

# Upper Gunnison River Water Conservancy District

## SCHEDULED MEETING

Monday, October 11, 1993  
1:30 p.m.

Multi-Purpose Building - County Fairgrounds  
Gunnison, Colorado

### A G E N D A

1. Call to Order.
2. Approval of September 13, 1993 Minutes.
3. Length of Meetings.
4. Consideration of Operational Expenses Paid.
5. Consideration of Other Expenses Payable.
6. Monthly Budget Report.
7. Public Hearing: Proposed Amendments to 1993 Budget.
8. Consideration of Resolution to Amend the 1993 Budget.
9. Public Hearing: Proposed Revisions to Bylaws.
10. Consideration of Resolution to Revise the Bylaws.
11. Proposed 1994 Budget.
12. Legal Matters:
  - a. Union Park Project Water Availability Appeal.
  - b. Other Legal Matters.
13. Taylor Park Water Management Agreement.
14. Stream Gaging Program.
15. Miscellaneous Matters.
16. Unscheduled Citizens.
17. Future Meetings.
18. Adjournment.

OPERATIONAL EXPENSES PAID

September 13, 1993	U. S. West Communications-office telephone	\$146.20
September 13, 1993	The Paper Clip-office supplies	45.00
September 13, 1993	Silver World Publishing-Aug. meeting notice & publication of operating statement	57.20
September 13, 1993	Chronicle & Pilot-publication of operating statement	70.00
September 13, 1993	Lorna Dotts-accrued vacation & sick leave from 1992	198.73
September 13, 1993	Tyler Martineau-August direct administrative travel expense & phone expense	230.50
September 30, 1993	Gunnison Country Times-publication of operating statement	96.72
September 30, 1993	Tyler Martineau-net salary for pay period 9/1/93-9/30/93	2,533.23
September 30, 1993	Patrice Thomas-net wages for pay period 9/1/93-9/30/93	646.56
September 30, 1993	Rita McDermott-net salary for pay period 9/1/93-9/30/93	251.45
September 30, 1993	Colorado Department of Revenue-CWT-September	225.70
September 30, 1993	First National Bank-FWT & FICA-September	1,677.40

OTHER EXPENSES PAYABLE

October 11, 1993 Scheduled Meeting:

Bob Arnold	attendance-\$25	\$25.00
Ralph Clark III	attendance-\$25	25.00
Susan Allen Lohr	attendance-\$25 & 72 mi.@.25-\$18	43.00
Ramon Reed	attendance-\$25	25.00
Mark Schumacher	attendance-\$25 & 20 mi.@.25-\$5	30.00
Peter Smith	attendance-\$25	25.00
Lee Spann	attendance-\$25 & 6 mi.@.25-\$1.50	26.50
Dennis Steckel	attendance-\$25	25.00
Doyle Templeton	attendance-\$25 & 64 mi.@.25-\$16	41.00
William Trampe	attendance-\$25 & 14 mi.@.25-\$3.50	28.50
Purvis Vickers	attendance-\$25 & 120 mi.@.25-\$30	55.00
L. Richard Bratton	October retainer fee	50.00
Bratton & McClow	October invoice	7,309.69
Williams, Turner, & Holmes, P.C.		00.00

**ATTORNEY INVOICES RECEIVED AND PAID  
1993**

**Bratton and Associates**

Invoice Date	Amount	Date Paid	Budget Year Expended
12/23/92	\$5,795.34	1/11/93	1992
1/27/93	\$3,055.31	2/12/93	1993
2/26/93	\$8,222.00	3/15/93	1993
3/29/93	\$4,811.26	4/12/93	1993
4/28/93	\$7,365.28	5/10/93	1993
5/27/93	\$7,225.52	6/21/93	1993
6/29/93	\$5,100.88	7/12/93	1993
7/29/93	\$6,153.92	8/9/93	1993
8/27/93	\$8,979.82	9/13/93	1993

**Williams, Turner, & Holmes, P.C.**

	Invoice Date	Amount	Date Paid	Budget Year Expended
diligence	12/31/92	\$126.30	2/8/93	1992
diligence	1/31/93	\$208.10	3/8/93	1993
water rights	1/31/93	\$234.20	3/8/93	1992
diligence	2/28/93	\$1,045.10	4/12/93	1993
water rights	2/28/93	\$70.00	4/12/93	1993
diligence	3/31/93	\$442.20	4/12/93	1993
water rights	3/31/93	\$233.40	4/12/93	1993
exchange	4/30/93	\$920.00	7/12/93	1993
water rights	5/31/93	\$30.00	7/12/93	1993
Arapahoe/Hydropower	7/31/93	\$1,731.50	9/13/93	1993

**Helton & Williamsen, P.C.**

	Invoice Date	Amount	Date Paid	Budget Year Expended
Engineering Services	4/9/93	\$63.75	4/12/93	1993
Engineering Services	5/7/93	\$212.50	5/10/93	1993
Engineering Services	8/9/93	\$85.00	9/13/93	1993

Total Disbursed \$62,111.38

Total Disbursed-1993 Budget \$55,955.54

Note: These amounts include Travel Expense

UGRWCD BUDGET SUMMARY-SEPTEMBER 1993

	SEPTEMBER EXPENSE	YEAR -TO- DATE AS OF 9/30/93	1993 BUDGET	% EXPENDED
Administrative Salary	\$3,664.68	\$31,919.33	\$45,000.00	71%
Secretary Salary	1,175.19	8,594.69	11,000.00	78%
Board Treasurer Salary	300.00	2,740.00	4,000.00	69%
Payroll Taxes & Benefits	393.20	4,253.37	7,000.00	61%
Staff Conference & Training	0.00	20.00	500.00	4%
Legal Retainer Fees	50.00	450.00	600.00	75%
Legal Exp & Eng. Related	10,796.32	61,350.24	65,000.00	94%
Audit & Accounting	0.00	874.30	1,200.00	73%
Rent & Utilities	0.00	0.00	1,500.00	0%
Stream Gages O&M	0.00	0.00	7,300.00	0%
Stream Gages Construction	0.00	0.00	7,000.00	0%
Bonding	50.00	150.00	300.00	50%
Insurance/Premises	0.00	0.00	500.00	0%
Office Telephone	150.20	1,397.70	2,700.00	52%
Attorney Telephone	0.00	0.00	500.00	0%
Legal Printing	223.92	726.36	1,300.00	56%
Administrative Travel	226.50	1,306.46	4,000.00	33%
Attorney Travel	0.00	761.14	2,000.00	38%
Board of Directors Travel	0.00	0.00	500.00	0%
Office Supplies	45.00	800.36	1,800.00	44%
Postage	0.00	518.00	1,200.00	43%
Copying	0.00	900.75	1,100.00	82%
Publications Acquisition	0.00	120.75	500.00	24%
Office Equipment	0.00	1,015.25	6,500.00	16%
Board of Directors Fees	275.00	3,125.00	5,000.00	63%
Board of Directors Mileage	74.00	821.00	1,400.00	59%
Uncompahgre Water Users	0.00	3,000.00	3,000.00	100%
CWC Membership	0.00	400.00	500.00	80%
WSC Water Workshop	0.00	1,200.00	1,200.00	100%
Water Resources Study	240.00	4,065.00	5,000.00	81%
Promotion & Guest Expense	0.00	438.97	1,500.00	29%
County Treasurer's Fees	186.03	6,392.59	7,000.00	91%
Subtotals	\$17,850.04	\$137,341.26	\$197,600.00	70%
Contingency			9,000.00	0%
Emergency Reserves			2,700.00	0%
Water Resource Protection & Development Reserves			37,000.00	0%
Totals	\$17,850.04	\$137,341.26	\$246,300.00	56%

UGRWCD  
FINANCIAL DATA-9/1/93 THRU 9/30/93

Balance on Hand - August 31, 1993

Checking Account	\$14,970.65
Petty Cash	100.00
Time C.D.-FNB	2,680.07
Time C.D.-Wetlands Fund	932.49
Money Maker-GS&L	41,167.08
Time C.D.-FNB-Lake City	40,751.44
Passbook Svgs-CB St. Ban	40,000.00
Passbook Svgs-FNB	80,212.87

TOTAL FUNDS 9/30/93 \$220,814.60

Tax Receipt Collections thru August

Real Estate	\$191,900.10
Specific Ownership	9,402.67
Interest	812.83
	\$202,115.60

Note: Treasurers' Fees are included

August Tax Receipt Collections Paid in September

Real Estate	\$5,642.13
Specific Ownership	1,257.22
Interest	232.21

Note: Treasurers' Fees are included

\$7,131.56

Interest on Investments received in September  
TOTAL TO DATE

168.01  
\$228,114.17

Total Disbursements thru 9/30/93

TOTAL FUNDS 9/30/93

17,850.04

\$210,264.13

Balances as of 9/30/93

Checking Account	\$4,301.14
Petty Cash	100.00
Time C.D.-FNB of Gunnison (1 yr.)	2,680.07
Time C.D.-Wetlands-FNB of Gunnison (1 yr.)	932.49
Money Maker-GS&L	41,286.12
Time C.D.-FNB of Lake City (6 mo.)	40,751.44
Passbook Savings-C.B. State Bank	40,000.00
Passbook Savings-FNB of Gunnison	80,212.87
TOTAL FUNDS 9/30/93	\$210,264.13

INTEREST RATES	MATURITY DATES
2.25%	
3.50%	1/18/94
3.50%	8/16/94
3.40%	
3.50%	10/4/93
3.25%	
3.25%	

**HELTON & WILLIAMSEN, P.C.**  
**CONSULTING ENGINEERS IN WATER RESOURCES**  
 984 INVERNESS DRIVE SOUTH, SUITE 115  
 ENGLEWOOD, COLORADO 80112  
 PHONE (303) 782-2161  
 FAX (303) 782-2165

RECEIVED  
 10/8/93

October 8, 1993

Upper Gunnison River Water Conservancy District  
 278 South Spruce Street  
 Gunnison, Colorado 81230

INVOICE

**Project Description:** Provision of engineering services as requested by client of counsel.

**Job Number:** U201

**Billing Period:** September 1 through 30, 1993

Work Completed:

- 1) As requested, consulted with client and counsel on matters related to Arapahoe County's appeal in Case Nos. 86CW228 and 88CW178.
- 2) Reviewed the engineering analyses and reports, and decree of the Water Court in the above-mentioned case.
- 3) Prepared a preliminary analysis of the water that would be available for diversion from Brush Creek, Cement Creek, Spring Creek, and Deadman Gulch during the months when the Blue Mesa Reservoir water storage right would be satisfied.
- 4) Read the transcript of testimony of D. Helton during the trial in the above-mentioned case.
- 5) Prepared the first cut of a description of the analysis in Item 3 above that might be considered for use in a trial brief.

Itemized Charges:

D. Helton	7.00 hrs @ \$85.00/hr	\$595.00
N. Mitchell	4.75 hrs @ \$30.00/hr	<u>\$142.50</u>

**AMOUNT DUE THIS STATEMENT** ..... **\$737.50**

UGRWCD Invoice  
October 8, 1993  
Page 2

PREVIOUS AMOUNT DUE ..... \$85.00  
PAYMENT - THANK YOU ..... -85.00

TOTAL AMOUNT DUE ..... **\$737.50**

HELTON & WILLIAMSEN, P.C.

