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Beattson
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60,000 ACRE-FEET

I. SUBORDINATION DEFINED.

- A. **What it is.** In order to permit the further development of water resources within the Upper Gunnison River Basin after completion of the Wayne N. Aspinall Unit of Colorado River Storage Project, the United States agreed to waive its priority under the Aspinall Unit water decrees and allow Upper Basin water users the use of water which would otherwise be subject to Aspinall decrees "in an amount to determined by the United States". That amount has not been determined by the United States, but in any event, the United States has agreed **"to allow not less than 60,000 acre-feet of depletion"** from diversions above the Aspinall Unit which are made under water rights junior to Aspinall rights.
- B. **What it is not.** Protection from calls on the Gunnison River by senior water right holders downstream of the Aspinall Unit.
- C. **How much water is affected within UGRWCD.**
1. **Total depletion and allocation.** At least 60,000 acre-feet per year of consumptive use (depletion), from diversions above Crystal Dam under water rights *junior* to Aspinall water rights, historically allocated as follows: 10,000 af/yr between Crystal Dam and Morrow Point Dam; 10,000 af/yr between Morrow Point Dam and Blue Mesa Dam; 40,000 af/yr above Blue Mesa Dam. *Excludes* Bostwick Park (Silver Jack Reservoir), *includes* Fruitland Mesa Project.
 2. **The Fruitland Mesa Project.** Would cause approximately 29,000 af/yr depletion anticipated from diversions from Soap Creek (above Blue Mesa Dam) plus additional annual depletion from diversions from Curecanti Creek and Crystal Creek. Depletion essentially equals diversions, because the Project as proposed exports water out of the Upper Gunnison Basin, so there are no return flows within the Upper Basin.
- D. **UGRWCD Conditional Water Rights** ("Upper Gunnison Basin Project") have the same priority as Aspinall Unit water rights and therefore are technically not affected by a subordination of Aspinall rights. **However**, UGRWCD could benefit from subordination if insufficient water were available to permit diversions under both Aspinall and UGRWCD rights. In that event, UGRWCD could request "subordination" by Aspinall to permit UGRWCD to divert water up to the full amount of its water rights prior to any diversions under Aspinall rights, rather than divide the available water proportionately between UGRWCD and Aspinall, which is proper administration between equal water rights in the absence of subordination.

II. SUBORDINATION APPLIED - *THE DECISION*

A. Prerequisites.

1. Judge Brown's Orders. USBR cannot subordinate its Aspinall water rights without a water services contract.
2. U. S. Department of Justice. Judge Brown's interpretation of Reclamation Law acceptable for limited purpose of determining availability of water, but it does not bind USBR in its operation of Aspinall Unit.

B. Administration.

1. Bureau of Reclamation's Position. (Grand Junction Staff) Provided that a contract exists as directed by Judge Brown (above), USBR would be willing to request administration of Aspinall water rights subject to a subordination consistent with the definition in I.A. above.
2. State Engineer's Position. Subordination of Aspinall water rights cannot be administered selectively; i.e., USBR cannot "pick and choose" who is entitled to the benefits of the subordination of its Aspinall rights.
 - a. *Selective Subordination.* USBR would subordinate Aspinall water rights only to depletions which occur from uses of water "in the natural basin of the Gunnison River."
 - b. *General Subordination.* USBR subordination of Aspinall water rights applies to all depletions which result from upstream diversions under water rights junior to Aspinall decrees, without regard to where the water thus depleted will be used.

C. Federal Action/Federal Regulation?

1. Reclamation Reform Act.
2. National Environmental Protection Act.

D. Beneficiaries.

1. Private developers. Precedent established by 1964 Contracts.
2. UGRWCD Plan for Augmentation. UGRWCD contract with USBR providing for subordination of Aspinall rights submitted for adjudication as part of a plan for augmentation.

E. Relinquishment. Denies the potential benefit of subordination to transmountain diverters, but theoretically curtails future water development within the Upper Gunnison Basin, *but*:

1. Can UGRWCD relinquish or waive subordination?
2. If so, can others request or demand it?