

Ramon's Copy

Agenda Item 12
April 22, 1996

Upper Gunnison River Water Conservancy District

April 13, 1996

Carol DeAngelis, Area Manager
U. S. Bureau of Reclamation
P. O. Box 60340
Grand Junction, CO 81506

*From
Ramon Reed
this is a result
of my previous
letter to Beaton*

Subject: Aspinall Unit water rights

Dear Ms. DeAngelis:

The Upper Gunnison River Water Conservancy District requests to enter into a written agreement with the Bureau of Reclamation to formalize the commitment of the United States to protect up to 60,000 acre-feet of upstream junior in-basin depletions from a call of the Aspinall Unit. The following is a brief history and explanation of why the District believes a formalized agreement is needed at this time.

In February, 1959 the Bureau of Reclamation released a report titled "Curecanti Unit of the Colorado River Storage Project, Economic Justification Report," which demonstrated the economic feasibility of the Curecanti Unit. The study assumed that after the Curecanti Unit was completed, an additional depletion of 60,000 acre-feet of water by irrigation in the Gunnison River Basin upstream of Crystal Dam would be developed: 40,000 acre-feet above Blue Mesa Dam, 10,000 acre-feet between Blue Mesa and Morrow Point Dams, and 10,000 acre-feet between Crystal and Morrow Point Dams.

In a letter dated June 28, 1963 from the Commissioner of Reclamation to the Regional Director, Salt Lake City, the Bureau of Reclamation approved a form of contract to be executed with individual water users (contractors) which would provide protection against a call of the Aspinall Unit. The contract recognized that the water rights of the Aspinall Unit would be utilized "in such a manner and pursuant to operating criteria that will permit future upstream water depletions by projects constructed for use of water in the Upper Gunnison Basin in the aggregate amount to be determined by the United States even though such projects divert under priorities subsequent in time to the priorities of the Curecanti Unit water rights." In the contract the Bureau of Reclamation agreed that, "irrespective of priority dates, the diversion, storage, distribution, and use of water under the Curecanti Unit water rights will not be made in any manner that will reduce diversions of the Contractor on the Upper Gunnison River Basin water shed under the water rights obtained for use on the project to be constructed, operated, and maintained by the Contractor". Subsequently five small contracts were executed by the Bureau of Reclamation with private water users.

Page 2

Ms. Carol DeAngelis

April 13, 1996

In a letter dated February 16, 1984 from the Regional Director, Upper Colorado Regional Office to the U. S. Department of Justice, the Bureau of Reclamation reaffirmed its intention to subordinate the Curecanti Unit to junior appropriators in an amount not to exceed 60,000 acre-feet. Correspondence from the Regional Solicitor to the Regional Director, Bureau of Reclamation dated October 26, 1984 advised the Bureau of Reclamation to fulfill its "obligation to allow upstream depletions in an amount not to exceed 60,000 acre-feet". The correspondence also stated "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". Based upon the October 26, 1984 letter of the Regional Solicitor, correspondence from the Colorado State Engineer on November 15, 1984 indicated the intention of the State Engineer to administer the Aspinall Unit water rights as the most junior water rights in the Upper Gunnison Basin.

In connection with the application for water rights by Arapahoe County in Case No. 88-CW-178, Water Court Judge Robert A. Brown, in pretrial orders dated September 14, 1990, issued the following ruling concerning the subordination of Aspinall Unit water rights: "It is clear from an analysis of the Colorado River Storage Project Act and related reclamation laws that the Bureau of Reclamation may dispose of water only through a written contract. The Bureau of Reclamation has no discretion or authority to dispose of water in any other manner. The Court is satisfied that the Bureau cannot subordinate its water rights by a simple oral declaration of its officials, and that a more formal, written contract will be necessary to express said decision."

In the light of the Water Court's ruling we believe that the State Engineer will require a written agreement in the future in order for the Bureau of Reclamation to continue to protect upstream in-basin junior water rights from a call of the Aspinall Unit. As soon as it is convenient for you the Upper Gunnison River Water Conservancy District would like to begin to develop such an agreement with the Bureau of Reclamation.

As you know the Upper Gunnison River Water Conservancy District has been working with the Bureau of Reclamation and others on methods of continuing the 30-year historic practice of operation of the Aspinall Unit to meet the needs of downstream senior water users such as the Gunnison Tunnel and the Redlands Power Canal. It was generally anticipated at the time that the Aspinall Unit was constructed that the presence of the Aspinall Unit would satisfy the water needs of these downstream users. A positive consequence of that operation has been that water users in the Upper Gunnison Basin have been free from calls from the lower basin since the completion of the Aspinall Unit. It is likely that the Bureau of Reclamation's Taylor Park Reservoir refill may play a role in assisting the Upper Gunnison Basin to remain free of downstream senior calls in the

Page 3

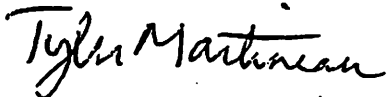
Ms. Carol DeAngelis

April 13, 1996

future when the needs of endangered fish are factored into the operation of the Aspinall Unit and river administration in the basin becomes more commonplace. It is important, therefore, that a mechanism be in place so that the Taylor Park refill is not adversely affected by a call of the Aspinall Unit.

In order to assist in the development of needed information we are willing to prepare a list of in-basin water rights junior to the Aspinall Unit, and to quantify the depletions taking place under those rights. If there are other ways that we can assist in moving forward with this matter please let us know.

Very truly yours,



Tyler Martineau,
Manager

cc: UGRWCD Board Members