Duane D. Helton  
Duane D. Helton

DDH/nlm

BRATTON & McCLOW  
232 West Tomichi, Suite 202  
P.O. Box 669  
Gunnison, Colorado 81230  
(303) 641-1903

Upper Gunnison River Water  
Conservancy District  
275 South Spruce Street  
Gunnison, Colorado 81230

September 29, 1993

Professional services:

Administrative

09/03/93 UGd Review, revise Board minutes  
09/13/93 UGd Attend regular September Board Meeting  
UGj Attend September 13 Board Meeting NO CHARGE  
09/21/93 SLP Telephone conference with Mr. Martineau re: office  
lease with County; review and revise same  
09/22/93 SLP Revise agreement for conformity; letter to Mr.  
Martineau and the County Attorney on revised  
agreement

Amount

SUBTOTAL: [ 585.00 ]

Rocky Point

09/09/93 UGj Telephone conference with David Baumgarten re:  
coordination of strategy for FERC filing, letter  
campaign

SUBTOTAL: [ 30.00 ]

PAYMENT IN FULL IS DUE ON RECEIPT OF STATEMENT. A LATE CHARGE  
OF 1 1/2% PER MONTH WILL BE ASSESSED ON BALANCES NOT RECEIVED WITHIN 30 DAYS.

THIS STATEMENT DOES NOT INCLUDE DISBURSEMENTS FOR WHICH WE HAVE NOT YET BEEN BILLED.



Availability - Appeal

- 08/24/93 UGd Telephone conference with Don Hamburg and Andy Williams re: work assignments for brief in Supreme Court
- 09/01/93 UGd Telephone conferences with various opposers' attorneys re: Arapahoe extension to file brief and reschedule opposers' meeting
- 09/07/93 jh Research and writing brief
- UGd Meeting with Gunnison County Commissioners to discuss legal, political issues related to availability appeal
- UGj Attend executive session with County Commissioners to review legal issues for County briefing NO CHARGE
- 09/08/93 jh Research and writing brief
- UGd Telephone conference with John Hill and Steve Sims re: consideration of conditional water rights
- 09/09/93 jh Research and writing brief
- 09/10/93 jh Research and writing brief
- 09/14/93 jh Research and writing brief
- 09/17/93 jh Conference with Dick Bratton
- jh Conference with Duane Helton
- jh Research and writing brief
- UGd Telephone conference with John Hill, Andy Williams re: issues on appeal (conditional water rights and 620(f))
- 09/19/93 UGd Work on preliminary brief, review issues
- 09/20/93 jh Research and writing brief
- jh Conference with Dick Bratton
- 09/23/93 jh Research and writing brief
- 09/24/93 jh Research and writing brief

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09/25/93 jh Research and writing brief

09/26/93 jh Research and writing brief

Amount

SUBTOTAL: [ 4,685.00]

Taylor Park Res Management Contract

09/07/93 UGd Review revised agreement dated 7/28/93

09/08/93 UGd Conference with Bill and Tyler re: Taylor Park  
Reservoir Management ContractUGd Work on revised language for the Taylor Park  
Reservoir Management Agreement09/09/93 UGd Continue revisions to Taylor Park Reservoir  
Management Contract09/13/93 UGd Review, revise Taylor Park Reservoir Management  
Contract; conference with Tyler to review and revise  
agreement09/14/93 UGd Make revisions to draft of Taylor Park Reservoir  
Management Contract to include suggestions by Board;  
telephone conference with Tyler to review same09/16/93 UGd Attend meeting of negotiating team re: Taylor Park  
Reservoir Management Contract

SUBTOTAL: [ 1,200.00]

For professional services rendered \$6,500.00

Itemization of costs

-Telecopier expense	120.00
-Long distance telephone expense	34.69
-Photocopier expense	154.50

SUBTOTAL: [ 309.19]

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OF 1 1/2% PER MONTH WILL BE ASSESSED ON BALANCES NOT RECEIVED WITHIN 30 DAYS.

THIS STATEMENT DOES NOT INCLUDE DISBURSEMENTS FOR WHICH WE HAVE NOT YET BEEN BILLED.

	<u>Amount</u>
<u>Availability - Appeal</u>	
-Additional surcharge and tax for conference room at Copper Mountain Resort (8/12/93 meeting with opposers' attorneys)	8.58
-Postage expense	6.96
-Postage for mailing transcript to Helton	5.55
-Westlaw research charges	479.41
<hr/>	
SUBTOTAL:	[ 500.50 ]
<hr/>	
Total costs	\$809.69
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Total amount of this bill	\$7,309.69

PAYMENT IN FULL IS DUE ON RECEIPT OF STATEMENT. A LATE CHARGE  
OF 1 1/2% PER MONTH WILL BE ASSESSED ON BALANCES NOT RECEIVED WITHIN 30 DAYS.

THIS STATEMENT DOES NOT INCLUDE DISBURSEMENTS FOR WHICH WE HAVE NOT YET BEEN BILLED.

# Upper Gunnison River Water Conservancy District

## M E M O R A N D U M

TO: Board Members,  
Upper Gunnison River Water Conservancy District

FROM: Tyler Martineau *TM*

DATE: September 30, 1993

SUBJECT: Agenda Item 8, October 11, 1993, Board Meeting --  
Consideration of Resolution to Amend the 1993  
Budget.

Dick Bratton, John McClow and I have met to discuss legal fees for the District for the remainder of the year as requested by the Board of Directors. The estimate of legal expenses and engineering related fees for 1993 is as follows:

January - July, 1993	\$ 45,159.22
August, 1993	\$ 10,796.32
September, 1993	\$ 7,100.00
October, 1993	\$ 10,000.00
November, 1993	\$ 10,000.00
December, 1993	\$ 10,000.00
	<hr/>
Total	\$ 93,055.54
 Rounded To	 \$ 93,000.00

I have prepared a draft resolution and attached amended budget which will provide the funds necessary for the change in legal fees. The funds would be obtained by transfers from other line items within the budget, and from additional money that the District was able to carry over from last year.

Attached also is a summary prepared by John McClow showing a breakdown of Bratton & McClow's attorney fees by category as requested by the Board.

Received  
9/30/93

UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT  
SUMMARY OF ATTORNEYS' FEES  
JANUARY THROUGH SEPTEMBER, 1993

Administrative (includes retainer)	\$ 7097.50
Aspinall Unit Decrees	215.00
Availability	16,180.00
Diligence	9,540.00
Dominguez Reservoir	100.00
O'Fallon Ditch	150.00
Private Instream Flow Rights	3,070.00
Rocky Point	9,465.50
Taylor Park Res. Management Contract	3,425.00
Taylor Park Res. Operations	1,390.00
Taylor Park Res. - Refill & Assignment	2,775.00
Taylor River	75.00
Union Park/FERC	<u>50.00</u>
	<u>\$ 53,533.00</u>

**A M E N D E D B U D G E T**  
**UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT**  
**January 1 - December 31, 1993**

**DRAFT****GENERAL FUND****Estimated Revenues**

	<u>1993</u> <u>BUDGET</u>	<u>1993</u> <u>AMENDED</u> <u>BUDGET</u>
Beginning Fund Balance (Unreserved)	\$18,521.90	\$27,165.04
<b>Non-Operating Revenues</b>		
General Property Tax	\$210,778.10	\$210,778.10
Specific Ownership Tax	13,500.00	17,500.00
Other (Interest & Refunds)	3,500.00	5,000.00
FNB Loan Advance	0.00	0.00
<b>Total Funds Available</b>	<u>\$246,300.00</u>	<u>\$260,443.14</u>

**Estimated Expenditures**

	<u>1993</u> <u>BUDGET</u>	<u>1993</u> <u>AMENDED</u> <u>BUDGET</u>
Administrative Salary	\$45,000.00	\$43,000.00
Secretary Salary	11,000.00	12,000.00
Board Treasurer Salary	4,000.00	4,000.00
Payroll Taxes & Benefits	7,000.00	6,000.00
Staff Conference & Training	500.00	500.00
State Compensation Insurance	0.00	0.00
Legal Retainer Fees	600.00	600.00
Legal Exp. & Eng. Related	65,000.00	93,000.00
Audit & Accounting	1,200.00	1,200.00
Rent and Utilities	1,500.00	1,500.00
Stream Gages O&M	7,300.00	7,000.00
Stream Gages Construction	7,000.00	0.00
Bonding	300.00	200.00
Insurance	500.00	300.00
Office Telephone	2,700.00	2,200.00
Attorney Telephone	500.00	100.00
Legal Printing	1,300.00	1,200.00
Administrative Travel	4,000.00	2,500.00
Attorney Travel	2,000.00	800.00
Board of Directors Travel	500.00	200.00
Office Supplies	1,800.00	1,300.00
Postage	1,200.00	1,000.00
Copying	1,100.00	1,100.00
Publications Acquisition	500.00	300.00
Office Equipment	6,500.00	6,500.00
Board of Directors Fees	5,000.00	5,000.00
Board of Directors Mileage	1,400.00	1,400.00
Uncompahgre Water Users	3,000.00	3,000.00
CWC Membership	500.00	400.00
WSC Water Workshop	1,200.00	1,200.00
Water Resources Study	5,000.00	5,000.00
Promotion & Guest Expense	1,500.00	1,500.00
Interest on Loan	0.00	0.00
Principal on Loan	0.00	0.00
County Treasurer's Fees	7,000.00	7,000.00
<b>Subtotals</b>	<u>\$197,600.00</u>	<u>\$211,000.00</u>
Contingency	\$9,000.00	0.00
Increase (Decrease) in Emergency Reserves	2,700.00	2,700.00
Increase (Decrease) in Water Resource Protection and Development Reserves	37,000.00	46,000.00
<b>Total Expenditures</b>	<u>\$246,300.00</u>	<u>\$259,700.00</u>
Ending Fund Balance (Unreserved)	\$0.00	\$743.14

Fund Balance  
(Decrease)

Fund Balance  
Beginning  
Ending

\$149,700.00

Ending Fund Balance Analysis

	1993 <u>BUDGET</u>	1993 <u>AMENDED BUDGET</u>
Unreserved Fund Balance	\$0.00	\$743.14
Reserved Fund Balances		
Emergency Reserves	2,700.00	2,700.00
Water Resource Protection and Development Reserves	147,000.00	156,000.00
Total Ending Fund Balance	<u>\$149,700.00</u>	<u>\$159,443.14</u>

Calculation of Mill Levy

1. Amount of General Property Tax required \$210,778.10
2. Assessed Valuation: \$133,277,777.00
3. Required Mill Levy: 1.581 Mills

I, Mark Schumacher, Secretary of the Board of Directors of the UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT, do hereby certify that the above and foregoing is a true copy of the Amended 1993 budget for said District as adopted by the Board of Directors on October 11, 1993.

IN WITNESS THEREOF, I have hereunto set my hand and affixed the seal of the UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT, COLORADO this 11th day of October, 1993.

Secretary

**Fund Balance Analysis**

	<u>1993 BUDGET</u>	<u>1993 AMENDED BUDGET</u>
Revenues Over (Under) Expenditures	(\$18,521.90)	(\$26,421.90)
Increase (Decrease) in Reserve Fund Balances	39,700.00	48,700.00
Fund Balance Increase (Decrease)	<u>21,178.10</u>	<u>22,278.10</u>
Fund Balance Beginning	128,521.90	137,165.04
Ending	<u>\$149,700.00</u>	<u>\$159,443.14</u>

**Ending Fund Balance Analysis**

	<u>1993 BUDGET</u>	<u>1993 AMENDED BUDGET</u>
Unreserved Fund Balance	\$0.00	\$743.14
Reserved Fund Balances		
Emergency Reserves	2,700.00	2,700.00
Water Resource Protection and Development Reserves	147,000.00	156,000.00
Total Ending Fund Balance	<u>\$149,700.00</u>	<u>\$159,443.14</u>

**Calculation of Mill Levy**

1. Amount of General Property Tax required	\$210,778.10
2. Assessed Valuation: \$133,277,777.00	
3. Required Mill Levy: 1.581 Mills	

I, Mark Schumacher, Secretary of the Board of Directors of the UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT, do hereby certify that the above and foregoing is a true copy of the Amended 1993 budget for said District as adopted by the Board of Directors on October 11, 1993.

