite investigations in the Upper Colorado River Basin. Colorado urges that the report be revised so as to include a recommendation that the Congress authorize the creation of a special fund as a basis for future appropriations to carry on investigations in the Upper Colorado River Basin in that period prior to the time when money will become available under the above mentioned paragraph (j) and that the funds so appropriated shall be nonreimbursable.

Acreage Limitations

Much of the area of the Upper Colorado River Basin is devoted to the raising of live stock at high altitude. Additional irrigated pasture and meadow land is needed by the ranchers if the basic meat supply of our country is to be maintained at adequate levels. In such ranching operations the 160 acre limitation of the Federal reclamation laws is unrealistic. The practical development of the Upper Colorado River Basin will require water supplies for these live stock ranches. Consideration should be given to a revision of the present law relative to excess lands so that the principle of family operation may be retained in the mountain area.

Conclusion

The Colorado River Storage Project is of basic importance to the economy of the Upper Colorado River Basin. A development plan must of necessity be flexible so as to permit adjustments made desirable by investigations and new conditions. Colorado recommends that the interested states should be given opportunity to comment from time to time on these new developments so that there may be the most complete cooperation between the States and the Federal government to the end that a great national natural resource may be best developed.

Respectfully submitted,

Ben Houston

Governor, State of Colorado, and
Ex-Officio Chairman of the
Colorado Water Conservation Board

Richard H. Stouffer

Director, Colorado Water
Conservation Board

United States Department of the Interior



RECEIVED

OFFICE OF THE SOLICITOR

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JUN 16 1986

INTERMOUNTAIN REGION

NOV 09 1984

SUITE 6201, FEDERAL BUILDING

125 SOUTH STATE STREET

SALT LAKE CITY, UTAH 84138-1180

WATER RESOURCES

October 26, 1984

STATE-ENGINEER

COLO.

Colorado Water Resources
Power Development Authority

Blue Mesa

10/30
11-7
11-21
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 of 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

Doc #1

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 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 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.

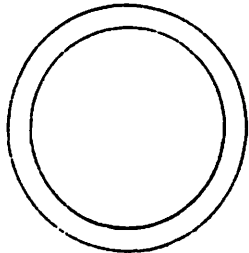
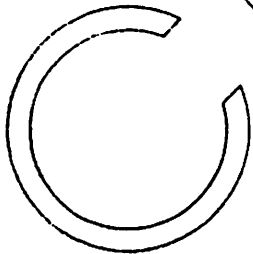
With kindest personal regards, I am

Yours very truly,

DUTCHER AND SERAPHINE

by:

FLD/amp



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. N. 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. Jax--Area Planning Engineer, Region 4, Grand Junction, Colorado

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

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

Fish and Wildlife Service

R. A. Schmidt--Albuquerque, New Mexico

A. B. Mustis--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

wherein it was provided that the "dam or dams in the Gunnison River Basin at a site or sites (is) to be determined by the Secretary (of the Interior) after consultation with the Colorado Water Conservation Board." Engineering studies performed by the Steering Committee would be made available, he said, for study by this Committee upon request or in connection with its work assignments.

Minutes of Meetings

4. The Chairman announced that he had delegated Mr. Leon F. Maca representing the Hydrology Branch, Project Planning Division, Bureau of Reclamation, to act temporarily as Secretary for this meeting. Upon question by the Chairman, no objections were raised by the Committee to this delegation. The Judge informed the Committee that no distribution will be made of the minutes until drafts are circulated to the Members of the Committee and the Federal representatives for careful review and correction, and finally approved by the Committee at its following meeting. He also stated that, as in the case of the Policy and Review Committee-Initial Phase Gunnison-Arkansas Project, verbatim transcriptions will be made of future meetings involving specific actions on policy matters to be resolved by the Committee.

Procedures

5. Following explanation of the Committee's task, the Chairman suggested the following procedure to which the Committee had no objections:

- (a) Receive any statements or factual data submitted by any Committee Member that are not subject to debate, and
- (b) Upon consideration of the facts, arrive at assignments of studies to be made by the Committee using such data as may be furnished by the Federal Agencies.

