

MAY 25, 2000

The speculation is reprehensible

Not finished

To the Editor:

The Board of Directors of the Upper Gunnison River Water Conservancy District (UGRWCD) instructed us to reply to the May 18 letter from P. C. Klingsmith, president of People Opposed to Water Export Raids (POWER). Klingsmith's letter contained incorrect statements promoting "The Promise," fiction dispensed with years ago.

POWER misrepresents that the U.S. government sought and received "approval" from local citizens for construction of the Aspinall Unit and made promises to locals in exchange for such approval. It simply did not happen. POWER has been challenged to produce evidence to support that allegation, and in fact several years ago was assisted by UGRWCD. There is none. It did not happen.

To be fair, POWER has produced reams of material related to the discussions and debates among the locals, and even a state official, which occurred in the Gunnison Basin and throughout the state in the late 1940's and early 1950's when Congress considered construction of the Aspinall Unit. People at all levels of importance and influence made suggestions and demands related to their areas of interest including protection of Upper Gunnison Basin water rights from the "call" of downstream senior water rights. It did not happen.

Lacking is any evidence that any U.S. official or agency ever communicated in any fashion a request for "approval" or made any promise in exchange. The

promise POWER has fabricated could only be made by Congress.

Congress authorized construction of the Aspinall Unit in the Colorado River Storage Project Act of 1956, studied and debated for two years in the House of Representatives, the Senate and in hearings before committees and subcommittees. Many revisions to the legislation resulted. The written record of the proceedings contains thousands of pages. In preparing for the Union park litigation, we read every page, twice. Nowhere is there hint that Congress proceeded with Aspinall only because Gunnison citizens had given approval, nor is there mention of "The Promise."

Even speculation about a promise should have basis in some document, statement or hypothetical musing by the party alleged to have made it: the U.S. government. We, POWER and others have searched for it. There is nothing. It did not happen, and to continue to speculate that it did is reprehensible. Equally reprehensible are Klingsmith's repeated accusations that UGRWCD is failing to adequately serve the interests of its constituents because it has failed to enforce a promise that does not exist.

The Aspinall Subordination Agreement does fulfill a U.S. promise. To understand the agreement, one must understand its origins. Aspinall was authorized as one of four primary projects of the Colorado River Storage Project (CRSP), which also included Glen Canyon Dam and Lake Powell, Flaming Gorge

Dam and reservoir and Navajo Dam and reservoir. Unlike the other primary projects, Aspinall's authorization was conditioned on a demonstration of its economic feasibility. Congress publicly anticipated that CRSP reservoirs would produce revenues, primarily from hydropower sales, to repay construction cost. Thus the projects were "economically feasible." The Secretary of the Interior provided the necessary justification to Congress in the Economic Justification Report of February 1959. It provided substantial evidence of Aspinall's economic feasibility even if future upstream water development depleted inflows to its reservoirs by 60,000 acre feet per year. This analysis was included in the Report because in the 1956 act, Congress had also authorized consideration of construction by the U.S. of participating projects in the Upper Gunnison Basin including the Upper Gunnison Project, whose concept survives today in the form of UGRWCD conditional water rights.

In 1957 the U.S. obtained decrees for water rights for Blue Mesa, Morrow Point and Crystal reservoirs, both storage and for hydropower use by the federal powerplants - a large volume of water.

By the time Aspinall was completed, it had become apparent that the Upper Gunnison Project, as conceived in the 1950's, would never be built. Nevertheless, the Bureau of Reclamation (BOR) - the federal agency empowered to construct and operate the CRSP reservoirs - remained committed to the concept of allowing

in-basin diversions of water for in-basin use upstream from Aspinall, up to 60,000 acre feet per year, accomplished by subordinating Aspinall's rights to junior water rights (those obtained after 1957).

A "subordination" is a voluntary agreement between the holder of a senior water right and the holder of a junior water right, under which the senior permits the junior to divert water when the entire flow of the stream is legally committed to satisfaction of the senior's rights.

Consistent with its commitment, the BOR informally acquiesced for several years even though full exercise of the Aspinall rights would make water unavailable for diversion by junior water right holders. Recently, however, it became apparent that changing demands for Aspinall water could make the Bureau's informal subordination legally inadequate. To preserve that protection in perpetuity, the UGRWCD - with the cooperation and assistance of the Colorado River Water Conservation District and the State Engineer - entered into a written subordination agreement with the

BOR which formalizes the 60,000 acre-foot commitment. Divided among the three reservoirs of the Aspinall Unit, up to 40,000 acre feet per year are allowed upstream from Blue Mesa Reservoir. Any person who obtained or obtains a water right junior in priority to the Aspinall Unit, for diversion within the UGRWCD for beneficial use within the basin, is entitled to the subordination.

In addition to the subordination agreement, the District is working pro-actively to put the Upper Gunnison Project water rights to use to provide call protection and maintain in-stream flows, to support extension of an existing agreement between the BOR, U.S. Fish and Wildlife Service and the state that provides some level of call protection, and to perfect the Taylor refill water right to maximize its use for call protection purposes. Rather than continually criticizing the District and misleading the public, POWER might consider a cooperative approach on the measures that will actually provide protection

Kathleen C. Klein, Manager
John H. McClow, Attorney



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