IN WITNESS THEREOF, I have hereunto set my hand and affixed the seal of the UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT, COLORADO this 11th day of October, 1993.

\_\_\_\_\_  
 Secretary



**RESOLUTION 93- \_\_\_\_\_**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT TRANSFERRING FUNDS BETWEEN VARIOUS LINE ITEMS AND APPROPRIATING ADDITIONAL SUMS OF MONEY TO DEFRAY EXPENSES IN EXCESS OF AMOUNTS BUDGETED FOR THE 1993 FISCAL YEAR.**

**WHEREAS,** In December, 1992, the Board of Directors of the Upper Gunnison River Water Conservancy District (the Board) adopted its operating budget for the fiscal year beginning January 1, 1993 and ending December 31, 1993; and

**WHEREAS,** the Board having been advised of actual expenses incurred to date and anticipated for the remainder of the 1993 fiscal year finds that the amount budgeted for certain line items will be inadequate to cover the necessary expenses over the course of the year under those specific line items; and

**WHEREAS,** the Board deems it desirable to amend the existing budget to bring existing line items into compliance with projected actual expenses; and

**WHEREAS,** the existing budget has monies available in various line items including the contingency line item which can, through line item transfers, contribute to covering these expenses; and

**WHEREAS,** the District will receive revenues not assured at the time of the adoption of the budget from sources other than the District's property tax mill levy which can contribute to covering these expenses.

**NOW, THEREFORE, BE IT RESOLVED;** by the Board of Directors of the Upper Gunnison River Water Conservancy District that subsequent to public hearing conducted at a scheduled meeting of the Board held on October 11, 1993, and in accordance with sections 129-1-106 and 29-1-109, C.R.S., as amended, that:

- 1) Funds within the existing 1993 appropriation for expenditures from the General Fund are hereby authorized to be transferred from the various line items including the contingency line item to the increased line items as shown on the Amended Budget, attached hereto as Exhibit A.
- 2) The 1993 appropriation for expenditures from the General Fund is authorized to be increased from \$246,300.00 to \$259,700.00 for the purposes shown on Exhibit A.

We, the undersigned officers of the Board of Directors of the Upper Gunnison River Water Conservancy District, do hereby certify that the foregoing resolution was duly adopted by a unanimous vote of the members present at a regularly scheduled meeting of the Board of Directors on the 11th day of October, 1993, and we do further certify that said Exhibit A is a full, true and correct copy of the 1993 Budget as amended.

UPPER GUNNISON RIVER  
WATER CONSERVANCY DISTRICT

William S. Trampe, President

ATTEST:

Mark Schumacher, Secretary

# Upper Gunnison River Water Conservancy District

## M E M O R A N D U M

TO: Board Members,  
Upper Gunnison River Water Conservancy District

FROM: Tyler Martineau *Tm*

DATE: September 30, 1993

SUBJECT: Agenda Item 10, October 11, 1993, Board Meeting --  
Consideration of Resolution to Revise the Bylaws.

Enclosed is a draft resolution concerning the revision of the bylaws of the Upper Gunnison River Water Conservancy District. Attached to the resolution as Exhibit A are the proposed revisions to the bylaws which includes changes requested by the board at the September 13, 1993 board meeting. The following changes have been incorporated in the latest revision:

- 1) Section 2 of Article I concerning board member representation for each county has been revised.
- 2) A new Section 8 of Article II has been added to address executive sessions.
- 3) The previous Section 8 of Article II has been renumbered as Section 9.
- 4) Section 10 of Article II has been added to address rules of order for the board.

At the October 11, 1993 board meeting a public hearing has been scheduled to receive public comment on the proposed revisions of the bylaws.

## RESOLUTION 93-\_\_\_\_\_

### **A RESOLUTION OF THE BOARD OF DIRECTORS OF THE UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT AMENDING THE BYLAWS OF THE DISTRICT**

**WHEREAS**, the Board of Directors of the Upper Gunnison River Water Conservancy District (the Board) held its first (organization) meeting on July 9, 1959 at which meeting Bylaws of the Upper Gunnison River Water Conservancy District were adopted; and

**WHEREAS**, Section 2 of Article I of the Bylaws of the Upper Gunnison River Water Conservancy District was amended by the Board on November 30, 1965; and

**WHEREAS**, Section 1 of Article III of the Bylaws of the Upper Gunnison River Water Conservancy District was amended by the Board on September 14, 1970; and

**WHEREAS**, Section 4 of Article III of the Bylaws of the Upper Gunnison River Water Conservancy District was added by the Board on October 12, 1992; and

**WHEREAS**, the Board desires to amend the Bylaws in order to make them consistent with current statutes, the court decree in Civil Action No. 5618 entered October 8, 1991, and the current practices of the Board; and

**WHEREAS**, a majority vote of the eleven members of the board is required by the bylaws to amend or change the same.

**NOW, THEREFORE, BE IT RESOLVED**; that subsequent to public hearing conducted at a scheduled meeting of the Board of Directors of the Upper Gunnison River Water Conservancy District held on October 11, 1993, that the Bylaws of the Upper Gunnison River Water Conservancy District are amended as shown on Exhibit A which is attached hereto.

We, the undersigned officers of the Board of Directors of the Upper Gunnison River Water Conservancy District, do hereby certify that the foregoing amendments to the Bylaws of said District were duly adopted by a unanimous vote of the \_\_\_\_\_ members present, and we do further certify that said Exhibit A is a full, true and correct copy of said Bylaws as amended.

IN WITNESS WHEREOF, We, the undersigned President and Secretary, respectively, of the Board of Directors of the Upper Gunnison River Water Conservancy District, have hereunto set our hands at Gunnison, Colorado, this 11th day of October, 1993.

UPPER GUNNISON RIVER  
WATER CONSERVANCY DISTRICT

\_\_\_\_\_  
William S. Trampe, President

ATTEST:

\_\_\_\_\_  
Mark Schumacher, Secretary

September 29, 1993

**PROPOSED REVISION OF**  
**BY-LAWS**  
**of**  
**UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT**

**ARTICLE I**  
**BOARD OF DIRECTORS**

**Section 1.** The management of the business affairs and property of the District, pursuant to statute, shall be vested in a Board of Directors consisting of eleven members.

**Section 2.** *Appointment and Qualifications.* There shall be one Director to represent Hinsdale County, one Director to represent Saguache County, and nine Directors to represent Gunnison County by division. The members of said Board shall be appointed by the District Court in and for the Seventh Judicial District or elected as provided in (~~Colo. Rev. Stat.; 1953; 149-6-9;~~) Section 37-45-114, C.R.S., 1973 and the court decree in Civil Action No. 5618 entered October 8, 1991, as the same has been or may be amended from time-to-time. Each Director shall be a real property owner and a resident of the (~~District~~) Division from which (~~he~~) the Director may be appointed or elected.

**Section 3.** *Term of Office.* At the expiration of their respective terms as fixed by the order of the District Court of Gunnison County, Colorado, entered (~~June 25, 1959;~~) October 8, 1991, appointment shall be made by the District Court for the term of (~~two~~) four years except for the term of one Director from Division No. 8 which shall be for two years ending

at the time of the annual meeting in June 1996. Each Director shall hold office during the term for which the Director is appointed and until a successor is duly appointed and has qualified. The District shall maintain for public inspection at its offices during normal working hours a current list showing the names, counties of residence, and expiration dates of the terms of each member of the District's Board of Directors. Not more than sixty days and not less than forty-five days prior to expiration of a Director's term, the Conservancy District shall publish notice, once in a newspaper of general circulation within the District, that applications for appointment as Director will be accepted by the court until thirty days prior to expiration of the Director's term. The notice shall specify the address of the court to which resumes may be sent, shall specify that the applicant must have resided within the District for a period of one year, and must reside in and be the owner of real property within the particular county and division whose Director's term is expiring. The court shall fill, for the duration of the unexpired term, any vacancy which may occur on the board.

**Section 4. *Oath and Bond.*** Each Director shall, pursuant to statute, before entering upon the duties of(his) office take and subscribe an oath as required by Section 37-45-115(1), C.R.S., 1973, (statute;) and shall (give) furnish a bond in the sum of \$1,000.00 conditioned for the faithful and honest performance of the duties of (his) that office.

**Section 5. *Compensation.*** Each Director shall receive as compensation for the Director's service such sum as shall be ordered by the court and necessary travel expenses actually expended while engaged in the performance of the Director's duties.

**ARTICLE II**  
**MEETINGS OF THE BOARD OF DIRECTORS**

**Section 1. Annual Meeting** A regularly scheduled annual meeting of the Board of Directors shall be held ~~(on the 9th day of July, 1959 and)~~ on the 1st Monday following the 7th(15th) day of June of each and every year ~~(thereafter, of each year)~~ at the office or principal place of business of the District in Gunnison, Colorado ~~(law office of E.L. Dutcher, Gunnison, Colorado;)~~ at the hour of ~~(2:00)~~ 1:00 o'clock P.M.; provided however, that the President of the District may, for good cause, change the place or hour of such meeting from the place and hour herein specified; provided further, that such meetings shall be held within the geographical boundaries of the District.

**Section 2. Regularly Scheduled Meeting of the Board.** Regularly scheduled meetings of the Board of Directors may be held at such regular intervals, and at such time and place as may be determined by the Board of Directors; provided however, that the President of the District may, for good cause, change the place or hour of such meetings; provided further, that such meetings shall be held within the geographical boundaries of the District.

**Section 3(2). Special Meetings of the Board.** A special meeting of the Board of Directors may be held at any time and place within the boundaries of the District, upon the call of the President or of any four members of the Board of Directors.

**Section 4(3). Notice of Meetings.** A written notice of all regularly scheduled meetings shall be given by mail to each Director, by mailing such notice not less than ten days prior to the date and hour of such meeting. Notice of all special meetings of the Board shall be given by mailing a written notice thereof to each Director not less than ninety-six

hours prior to the date and hour of such meeting. All notices shall specify the place and hour of the meeting. The District shall cause publication of regularly scheduled meetings to appear at least ten days before each meeting is held in the Gunnison Country Times, the Crested Butte Chronicle, the Lake City Silver world, and the Saguache Crescent. If any of said newspapers ceases to exist, publication shall be made in a newspaper of similar circulation, if any. Public notice of any meeting at which a quorum of the board members is in attendance or expected to be in attendance shall be posted in a designated public place no less than twenty-four hours prior to the holding of the meeting.

**Section 5 (4). Waiver of Notice of Meetings.** The notice herein required to be given to each Director of any regularly scheduled or special meeting of the Board of Directors may be waived (by any or) with the concurrence of all the Directors and shall be deemed to have been waived in the event any one of the following shall occur for each Director:

- (a) If a Director shall sign a written waiver of such notice.
- (b) If a Director shall attend the meeting in question, and such fact appears from the minutes.
- (c) If a Director shall sign the minutes or record of proceedings of such meeting.

**Section 6(5). Quorum.** Six members of the Board of Directors shall constitute a quorum thereof for the transaction of any business. The concurrence (~~affirmative vote~~) of a majority of the Directors in attendance shall be sufficient for the determination of any matter within the duties of the Board, except as otherwise provided herein or by statute.

**Section 7. Public Meetings.** All meetings of three or more members of the Board of Directors at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.