Presentation of Statements

6. Upon call of the Chairman for any factual statements on this problem to be heard by the Committee, Mr. Cory, with the assistance of Mr. Peterson, presented a verbal summary of studies prepared by certain individuals and technical experts for Montrose and Delta Counties working cooperatively. In evaluating the benefits accruing to the locale and the State, the studies summarized by Mr. Cory covered the following eight principal items:

(A) Holdover storage, (B) Irrigation, (C) Electric power generation, (D) Industry, (E) General Economy, (F) Recreation, (G) Fish and Wildlife, and (H) National Defense. Supporting data, detailed information, photographs, and other material were offered by Mr. Cory as available for detailed review. In response to the Chairman's suggestion, Messrs. Cory and Peterson agreed to submit promptly a written draft of statement covering the summary to the office of the Colorado Water Conservation Board for duplication and transmittal of copies to the Members of the Committee and the Federal Agencies for their information and further study.

7. Mr. Feast called attention to the fact that Mr. Cory did not comment on the Fish and Wildlife item in his summary which involves an important decision with regard to policy. Mr. Cory replied that local interests are in disagreement on that item and since it was desired to make a unified and positive presentation at this time, that item was omitted and further stated that he is fully aware of this position. In response to the Chairman's question, Mr. Cory stated that no specific figures on total storage were arrived at in the studies concerning (a) requirements to meet Uncompahgre and Delta needs for water under present rights, (b) requirements for industrial development (coal hydrogenation) in the Gunnison Basin, and (c) requirements to enable development of projects presented in the Bureau's February 1951 Reconnaissance Report on Gunnison River Project; eliminating in all cases requirements for

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

Gunnison Area and the upper elevation diversions. He pointed to the need for coordinated studies of all potential developments to prevent detrimental effect on the biological and habitat characteristics of the area. Mr. Cory expressed interest in learning how diversions affect fish and wildlife and in obtaining the full picture based on qualified data on how the habitat is altered through these proposed developments.

10. Mr. Groom, President of the Redlands Water and Power Company, read a prepared statement substantiating the favorable attitude of the Redlands Mass people to the construction of Curecanti Reservoir. A copy of the statement was furnished for the record and for purposes of duplication by the Colorado Water Conservation Board in making copies available for use by Members of the Committee. In reply to Mr. Tipton's question on what the District could pay annually for benefits accruing to local purposes and beneficiaries of regulated water supply for any holdover reservoir storage capacity that might be converted to consumptive use purposes, Mr. Groom stated that he did not know what that amount might be but he felt sure that the Redlands District would pay a reasonable amount. Mr. Marriell questioned whether the District would be obligated to pay for such benefits unless it made a demand on Curecanti Reservoir for stored waters since it can probably obtain an adequate supply by diversion from the river during normal operations of the reservoir.

11. In response to the Chairman's question whether there were other statements to be heard, Mr. Marriell requested that at a time convenient to Committee he would like to discuss the water problems of Gunnison County as he observes to be the actual situation based upon present data and studies on which he has done considerable work, including studies on the use of Taylor Park Reservoir for Gunnison County.

12. Messrs. Smith, Breitenstein, Tipton, and Wilderleeve indicated they had no factual statements to present to the Committee. The Federal representatives did not present statements.

(5) Effect on Colorado River Storage Project Plan if the proposed holdover storage capacity at the Curecanti site were reduced or eliminated.

Mr. Jacobson agreed to undertake the requested studies in collaboration with the Colorado Water Conservation Board.

Publicity

14. It was agreed by the Committee that the subject of local publicity on the results of its meetings would be left to the discretion of the members with the understanding that no specific information on its actions would be reported and that the subject of the meetings would be covered in generalities.

Next Meeting

15. The Committee agreed to hold its next meeting subject to the call of the Chairman.

Adjournment

16. The Committee adjourned at 4:10 p.m.

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.

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.

8. That in so far as the Upper Gunnison River Basin people are concerned, that the 160 acre limitation be definitely waived or modified to correspond with local conditions.

9. That in acquiring the resorts, ranches, livestock holdings, which may be affected by the reservoirs, a strong recommendation shall be made, or some method worked out with the people who are going to be dispossessed in order that they will not pay an excessive income tax either to the Federal or State government.

10. Other miscellaneous protective measures.

April 15, 1952

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

RE POL. & RESERVE COMMISSION
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 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

Yours very truly,

BUR OF REC TO
SEN. 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.

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.

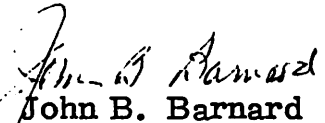
In our conversation, I asked Mr. Jennings whether or not the Secretary wished that you and I present proof of diligence in connection with the Curecanti Units on April 16; and he stated that he felt that such would be the case. Those proofs will, of course, closely parallel the proof we presented at 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 ^{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

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~~ ^{ACTUALLY} amount of water 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} ~~is~~ ^{first}
approved by the Director and the District.