Section 8. Executive Sessions. The Board of Directors upon the concurrence of two-thirds of the Directors in attendance, may hold an executive session only at a regularly scheduled or special meeting and for the sole purpose of considering the matters specified in Section 24-6-402 (4), C.R.S., 1973; except that no adoption of any proposed policy, position, resolution, rule, regulation, or formal action shall occur at any executive session which is not open to the public. Prior to the time that the Board of Directors convenes in executive session, the President of the District shall announce the general topic of the executive session.

Section 9. Records. The board shall keep written minutes of its proceedings. The records of the District shall be public records as defined by Section 24-72-202 (6), C.R.S., 1973. The board shall keep in a well-bound book a record of all of its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees, and all corporate acts which shall be open to inspection of all owners of property in the District, as well as to all other interested parties. The official records and files of the District shall be kept at the office of the District which shall be located in the City of Gunnison, Gunnison County, Colorado.

Section 10. Parliamentary Authority. The rules contained in the current edition of Robert's Rules of Order Newly Revised shall be followed in all instances in which they are applicable and in which they are not inconsistent with these bylaws and any special rules of order the District may adopt.

**ARTICLE III**  
**OFFICERS**

**Section 1. *Designation.*** The officers of the Board shall be a Chair~~(man)~~person, who shall be the President of the District, Vice Chair~~(man)~~person, who shall be the Vice President of the District, a Secretary and a Treasurer. All officers shall be members of the Board of Directors except the Secretary, or the ~~(Secretary-)~~Treasurer who may be one and the same person, and such person~~s~~ may or may not be a member of the Board, as the Board may from time-to-time determine. The Secretary and/or Treasurer ~~(shall)~~ may be paid such salary as may from time-to-time be determined by the Board of Directors.

**Section 2. *Election and Term of Office.*** Officers shall be elected by the Board of Directors at the annual meeting of the District. The term of office of each officer shall be for one year from the date of ~~(his)~~the officer's election at the annual meeting, and until ~~(his)~~a successor is elected and qualifies. Any vacancies which occur will be filled by the Board of Directors by special election and that officer shall serve until the election at the annual meeting, and until a successor is elected and qualifies.

**Section 3. *Duties of Officers.*** The duties of the officers of the District shall be such as are prescribed and provided by statute of the State of Colorado, and shall otherwise be the same as those of officers of public corporations. Additional duties may be imposed upon any officer by amendment of these By-Laws or by motion or resolution of the Board of Directors.

**Section 4. *Committees.*** The Board of Directors, by resolution adopted by a majority of the entire Board, may, from time-to-time, designate from among its members an

Executive Committee and such other committees and alternate members thereof, as they deem desirable, each consisting of three or more members with such power and authority, to the extent permitted by law, as may be provided in such resolution. Each such committee shall serve at the pleasure of the Board.

#### **ARTICLE IV**

#### **ATTORNEY**

**Section 1.** The Board of Directors shall, at the ~~(ir)~~ ~~(organization)~~ meeting at which the District's annual budget is adopted, employ an attorney who shall act as attorney for the District and whose term shall be for one year commencing on the first day of the District's fiscal year or until ~~(his)~~ a successor is employed. The attorney ~~(He)~~ shall be paid such salary and expenses as the Board of Directors may determine.

#### **ARTICLE V**

#### **CHIEF ENGINEER AND OTHER EMPLOYEES**

The Board of Directors may employ ~~(appoint)~~ a chief engineer and such other agents and assistants as may be needful; and each of them shall be paid such salary and expenses as the Board of Directors may determine.

**ARTICLE VI**  
**CHECKS AND DRAFTS**

**Section 1. Checks and Drafts.** All checks, drafts, notes or orders for the payment of money issued in the name of the District shall require both a signature and countersignature. Said signature and countersignature shall be by such officer or officers, or agent or agents of the District as shall from time to time be determined by resolution of the Board of Directors.

**Section 2. Deposits.** All funds of the District not otherwise employed shall be deposited from time to time to the credit of the District in such banks, trust companies or other depositories as determined by resolution of the Board of Directors.

**ARTICLE VII**  
**SEAL**

**Section 1. Seal.** The seal of the District shall consist of two concentric circles with the name of the District between such circles, and the year of incorporation, "1959", and the word "Colorado", within the inner circle.

**ARTICLE VIII**  
**AMENDMENTS.**

These By-Laws may be amended at any time by a majority vote of the eleven members of the Board of Directors.

# Upper Gunnison River Water Conservancy District

## M E M O R A N D U M

TO: Board Members,  
Upper Gunnison River Water Conservancy District

FROM: Tyler Martineau *TM*

DATE: October 4, 1993

SUBJECT: Agenda Item 11, October 11, 1993, Board Meeting --  
Proposed 1994 Budget.

Attached is the proposed budget for 1994 for the Upper Gunnison River Water Conservancy District.

Revenues for 1994 have been estimated assuming that the District would maintain its property tax revenues at the same level as in 1993. This revenue amount is less than the revenue limits provided for by statute and Amendment 1. The board could increase property tax revenues in 1994 to approximately \$225,000.00 without raising its mill levy or conducting an election.

Expenditures for 1994 have been estimated assuming the District will be involved in generally the same types of activities in 1994 as in 1993. The following should be noted:

- 1) Budget amounts shown for Administrative Salary, Board Treasurer Salary, and Legal Retainer Fees are unchanged from 1993 pending board direction as to what should be budgeted for those line items. The budget amount shown for Legal Expense and Engineering Related is based upon estimates provided by Bratton & McClow. The amounts budgeted for other line items are based upon staff's opinion of the amount needed in 1994 to carry out each activity shown.
- 2) The amount shown for Stream Gages O&M is the amount needed for operation of the Castle Creek, Cochetopa Creek, Tomichi Creek, and one-half of the Slate River gages.
- 3) The amount shown for Stream Gages Construction is the amount needed for one-half of the local cost share for construction of the Slate River gage.

- 4) **Attorney Telephone and Attorney Travel Expenses** have been included within the Legal Expense and Engineering Related line item for 1994.
- 5) The amount proposed under Office Equipment is based upon the District acquiring a map case for permanent storage of the District's maps, plus minor miscellaneous office equipment.
- 6) No water resources studies and no separately identified engineering fees have been budgeted for in 1994. The District may need to anticipate expending significant funds in these areas in the future in order to move forward with the development of its conditional water rights, and in order to develop a basin-wide augmentation plan to protect water users. Bratton & McCloy have recommended that \$10,000.00 be budgeted as a separate line item for engineering fees in 1994.
- 7) Promotion and Guest Expense have been budgeted to include continuing funds of \$1,200.00 for the newsletter and \$500.00 for miscellaneous promotion and guest expenses.

At the October 11, 1993 board meeting I recommend that the board:

- 1) Provide direction concerning any needed revisions to the proposed 1994 budget, and budget message.
- 2) Establish a budget hearing date.
- 3) Authorize the Notice of Budget to be published.

**PROPOSED BUDGET**  
**UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT**  
**January 1 - December 31, 1994**

**GENERAL FUND**

**Estimated Revenues**

	1992 <u>ACTUAL</u>	1993 <u>ESTIMATED</u>	1994 <u>PROPOSED</u>
Beginning Unreserved Fund Balance (Designated and Undesignated)	\$113,611.00	\$27,943.00	\$1,521.00
<b>Non-Operating Revenues</b>			
General Property Tax	\$211,639.00	\$210,778.00	\$210,778.00
Specific Ownership Tax	17,149.00	17,500.00	15,750.00
Other (Interest & Refunds)	1,897.00	5,000.00	5,000.00
<b>Total Funds Available</b>	<u>\$344,296.00</u>	<u>\$261,221.00</u>	<u>\$233,049.00</u>

**Estimated Expenditures**

	1992 <u>ACTUAL</u>	1993 <u>ESTIMATED</u>	1994 <u>PROPOSED</u>
Administrative Salary	\$40,739.00	\$43,000.00	\$45,000.00
Secretary Salary	5,809.00	12,000.00	14,000.00
Board Treasurer Salary	3,254.00	4,000.00	4,000.00
Payroll Taxes & Benefits	4,850.00	6,000.00	7,000.00
Staff Conference & Training	230.00	500.00	500.00
State Compensation Insurance	216.00	0.00	0.00
Legal Retainer Fees	600.00	600.00	600.00
Legal Exp. & Eng. Related	88,040.00	93,000.00	70,000.00
Audit & Accounting	1,058.00	1,200.00	1,200.00
Rent and Utilities	1,500.00	1,500.00	1,500.00
Stream Gages O&M	0.00	7,000.00	12,300.00
Stream Gages Construction	8,150.00	0.00	4,000.00
Bonding	125.00	200.00	200.00
Insurance	0.00	300.00	300.00
Office Telephone	1,299.00	2,200.00	2,500.00
Attorney Telephone	396.00	100.00	0.00
Legal Printing	1,247.00	1,200.00	1,400.00
Administrative Travel	3,533.00	2,500.00	3,000.00
Attorney Travel	2,082.00	800.00	0.00
Board of Directors Travel	122.00	200.00	500.00
Office Supplies	2,961.00	1,300.00	1,500.00
Postage	1,360.00	1,000.00	1,200.00
Copying	0.00	1,100.00	1,200.00
Publications Acquisition	0.00	300.00	500.00
Office Equipment	13,271.00	6,500.00	1,000.00
Board of Directors Fees	4,200.00	5,000.00	5,000.00
Board of Directors Mileage	1,009.00	1,400.00	1,400.00
Uncompahgre Water Users	2,000.00	3,000.00	3,000.00
Taylor Park Water Management	0.00	0.00	10,000.00
CWC Membership	400.00	400.00	500.00
WSC Water Workshop	1,000.00	1,200.00	1,200.00
Water Resources Study	10,000.00	5,000.00	0.00
Promotion & Guest Expense	77.00	1,500.00	1,700.00
County Treasurer's Fees	5,825.00	7,000.00	7,000.00
<b>Subtotals</b>	<u>\$206,353.00</u>	<u>\$211,000.00</u>	<u>\$203,200.00</u>
Contingency	\$0.00	\$0.00	\$10,000.00
Increase (Decrease) in Emergency Reserves	0.00	2,700.00	2,500.00
Increase (Decrease) in Water Resource Protection and Development Reserves	110,000.00	46,000.00	16,500.00
<b>Total Expenditures</b>	<u>\$316,353.00</u>	<u>\$259,700.00</u>	<u>\$232,200.00</u>
Ending Unreserved Fund Balance	\$27,943.00	\$1,521.00	\$849.00

**Total Fund Balance Analysis**

	<b>1992 <u>ACTUAL</u></b>	<b>1993 <u>ESTIMATED</u></b>	<b>1994 <u>PROPOSED</u></b>
Revenues Over (Under) Expenditures	(\$85,668.00)	(\$26,422.00)	(\$672.00)
Increase (Decrease) in Reserve Fund Balances	110,000.00	48,700.00	19,000.00
<b>Total Fund Balance Increase (Decrease)</b>	<u>\$24,332.00</u>	<u>\$22,278.00</u>	<u>\$18,328.00</u>
<b>Total Fund Balance Beginning</b>	113,611.00	137,943.00	160,221.00
<b>Ending</b>	<u>\$137,943.00</u>	<u>\$160,221.00</u>	<u>\$178,549.00</u>

**Ending Fund Balance Analysis**

	<b>1992 <u>ACTUAL</u></b>	<b>1993 <u>ESTIMATED</u></b>	<b>1994 <u>PROPOSED</u></b>
Unreserved Fund Balance	\$27,943.00	\$1,521.00	\$849.00
Reserved Fund Balances			
Emergency Reserves	0.00	2,700.00	5,200.00
Water Resource Protection and Development Reserves	110,000.00	156,000.00	172,500.00
<b>Ending Total Fund Balance</b>	<u>\$137,943.00</u>	<u>\$160,221.00</u>	<u>\$178,549.00</u>

**PROPOSED  
CALCULATION OF MILL LEVY**

1. Amount of General Property Tax required	\$210,778.00
2. Assessed Valuation:	\$145,609,686
3. Required Mill Levy:	1.448 Mills



**PROPOSED BUDGET MESSAGE**

The Upper Gunnison River Water Conservancy District was formed on June 1, 1959 pursuant to the provisions of and for the purposes described in the Water Conservancy Act of Colorado, Section 149-6-1, et seq., C.R.S., 1953. The District was reorganized on October 8, 1991. The District is located within Gunnison, Hinsdale, and Saguache Counties and is generally defined as that area of the Upper Gunnison watershed which lies above the outlet of Blue Mesa Reservoir. The District is largely supported through a mill levy which is assessed on real property located in the District.

The District uses the modified accrual basis of accounting in which revenues are recognized when they become measurable and available as net current assets. Expenditures are recognized when the related fund liability is incurred.

The accounts of the Upper Gunnison River Water Conservancy District are organized on the basis of funds. The District maintains only a General Fund in which all activity is reported.

Principal activities of the District in 1994 will include on-going water rights litigation to protect the water resources of the Upper Gunnison basin, protection of Upper Gunnison basin interests in discussions concerning the re-operation of the Aspinall Unit to meet the needs of endangered species, participation in the development of an Environmental Impact Statement for a contract to deliver water from the Aspinall Unit to the Black Canyon of the Gunnison National Monument, protection of Upper Gunnison basin interests in connection with the quantification of the federal reserved water right in the Black Canyon, development of an agreement for the use of water in the upper basin from Taylor Park Reservoir, development of an Upper Gunnison basin augmentation plan to protect upper basin water users from downstream calls, participation in legislative efforts to protect water uses in the Upper Gunnison basin, development of computerized basin-wide water accounting and planning tools, planning for water resource development to meet water needs throughout the Upper Gunnison basin, installation and operation of new stream gaging stations to obtain information needed for developing and protecting the District's water resources, and participation in an analysis of water supply and water quality needs in the East River basin.

The following is a description of major line items included in the 1994 budget:

Administrative Salary. The amount shown is for a full-time manager for the District.

Secretary Salary. The amount shown is for a half-time position plus attendance at board meetings.

Legal Expense and Engineering. Legal expenses include the anticipated legal costs associated with the Arapahoe County Union Park water availability appeal, the NECO Rocky Point Project, the Arapahoe County Upper Gunnison Basin Project, negotiation of contracts including the Taylor Park Water Management Agreement with the Bureau of Reclamation, involvement in Gunnison River issues with the Bureau of Reclamation, endangered species matters, development of a basin-wide augmentation plan, the Nature Conservancy water right donation to the Colorado Water Conservation Board, the Dominguez Reservoir litigation, development of an application for an exchange for the first fill in Taylor Park

*Austin?  
Res. 1*

P R O P O S E D    B U D G E T  
UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT  
January 1 - December 31, 1994  
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Reservoir, and on-going district activities such as development of the District's water rights, feasibility studies, and miscellaneous administrative matters. In conjunction with these legal activities, it is anticipated that consulting engineering services may be necessary.

Stream Gages O&M. The amount shown is for the cost of operation of stream gages on Castle Creek, Cochetopa Creek, Slate River, and Tomichi Creek.

Stream Gages Construction. The amount shown is for one-half of the local cost share for the construction of the Slate River stream gage.

Taylor Park Water Management. The amount is budgeted in anticipation that the District may decide to enter into the Taylor Park Water Management Agreement with the Bureau of Reclamation in 1994. As of the time of adoption of this budget the District has not committed to execute the agreement with the Bureau of Reclamation.

Contingency. This line item includes expenses which may be incurred in 1994 but which are uncertain at the time of budget adoption. It is the Board's intention that should the amount of contingency needed for any one line item exceed \$1,000.00 the amount shall be paid out of the contingency in accordance with the requirements of Sections 29-1-109 and 29-1-111, C.R.S., 1973. It is intended that contingency may be used to cover any line item expense in the budget. Payments from contingency may also be made to cover a new district expense for water purchase costs and contracting costs for providing water supplies to water users in the district. Such costs have been included in contingency because they are dependent in large part on future circumstances which cannot now be foreseen.

Increase in Water Resource Protection and Development Reserve. The amount budgeted under this line item for 1994 has been included to pay the costs of litigation to protect water resources in the District and for development of water resources in the future. The amount budgeted may also be used to pay consulting engineering costs for the development of a basin-wide augmentation plan so that water released from upper basin reservoirs including Taylor Park Reservoir can be used to prevent downstream senior calls from adversely affecting water users throughout the District. The amount has not been budgeted as individual line item expenses in the budget because of uncertainty concerning the timing and amount of the expenses.

In 1994 the Upper Gunnison River Water Conservancy District will maintain two reserve balances in the general fund.

Emergency Reserve. The District will appropriate at least 1% of fiscal year spending to this fund in 1994 as required by Amendment #1.

Water Resource Protection and Development Reserve. The District established this reserve in 1992 so as to have funds available to pay legal and engineering expenses associated with the protection of water resources within the District, to pay for potential new District expenses for water purchase costs and contracting costs for augmenting water supplies within the district, and to pay costs of developing new water supplies. It is the Board's intention that when transfers or payments from the Water Resource Protection and Development Reserve are required the amount shall first be approved by the Board in accordance with the requirements of Section 29-1-109, C.R.S., 1973.

P R O P O S E D   B U D G E T  
UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT  
January 1 - December 31, 1994  
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The Board of Directors of the Upper Gunnison River Water Conservancy District anticipate that this budget will allow the District to carry out its purposes and statutory responsibilities for 1994.

**BRATTON & McCLOW**  
Attorneys at Law  
232 West Tomichi Avenue, Suite 202  
P.O. Box 669  
Gunnison, Colorado 81230  
Telephone (303) 641-1903  
Telecopier (303) 641-1943

Denver Office:  
999 Eighteenth Street, Suite 1350  
Denver, Colorado 80202  
Telephone: (303) 295-3613  
Telecopier: (303) 294-9933

L. Richard Bratton  
John H. McClow

John R. Hill, Jr.  
Of Counsel

October 7, 1993

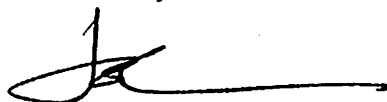
Board of Directors  
Upper Gunnison River Water  
Conservancy District

Susan and Gentlemen:

In response to your instruction, I have enclosed a discussion draft of a legal services agreement for review at the board meeting on October 11.

The form was derived from a sample agreement provided by Butch Clark.

Sincerely,



John H. McClow

JHM/lms  
Enclosure  
xc: Mr. Tyler Martineau (via facsimile)

## LEGAL SERVICES AGREEMENT

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 1993, by and between the **UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT**, a water conservancy district established under the Water Conservancy Act (the District), and **BRATTON & McCLOW**, a general partnership, (the Firm).

WHEREAS, the Board of Directors of the District (the Board) is authorized pursuant to the Water Conservancy Act to employ attorneys for the District; and

WHEREAS, the Board desires to contract with the Firm upon the terms and conditions set forth below;

In consideration of the mutual promises and obligations contained herein, the parties agree as follows:

1. **EMPLOYMENT.** The Firm is hereby employed to serve as legal counsel for the District. L. Richard Bratton and John H. McCLOW, partners in the Firm, are designated as the individual attorneys responsible for the performance of the duties set forth herein. It is understood, however, that associate attorneys of the Firm, either employees or of counsel, may perform certain legal services for the District under the supervision and control of the named individual attorneys.

2. **DUTIES AND RESPONSIBILITIES.** During the term of this Agreement, the Firm shall be responsible for the following:

(a) To attend all regular and special meetings and work sessions of the Board, except when excused by the Board, and attend meetings of the Board's committees upon request.

(b) To provide legal advice, counsel and opinion on any matter of concern to the District when requested to do so by the Board, the President of the District or the Manager of the District.

(c) To attend to all matters of a legal nature affecting the District including, but not limited to, negotiation and preparation or review of all legal documents and resolutions.

(d) To represent the District in all judicial, quasi-judicial or administrative trials, proceedings or hearings wherein the District is a party or participant.

3. **COMPENSATION.** As compensation for the performance of the duties and responsibilities set forth herein, the Firm shall be paid at the following hourly rates:

(a) For legal services performed by L. Richard Bratton and John H. McClow: \$125.00 per hour;

(b) For legal services performed by John R. Hill, Jr.: \$150.00 per hour;

(c) For legal services performed by Steven L. Pierson: \$75.00 per hour;

(d) For paralegal services: \$50.00 per hour;

provided, however, that hourly fees for attendance at meetings and work sessions of the Board and the Board's committees which are attended by both partners shall be billed to the District for only one attorney.

4. **EXPENSES.** In addition to the hourly fees set forth above, the District shall reimburse the firm for expenses incurred by the Firm on behalf of the District, including, without limitation, long distance telephone charges, copies, mailing expenses, travel expenses for travel on behalf of the District, filing fees and other litigation costs.

5. **BILLING AND PAYMENT.** The Firm shall provide a monthly billing to the District which shall contain a description of the legal services provided to the District during the preceding billing period, itemized and subtotaled by categories which shall be mutually agreed upon by the parties, together with an itemization of expenses incurred on behalf of the District. The Board shall review each billing at the next regular meeting of the Board following receipt of the billing by the District and approve for payment such amount as the Board deems appropriate. The District shall pay each monthly billing within four (4) business days after the bill has been reviewed and approved by the Board.

6. **TERM.** The term of employment of the Firm shall be for a period of one year, beginning on the 1st day of January, 1994, and ending on the 31st day of December, 1994. Either party may terminate this Agreement, for any reason, upon thirty (30) days' written notice.

7. **QUALIFICATION.** The District's Attorneys shall at all times be licensed attorneys authorized to practice in the State of Colorado, and shall at all times maintain a high level of competency in the performance of their duties.

8. **MEDIATION.** In the event of any dispute relating to this agreement, the parties agree to submit such dispute to mediation with a mediator agreed upon by the parties. In the event the parties fail to resolve the dispute by mediation within thirty (30) days from the date of a notice by either party requesting mediation, the parties agree that the matter shall be submitted to binding arbitration. The arbitration shall be governed by Colorado law and shall be conducted according to the Commercial Arbitration Rules of the American Arbitration Association.

9. **MISCELLANEOUS.**

(a) All notices and other communications required or permitted under this agreement shall be in writing and shall be, as determined by the person giving such notice, either hand delivered, mailed by certified mail, return receipt requested to the required party at the following addresses:

**DISTRICT:**

**FIRM:**

Bratton & McClow  
232 W. Tomichi, Suite 202  
P. O. Box 669  
Gunnison, Colorado 81230  
Attention: L. Richard Bratton

Notice shall be deemed delivered at the time of personal delivery, or when mailed to the required party. Either party may change its address by giving written notice of a change of address to the other party in the manner provided in this paragraph.

(b) This agreement is executed in Gunnison County, Colorado, and shall be interpreted, construed and governed by the laws of the State of Colorado.

(c) This agreement may be executed in counterparts, each of which shall for all purposes be deemed an original and all of which together shall constitute one and the same agreement, document or instrument.