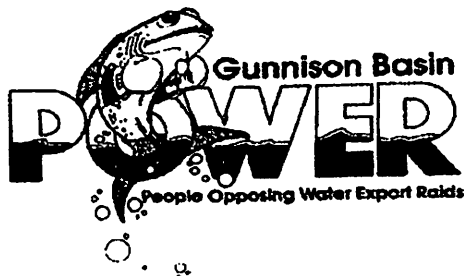
2. The operation ^{allow for} ~~principles~~ of said Curecanti Unit will con-
tinue ^{of} to promote future water resources development in the Upper Gunnison
Basin by the terms of the operating principles which shall ~~be drawn up~~
~~be~~ provided ^{ITS} for the waiver by the United States of ^{ITS} 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 _____



Copy to
PETE
HINGS MITT

November 20, 1997

Richard L. Bratton, Attorney
John McClow, Attorney
232 W. Tomichi Avenue
Gunnison, Colorado 81230

Ref: 60,000 acre feet meeting & other water issues

Dear Dick & John,

I am sorry to be so long in getting back to you regarding the planning of a meeting to discuss water issues. I have had two out of town trips as well as my usual work load and I am sure you have been busy also.

The first question I have regarding the meeting is, will there be a charge for your time in attending. If so, who will be required to pay for it. I would suggest that for this meeting we allow no less than at least four hours for discussion.

It is my plan for the meeting to be held in a mutual place with myself acting as moderator. The meeting will held in a civil fashion and I will not hesitate to "Call Down" anyone who gets out of hand. I do not however anticipate this being a problem. I believe this meeting should be for the purpose of exchanging view points regarding our beliefs of what the 60,000 acre feet issue is or is not. It is my plan for both of you to have the fullest opportunity to express yourselves regarding this matter and the other side to express theirs. Wherever you may differ will be the opportunity for us to discuss and investigate our differences and hopefully come to a common meeting of the minds regarding this matter. After all, are we even talking about the same water right?

P.O. Box 1742
Gunnison, CO 81230

Page 2 of 2 Lain to Bratton/McClow November 20, 1997

I have discussed this possible meeting with Tyler, and if you have no objections, I believe it would be good for him to be in attendance. Please advise me as to your thoughts on this matter.

Due to the fact that your schedules are probably tighter than any of ours, I suggest that you offer a list of dates and times which you would be able to make yourselves available for this discussion. If you wish to meet at night or on a Saturday, this would be fine in my opinion. I even have no problem with allowing a full eight hour day for the discussion and if we do not need it, that would be fine. Sometime in early December would be fine with me.

Dick and John, please rest assured that there are not hidden motives on my part in having this meeting. I firmly believe, that the best thing that could ever happen as a result, is that we have a meeting of the minds and go forth with a better understanding of the issue as well as a closer bond among ourselves as a result.

I shall await your letter regarding this matter.


Sincerely,

Gerald Lain

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

P.O. BOX 59
234 NORTH MAIN STREET
SUITE 2A
GUNNISON, COLORADO 81230
TELEPHONE (970) 641-1334
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PHIL KLINGSMITH
CLAYTON R. MILLER


P.C. KLINGSMITH
Of Counsel

April 18, 1996

Butch Clark
519 East Georgia Avenue
Gunnison, CO 81230

Dear Butch:

I've read your draft #2, Subordination and Call Protection from the Aspinall Unit by P.O.W.E.R. I have no objections or changes to make, but I think it could have been a little raspier.

I think P.O.W.E.R. should vigorously pursue its efforts to persuade the River District to perform its duties in the area of obtaining call protection from the Bureau as well as obtaining an agreement by the Bureau not to place calls on upper Gunnison water users to the extent of 60,000 acre feet consumptive use.

This matter could once again be easily dropped by the River District.

Sincerely yours,

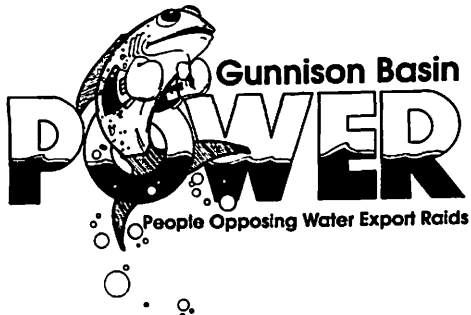
KLINGSMITH & ASSOCIATES, P.C.

By:


P.C. Klingsmith

PCK:pd

cc: Ramon Reed, President of P.O.W.E.R.



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).

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: Carol L. Oyster
Secretary

Marianne E. Stevens

Ralph S. Clark III

Judy P. Clark

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