UPPER GUNNISON RIVER WATER  
CONSERVANCY DISTRICT

ATTEST:

By: \_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

BRATTON & McCLOW

By: \_\_\_\_\_  
Partner



**BRATTON & McCLOW**  
Attorneys at Law  
232 West Tomichi Avenue, Suite 202  
P.O. Box 669  
Gunnison, Colorado 81230  
Telephone (303) 641-1903  
Telecopier (303) 641-1943

Denver Office:  
999 Eighteenth Street, Suite 1350  
Denver, Colorado 80202  
Telephone: (303) 295-3613  
Telecopier: (303) 294-9933

Richard Bratton  
John H. McCLOW

John R. Hill, Jr.  
Of Counsel

September 30, 1993

Board of Directors  
Upper Gunnison River Conservancy District  
Gunnison, Colorado 81230

Re: 1994 Budget/Legal-Engineering Fee Budget

Dear Susan and Gentlemen:

At the last meeting you requested that John and I provide you an estimate of the legal and engineering expenses for 1994. Our best estimate of the legal and engineering expenses for 1994 is as follows:

*No argumentation please*

1. LEGAL EXPENSE

Taylor River Management Agreement	\$12,000.00
FERC Matter	6,000.00
Appeal of Availability Trial	10,000.00
Gunnison River issues, including:	
(a) Bureau of Reclamation-National Park Service and	
(b) Federal Legislation	6,000.00
Endangered Species	3,000.00
CWCB - Nature Conservancy Change Proceeding	2,000.00
Basin-Wide Argumentation Proceeding	2,500.00
Dominguez Reservoir Litigation	3,000.00
Exchange Proceeding - First Fill and Second Fill of Taylor Park Reservoir	2,000.00
Diligence - Upper Gunnison Decrees	2,500.00
Taylor Park Operations and Private Instream Rights	3,000.00
Miscellaneous and Administrative Matters	13,000.00
Travel, telephone, and copying expense	<u>5,000.00</u>

TOTAL: \$70,000.00

*Water Cost*

*?*

Board of Directors  
Page 2  
September 30, 1993

The following comments are appropriate with regard to the above-referred matters:

A. **Generally.** As you know, the amount of involvement by the Board in legal matters is in many instances beyond the control of either the Board or its counsel, being influenced by outside factors or persons. In addition, some matters could take on increased significance in the future, thereby resulting in a substantial increase in the amount of time to be devoted to them. On the other hand, it often occurs that matters are delayed or otherwise take on less significance, resulting in very little legal expense. It is also possible (even likely based on past experience) that other matters not now foreseen will arise, resulting in expenditures not now anticipated.

There are several approaches to estimating annual legal expenses, including estimated maximum, estimated minimum, or most probable. Subject to the above qualifications, the above figures are our present estimate of the most probable amounts that will be expended for the various items. All of the specific items are subject to the above comments. In addition, the following comments relate to specific items.

B. **Taylor Park Reservoir Management Agreement.** As we have recently raised the issue of storing Upper Gunnison water in Blue Mesa Reservoir, we are not sure what course this will take when it is reviewed in Salt Lake City.

C. **Availability Appeal.** The legal work required on this matter in 1994 will involve a review of Arapahoe's response to our briefs and the oral argument. As it has not yet been determined how the oral argument will be handled, and will not be determined for some time, there is no way to estimate how much of our time will be involved.

D. **FERC Matter.** This is a matter that has the greatest potential for uncertainty. On the one hand, if we are successful in our motion to dismiss, which will be renewed in the next few days, there would be little, if any, legal activity in 1994. On the other hand, if the NECO activities are increased or the Arapahoe County/City of Parker preliminary permit application is approved, substantial legal activity may be generated.

E. **Gunnison River Issues, Including Bureau of Reclamation-National Park Service and Federal Legislation.** There will undoubtedly be some legal activity in this area; however, it is possible that Senator Campbell will not renew his efforts to introduce

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September 30, 1993

federal legislation this year and will wait until the related negotiations are further along. However, it is likely that there will be at least some activity involving the Bureau of Reclamation and the National Park Service.

F. Miscellaneous and Administrative Matters. During 1993 we have had an increase in legal review of miscellaneous matters and general administrative matters from prior years' activity. As the level of activity is dictated both by the Board's desires and unforeseen circumstances, we do not know exactly what to anticipate in 1994. Based on last year's experience, we decided that this estimate should be increased somewhat over the 1993 estimate.

G. Taylor Park Operations and Private Instream Rights. As a substantial amount of time in 1993 was devoted to these two matters, which were not foreseen at the time the budget was prepared, we suggest that an item be included for them as we believe there will be some time devoted to both matters in 1994.

G. All other matters. All other matters are dependent upon the efforts of other parties for the most part, and no further comment is required.

2. ENGINEERING EXPENSE.

Last year you decided to include legal and engineering fees as a single estimated expense. We have not attempted to provide a separate estimate for engineering expenses. Tyler and the Colorado River District can provide substantial engineering assistance in 1994; however, there are significant matters that will require substantial separate engineering expenses. These could include diligence activities related to Upper Gunnison's decrees, FERC activities, including both Rocky Point and Union Park, a plan of augmentation related to the Upper Gunnison Project, and computations required to show the actual use of water released from Taylor Park Reservoir for irrigation purposes so that the full decreed amount can be made absolute.

Do we know  
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for what

**BRATTON & McCLOW**

Board of Directors  
Page 4  
September 30, 1993

As with last year, we suggest that you include a separate line item of \$10,000.00 for engineering. This is substantially less than will ultimately be required for the above matters should they all be pursued but should be a reasonable amount for what will actually be needed for 1994.

Very truly yours,

*L. Richard Bratton*  
L. Richard Bratton *By jr*

jr

c Mr. Tyler Martineau

# Upper Gunnison River Water Conservancy District

## MEMORANDUM

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TO: Board Members,  
Upper Gunnison River Water Conservancy District

FROM: Tyler Martineau *TM*

DATE: October 4, 1993

SUBJECT: Agenda Item 13, October 11, 1993, Board Meeting --  
Taylor Park Water Management Agreement.

The third negotiating session concerning the Taylor Park Water Management Agreement was held with the Bureau of Reclamation (USBR) on September 16. At the negotiating session the USBR agreed with most of the requested language changes approved by the board at the September 13, 1993 board meeting. There were the following exceptions:

- 1) The USBR did not agree to the establishment of an exchange whereby refill water in Taylor Park Reservoir could be moved down to Blue Mesa Reservoir and carried over for use in dry years. The Bureau did say during the negotiation, however, that they would investigate the possibility of storage space being provided in Blue Mesa Reservoir on a space available basis. This space would be used to provide the District with a place that it could carry over refill water for the next year. The USBR has since indicated to me by telephone that they do not believe such storage space could be provided to the District.
- 2) It was argued by the USBR that administrative charges could be higher in the first one to two years of the agreement while the appropriate accounting procedures are being developed. Therefore, it would be beneficial to the District for it to have the option for the administrative charges to be revised after the first two years of the agreement, instead of locking the administrative charges in for five years.
- 3) Several additional language changes in the Agreement were discussed including changes in Sections 2(e), 5(a), 6(a), and 7(a).
- 4) During the negotiations the USBR agreed that they would provide information concerning the calculation of the

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administrative charges for the agreement, they would perform an analysis of the annual yield of the refill right, and they would continue to look into the possibility of providing some type of storage or exchange of refill water into Blue Mesa Reservoir.

Enclosed is a new draft of the agreement as prepared by the USBR following the negotiating session on September 16.

Received  
10/4/93

DRAFT 9-23-1993

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

UNCOMPAHGRE PROJECT, COLORADO

WATER MANAGEMENT AGREEMENT

AMONG  
THE UNITED STATES,  
THE UNCOMPAHGRE VALLEY WATER USERS ASSOCIATION,  
UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT,  
AND THE COLORADO RIVER WATER CONSERVATION DISTRICT

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 199\_\_, among the UNITED STATES, hereinafter referred to as the United States, under the provisions of the Act of June 17, 1902 (32 Stat. 388), and Acts amendatory thereof and supplementary thereto, particularly the Acts of April 11, 1956 (70 Stat. 105), March 10, 1934 (48 Stat. 401) as amended, and Section 7 of the Act of July 9, 1965 (79 Stat. 216), the UNCOMPAHGRE VALLEY WATER USERS ASSOCIATION, hereinafter referred to as the Association, a corporation organized and existing under the laws of the State of Colorado, having its principal place of business at Montrose, Colorado, the UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT, hereinafter referred to as the Gunnison District, a conservancy district organized under the laws of the State of Colorado, having its principal place of business at Gunnison, Colorado, and the COLORADO RIVER WATER CONSERVATION DISTRICT, hereinafter referred to as the Colorado District, a political subdivision of the State of Colorado, having its principal office at Glenwood Springs, Colorado;

PREAMBLE

WITNESSETH, That the following statements are made in explanation:

(a) WHEREAS, the United States constructed the Uncompahgre Project, including the Taylor Park Dam and Reservoir on the Taylor River, a tributary to the Gunnison River, and pursuant to that certain contract dated December 13, 1948, symbol Ilr-1530, between the United States and the Association, the Association is obligated to repay the reimbursable costs of the project, and to operate and maintain the project in accordance with the terms and conditions of said contract; and,

(b) WHEREAS, the United States is the owner of an adjudicated water right for the storage of 111,260 acre feet of water in Taylor Park Reservoir which water right was decreed by the District Court of Gunnison County, Water District No. 59, with a priority date of August 3, 1904, and hereinafter referred to as the first fill right; and,

(c) WHEREAS, the Gunnison District was granted a decree by the District Court of Gunnison County, Water Division 4, in Case No. 86-CW-203 for the refill of Taylor Park Reservoir in the amount of 106,230 acre feet with an appropriation date of August 28, 1975 (hereinafter referred to as the refill right), to be used for recreational purposes, including fishery and wildlife, while the water is impounded in the reservoir, and while controlled at times and in quantities calculated to enhance the fishery and recreational uses in the Taylor and Gunnison Rivers above Blue Mesa Reservoir. Of the total refill right of 106,230 acre feet, the Court declared 44,700 acre-feet be adjudicated absolute under this Decree, and the remaining 61,530 acre-feet be decreed conditional for the same aforesaid uses and purposes. In addition, the court



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ruled that 19,200 acre-feet of said refill right for 106,230 acre-feet decreed for fishery and recreation purposes may also be used for irrigation purposes within the Gunnison District, and of said 19,200 acre-feet, 13,777 acre-feet be adjudicated absolute (as part of the 44,700 acre-feet), with the remaining 5,423 acre-feet having a conditional decree (as part of the 61,530 acre-feet); and,

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(d) WHEREAS, the United States, as part of the Colorado River Storage Project (Act of April 11, 1956, 70 Stat. 105), has constructed the Wayne N. Aspinall Storage Unit (formerly the Curecanti Unit) consisting of a three-reservoir complex on the Gunnison River below the confluence with the Taylor River, the three reservoirs known as Blue Mesa, Morrow Point, and Crystal, and hereinafter collectively referred to as the Aspinall Unit; and,

(e) WHEREAS, the Economic Justification Report for the Aspinall Unit, dated February 5, 1959, anticipated and provided for the future upstream depletion, by water rights junior or equal in priority to the Aspinall Unit, of 40,000 acre-feet of water above Blue Mesa Dam, 50,000 acre-feet above Morrow Point Dam, and 60,000 acre-feet above Crystal Dam; and,

(f) WHEREAS, the parties hereto entered into Contract No. 6-07-01-00027, dated August 28, 1975, relating to the operation of Taylor Park Dam and Reservoir; and providing for storage exchange between Taylor Park Reservoir and the Aspinall Unit to optimize fishery conditions and recreation uses, hereinafter referred to as the 1975 agreement; and,

(g) WHEREAS, the purposes of the said 1975 agreement include the furtherance of conservation and better utilization and management of available water supplies; coordinated storage of water in, and releases of water from, Taylor Park Reservoir and the regulation of

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releases at the Aspinall Unit in order to benefit the Gunnison District, the Association, and the Colorado District; the enhancement of recreation and fishery purposes of the Colorado River Storage Project, of which the Aspinall Unit is a part; and the provision for coordinated releases to allow for the beneficial use of water by the Gunnison District; and,

(h) WHEREAS, the 1975 agreement provides that the Gunnison District may apply for a water right on all surplus flows in the Taylor River above Taylor Park Reservoir and that all water so appropriated shall be used by the Gunnison District in the Upper Gunnison area. The agreement further provides that Taylor Park Reservoir will be operated as to assist the Gunnison District in using such water provided that all other purposes recited in the said agreement and the original purposes of Taylor Park Reservoir are not impaired; and,

(i) WHEREAS, the Gunnison District has assigned the Taylor Park refill storage right granted in Case No. 86-CW-203 to the United States, hereinafter referred to as the "refill right", as stipulated in the agreement dated April 16, 1990, among the parties hereto, which will result in waters being stored for beneficial use in Taylor Park Reservoir, for the purpose of furthering the goals and objectives of the 1975 agreement, with no capital expenditures by the parties to this agreement; and,

(j) WHEREAS, the parties hereto desire to enter into a water management agreement whereby storage, control, and release of water from Taylor Park Reservoir and the Aspinall Unit are managed consistent with the practices that have historically occurred under the terms of the 1975 agreement, or as is consistent with its purposes, and to provide a means to coordinate, account for, and protect the water stored, controlled, and released for the purposes

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of enhancing recreation, fishery, and wildlife benefits, and irrigation practices within the Gunnison District resulting from the refill right, including the perfection of the conditional rights therefor.

NOW, THEREFORE, it is mutually agreed as follows:

**DEFINITIONS**

1. Where used in this agreement, the term:
  - a. "Federal Reclamation Laws" means the Act of June 17, 1902 (32 Stat. 388), and all acts amendatory thereof or supplementary thereto.
  - b. "Secretary" or "Contracting Officer" means the Secretary of the Interior, United States of America, or his duly authorized representative.
  - c. "Association" means the Uncompahgre Valley Water Users Association.
  - d. "Gunnison District" means the Upper Gunnison River Water Conservancy District.
  - e. "Colorado District" means the Colorado River Water Conservation District.
  - f. "Districts" means the Gunnison District and the Colorado District.
  - g. "Taylor Park Gage" means United States Geological Survey (USGS) river gage number 09109000, Taylor River below Taylor Park Reservoir, Colorado, located 1000 feet downstream from Taylor Park Reservoir Dam.
  - h. "Irrigation water" means water used or intended to be used primarily in connection with agricultural or horticultural activities, including the raising of livestock and other beneficial uses.

**DRAFT 9-23-1993**

i. "Fishery and recreation water" means water that is used or intended to be used for maintaining and enhancing fisheries and recreation in Taylor Park Reservoir and in the Taylor River and Gunnison River between Taylor Park Reservoir and Blue Mesa Reservoir.

**TERM OF AGREEMENT**

2. a. This agreement shall be effective on execution hereof, and shall remain in effect for a period of 25 years.

b. The agreement may be renewed for an additional 25 year period following expiration of this agreement and upon written request to Reclamation by all the other signatory parties within two years prior to the expiration of this agreement on terms and conditions satisfactory to the Secretary at that time.

c. This agreement is not amendatory to the said 1975 agreement or the April 16, 1990 agreement but is supplemental thereto. The use of the refill right in Taylor Park Reservoir for the benefit of the Gunnison District for recreational, fishery, and irrigation purposes must be consistent at all times with each and all provisions of the 1975 agreement and the April 16, 1990 agreement, and shall not interfere with the operation of Taylor Park Reservoir for the benefit of the Uncompahgre Project.

d. This agreement shall not interfere with Aspinall Unit operations beyond those historic effects due to the 1975 agreement and the April 16, 1990 agreement.

e. Any one party may voluntarily terminate its participation in this agreement at any time. Termination shall be accomplished by written notice by any signatory party as provided in Article 10.a. herein, at least 90 days prior to the date of such termination. If any party

*can they?*

withdraws from this agreement, the remaining parties, may at their mutual consent elect to continue this agreement.

f. Upon failure of the Gunnison District, Colorado District or the Association to perform its obligations under this agreement, the United States will notify all parties in writing of intent to terminate that party's further participation in this agreement. The Notice of Termination shall specify each failure of the responsible party, and shall further provide that the party may, within a 90-day period from the date of said notice, present a detailed program to correct such problems and/or deficiencies, and the United States may accept such corrections and thereby waive the termination notice.

g. In any event termination of this agreement shall not result in termination of the 1975 agreement, the April 16, 1990 agreement, nor the assignment of the refill right granted in Case No. 86-CW-203.

RELEASE, EXCHANGE, AND MEASUREMENT OF WATER

3. a. Water stored or storable under the refill right solely for fishery and recreational purposes shall be utilized to meet the objectives of the 1975 agreement, the April 16, 1990 agreement and the refill right, subject to the United States' final approval of the annual release schedule developed pursuant to Articles 5.b. and 11. Refill water, attributable to the refill right, released from the outlet works of Taylor Park Dam, solely for fishery and recreation purposes, shall be considered a contract delivery of storage under Colorado Law and shall be considered to have fulfilled its decreed purposes when it reaches Blue Mesa Reservoir, and shall then be available for further beneficial use within the appropriation system of the State of Colorado.

**DRAFT 9-23-1993**

b. The refill water released by the Association from the outlet works of Taylor Park Dam for use by the Gunnison District for irrigation purposes will be measured at the Taylor Park Gage and administered by the Colorado State Engineers Office as a contract release of storage to the Gunnison District. The Gunnison District shall suffer all distribution and administration losses from the point of such measurement to the place of use.

c. A record of all water attributable to the refill right will be maintained by the United States and such records will be available at the Grand Junction Projects Office during regular business hours for inspection.

d. On November 1 of each year any water in storage in Taylor Park Reservoir shall be accounted against the Associations first fill right and the Gunnison District shall thereafter have no right, power or authority with respect to all or any part of said water except as is specified in the 1975 agreement and the April 16, 1990 agreement.

e. In the event the United States and/or the Association shall determine that the water storage level in Taylor Park Reservoir must be reduced for repair purposes, or any other emergency, notwithstanding that all or part of the water stored therein may have been stored under the refill right, the United States and/or the Association shall require said release at a time and rate to be determined solely by the United States and/or the Association. Before any such release is made, the party who determines to release water shall make a bona fide effort to give notice to each of the other parties of the time and amount of such proposed release. If it is not reasonably possible to give prior notice, notice thereof shall be given promptly thereafter. Any such releases shall be first charged against any water in storage under the refill right.

PAYMENTS DUE TO THE UNITED STATES

4. a. The Gunnison District agrees to pay the United States an annual accounting charge for the administration of this agreement. Such charge will recover the United States' cost (salaries, billing, travel, meetings, overhead, etc.) in accounting for the water stored in and released from Taylor Park Reservoir under the United States' refill right for irrigation purposes by the Gunnison District. The charge is initially set at \$10,000 per year and the first payment is due January 31, 1994, for the administration of water year 1994 (November 1, 1993 to October 31, 1994). Subsequent payments will be due on January 31 of each year. A worksheet determining the United States' cost in administering this agreement is attached as Exhibit B.

b. The charge described above will be reviewed, beginning May 1, 1995, and every five years after that to determine if the United States' costs in administering this contract are being fully recovered. If the United States determines that its costs are not being fully recovered, the Gunnison District will be notified in writing prior to June 1, 1995, of such fact and a review thereof shall be made. Such review shall be an open process with reasonable prior notice thereof to the other parties, containing the calculation of all proposed accounting and management charges. If it is ultimately determined by the United States after such review process that such costs are ~~not~~ being fully recovered, the Gunnison District will be notified of any changes, whether it is higher or lower, to the next billing. A similar review and notification may occur every five years after that.

c. Payments made under this paragraph will be mailed to the Bureau of Reclamation, P.O. Box 11568, Salt Lake City, Utah, 84147-0568, for deposit in a trust fund established for

**DRAFT 9-23-1993**

the administration of this agreement.

d. The United States reserves the right to amend the charge worksheet identified as Exhibit B at any time in the event the administration of this agreement substantially changes.

e. Payments made by the Gunnison District under 4.a. above are in addition to the operation and maintenance payments made by the Gunnison District and the Colorado District to the Association as part of the 1990 agreement.

**QUANTITY OF WATER AND RELEASE SCHEDULE**

5. a. The parties agree that the United States, the Association, and the Gunnison District will attempt to manage the operation of Taylor Park Reservoir to store and release at least \_\_\_\_ acre feet of refill water each year to be used by the Gunnison District for irrigation and recreation and fishery purposes. In addition, said parties shall attempt to manage said operation to optimize the storage and release of refill water each year for the purposes specified in paragraph 3, above, including use in addition to the historic use to the extent permitted by the refill water right. The consumptive use of this water, to the extent that the releases are made to replace depletions by water rights junior to or equal in priority to the Aspinall Unit, will be accounted for as part of the anticipated upstream depletion of 40,000 acre-feet above Blue Mesa Dam as described in the 1959 Economic Justification Report. The parties to the within agreement recognize that within the Gunnison District, existing irrigated land might be dried up, new land might be placed under irrigation, cropping patterns might change, new water rights might be adjudicated and water or existing irrigation water rights might be moved or changed in use. Nothing in this agreement shall be interpreted as approving or limiting such changes in irrigation



**DRAFT 9-23-1993**

which are within the historic depletion level associated with the operation of Taylor Park Reservoir.

b. A water release schedule for the upcoming period will be developed pursuant to Article 11. This schedule will be based upon the total quantity of water available for the period from November 1 through October 31 of each year. If the parties cannot mutually agree to a water release schedule for the upcoming period, the United States decision regarding releases shall prevail until a satisfactory water release schedule is developed.

**GENERAL OBLIGATION - BENEFITS CONDITIONED ON PAYMENT**

6. a. The payment obligation of the Gunnison District to the United States as provided in this agreement is the responsibility of the Gunnison District notwithstanding the manner in which the obligation may be distributed among the Gunnison District's water users and notwithstanding the default of individual water users in their obligations to the Gunnison District.

b. The payment of charges becoming due hereunder is a condition precedent to receiving benefits under this agreement. The United States and the Association shall not make water available for the Gunnison District during any period in which the Gunnison District may be in arrears in the payments due the United States hereunder and/or the Association under the April 16, 1990 agreement.

**SHORTAGE OF WATER**

7. On account of drought, sedimentation within the reservoir, failure of facilities, restraint by court or public authority, or Acts of God, there may occur at times a shortage during any year in the quantity of water available from the refill of Taylor Park Reservoir to the

**DRAFT 9-23-1993**

Gunnison District pursuant to this agreement, and in such event there shall not be any liability against the United States or the Association or any of their officers, agents, or employees for any damage direct or indirect, arising therefrom.

**CLAIM OF DAMAGE**

8. The Gunnison District shall hold the United States and the Association harmless on account of damage or claim of damage of any nature whatsoever by the Gunnison District, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such refill water.

**APPLICABLE RECLAMATION LAW**

9. a. All water delivered pursuant to this agreement is subject to and controlled by the Colorado River Compact, dated November 24, 1922; the Boulder Canyon Project Act approved December 21, 1928; the Boulder Canyon Project Adjustment Act of July 19, 1940; the Upper Colorado River Basin Compact dated October 11, 1948; the Mexican Water Treaty of February 3, 1944; the Colorado River Storage Project Act of April 11, 1956; and the Colorado River Basin Project Act of September 30, 1968; and any other applicable Federal Reclamation laws. The Reclamation Reform Act (RRA) of 1982 is not applicable to this agreement, as determined by the Assistant Commissioner, Resources Management, Denver, Colorado and verified by the Commissioner in his letter dated June 24, 1993, which is attached to this agreement as Exhibit C.

b. It is understood and agreed that all of the rights of the Association, as such exist prior to the effective date of this agreement, and particularly including the Gunnison Tunnel

**DRAFT 9-23-1993**

Decree and the Taylor Park Storage Decree shall not be impaired or diminished, but shall be preserved.

**NOTICES**

10. a. Any notice, demand, or request authorized or required by this agreement shall be deemed to have been given on behalf of any part when mailed, postage prepaid, or delivered to the following participants:

- (1) Regional Director  
Upper Colorado Region  
Bureau of Reclamation  
125 South State Street  
P.O. Box 11568  
Salt Lake City, Utah 84147
- (2) President, Uncompahgre Valley  
Water Users Association  
P.O. Box 69  
Montrose, Colorado 81402
- (3) President, Upper Gunnison River  
Water Conservancy District  
275 South Spruce Street  
Gunnison, Colorado 81230
- (4) President, Board of Directors  
Colorado River Water  
Conservation District  
P.O. Box 1120  
Glenwood Springs, Colorado 81602

b. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

**MEETINGS**

**DRAFT 9-23-1993**

11. The Association, Gunnison District, Colorado District, and the United States agree to participate in at least one (1) meeting each year on a mutually agreed upon date to be no later than May 31. At these meetings, which may be held in conjunction with those pursuant to the 1975 agreement and the April 16, 1990 agreement, the parties will adopt a water release schedule for the upcoming period of 1 year as required in Article 5.b. Additional meetings will be held at the request of any signatory party to coordinate the terms of this agreement.

**STANDARD CONTRACT ARTICLES**

12. The standard contract articles applicable to this agreement are listed below. The full text of these standard articles is attached as Exhibit A and is hereby made a part of this contract.

- A. Officials Not to Benefit
- B. Assignment Limited - Successor's and Assigns Obligated
- C. Quality of Water
- D. Water and Air Pollution
- E. Equal Opportunity
- F. Title XI, Civil Rights Act of 1964

**DRAFT 9-23-1993**

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed as of the day and year first above written.

**THE BUREAU OF RECLAMATION**

By \_\_\_\_\_  
Regional Director  
Upper Colorado Region

ATTEST:

**THE UNCOMPAHGRE VALLEY WATER  
USERS ASSOCIATION**

\_\_\_\_\_  
Secretary

By \_\_\_\_\_  
President

ATTEST:

**THE UPPER GUNNISON RIVER WATER  
CONSERVANCY DISTRICT**

\_\_\_\_\_  
Secretary

By \_\_\_\_\_  
President

ATTEST:

**THE COLORADO RIVER WATER  
CONSERVATION DISTRICT**

\_\_\_\_\_  
Secretary

By \_\_\_\_\_  
President, Board of Directors

EXHIBIT A

OFFICIALS NOT TO BENEFIT

A. No Member of or Delegate to Congress, Resident Commissioner or official of the Contractor shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

ASSIGNMENT LIMITED - SUCCESSORS AND ASSIGNS OBLIGATED

B. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract or any right or interest therein shall be valid until approved in writing by the Contracting Officer.

QUALITY OF WATER

C. The operation and maintenance of project facilities shall be performed in such a manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable, as determined by the Contracting Officer. The United States does not warrant the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

WATER AND AIR POLLUTION CONTROL

D. The Contractor, in carrying out this contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Colorado, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

EQUAL OPPORTUNITY

E. During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

3. The Contractor will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative

**DRAFT 9-23-1993**

of the Contractor's commitments under Section 202 of the Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The Contractor will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract with any of the such rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS**

F. 1. The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. department of the Interior and/or Bureau of Reclamation.

2. These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this contract, the Contractor agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United states to inspect premises, programs, and documents.

3. The Contractor makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts or other Federal financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation,

**DRAFT 9-23-1993**

including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article, and that the United States reserves the right to seek judicial enforcement thereof.



EXHIBIT B

ADMINISTRATIVE CHARGE WORKSHEET

Grand Junction staff time -	3 workweeks (434)	\$2,790
Grand Junction Management -	1.5 workweek (430)	1,425
Grand Junction Management -	1 workweek (400/100)	1,000
Salt Lake City (Finance) -	1 workweek (300)	<u>800</u>
	Subtotal	\$6,015
	Benefits (22%)	<u>1,323</u>
	Subtotal	\$7,338
	CPA (Overhead 29%)	<u>2,128</u>
	Subtotal	\$9,466
Partial (25%) payment of OM&R Reservoir DCP Transmitter		<u>500</u>
	Total	\$9,966
	Rounded	\$10,000



BUREAU OF RECLAMATION  
Washington, D.C. 20240

RECEIVED BUREAU OF RECLAMATION OFFICIAL FILE COPY
JUN 9 1993
WTR-400
UN
93013521
8951
Water Management
400

IN REPLY REFER TO:

JUN 24 1993

W-6400

Memorandum

To: Regional Director, Salt Lake City, Utah

From: Commissioner

Subject: Water Management Agreement, Taylor Park Reservoir,  
Uncompahgre Project, Colorado (Water Management  
Agreement)

This refers to your memorandum of December 21, 1992, by which you informed this office of your intent to enter into a water management agreement regarding the operation of Taylor Park Reservoir, Colorado. That agreement would be among the United States, the Uncompahgre Valley Water Users Association (Association), the Upper Gunnison River Water Conservancy District (Gunnison District), and the Colorado River Water Conservation District (Colorado District). Our initial review of the proposal raised a number of questions as indicated in our memorandum of January 22, 1993. Subsequently, those issues were informally addressed in a March 4, 1993, briefing by Messrs. Ron Johnson and Glade Barney.

As we understand your proposal, the purpose of the agreement would be to provide the terms and conditions under which water would be stored, released, exchanged, measured and accounted for from the 106,230 acre-foot refill right granted the Gunnison District for storage in Taylor Park Reservoir. The agreement would also provide for the United States to collect a charge to recover the management costs incurred. We understand that all water stored under the refill right would be for fisheries and recreation purposes and that 19,200 acre-feet of the refill right can be used for irrigation. The Colorado District Court has ruled that the Gunnison District has historically used 13,777 acre-feet of the refill water for irrigation and the accounting of the water is required in the proposed operating agreement.

It is also our understanding that the agreement will only address water operations and/or management functions among the parties and that it includes neither water service or storage benefits nor a repayment component. Therefore, it is more appropriately an operating agreement rather than a water service or repayment contract, and there is no opportunity for requiring and collecting additional revenues for existing supplemental irrigation. The acreage limitation staff in the office of the Assistant Commissioner, Resources Management, also determined that the proposed agreement is not a contract under the provisions of the Reclamation Reform Act of 1982.

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CY 100

RECLAMATION 00-400

We further understand that the Association operates and maintains Taylor Park Reservoir. The Colorado District and the Gunnison District pay annual charges to the Association to defray the cost of operation and maintenance under the April 16, 1990, agreement. However, the charge for the management of the refill water is paid by the Gunnison District to the United States. Pursuant to the April 16, 1990 contract, the refill right has been obtained and it has been transferred to the United States. The United States' role is as owner of the facility and the associated water rights. Upon execution of the agreement, the United States will coordinate the setting of release schedules and will account for all water delivered through those releases.

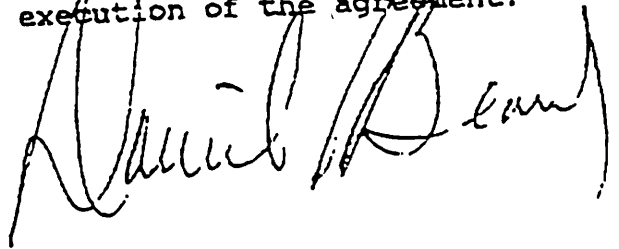
We provide the following comments on the Agreement:

1. If the Bureau of Reclamation (Reclamation) is to be treated as a party to the contract, it should be "defined" as the representative of the Secretary of the Interior. The agreement should more appropriately be among "The United States" and the other parties rather than among the "Bureau of Reclamation" and other parties.

2. In article 2 (e), line 6, delete "shall review and reasonably" and insert "may".

3. Articles 4 and 5 contain language that clearly indicates that the agreement will provide benefits of "increased and supplemental irrigation" to the Gunnison District. If this agreement is to continue to be a management agreement rather than a water service or storage contract, this language should be removed.

Under the foregoing conditions and understandings, you may initiate negotiations of the proposed water management agreement provided that the term of the agreement does not exceed 25 years and that the revenues collected are applied directly to the Reclamation fund. If it becomes apparent during the negotiations that the proposed agreement will involve water service, storage, or other such water user benefits for which the users should be charged, it is incumbent upon your office to adequately document those conditions and notify this office through the appropriate contracting procedures prior to execution of the agreement.



# Upper Gunnison River Water Conservancy District

## M E M O R A N D U M

TO: Board Members,  
Upper Gunnison River Water Conservancy District

FROM: Tyler Martineau *TM*

DATE: October 4, 1993

SUBJECT: Agenda Item 14, October 11, 1993, Board Meeting --  
Stream Gaging Program.

I have the following to report concerning the District's stream gaging program:

- 1) The new stream gage on the East River Below Cement Creek has been installed and is in operation.
- 2) The new stream gage on the Slate River near Crested Butte will be installed in the next two weeks. Thus far, Gunnison County and the Town of Crested Butte have made commitments to share in the local funding for the gage with us.
- 3) The Colorado River Water Conservation District has decided to discontinue its funding for operating the existing stream gage on Cochetopa Creek.
- 4) In exchange for discontinuing the Cochetopa gage funding, the Colorado River District has offered to pick up the entire local cost share for the Taylor River stream gage above Taylor Park Reservoir.

The Cochetopa gage is providing information which is needed in connection with the development of the Upper Gunnison River Water Conservancy District's water storage and delivery projects in the Cochetopa basin, therefore, I recommend that the District fund the local cost share for the operation of the gage in 1994. The amount of the local cost share would be approximately \$3,500.00 and would be payable in 1994.

# Upper Gunnison River Water Conservancy District

September 17, 1993

Evan Lukassen  
Gunnison Country Times  
218 N. Wisconsin St.  
Gunnison, CO 81230

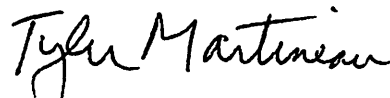
Dear Evan:

Your article in the September 15, 1993 issue of the Gunnison Country Times may give readers the impression that the Upper Gunnison River Water Conservancy District has made a decision to enter into the Taylor Park Water Management Agreement with the Bureau of Reclamation. The district has not made such a decision. The vote on which you reported concerned how the District should budget for the costs associated with the agreement should the District decide to enter into the agreement in the future. The board voted that not more than \$10,000.00 should be paid to the Bureau of Reclamation annually for the agreement, and that the source of funding for the payment in the District's annual budget should be from property tax revenues. The annual budget of the District has historically had as its source of revenues property taxes obtained through a mill levy assessed on real property located in the District. The board has directed that there not be any increase in the District's mill levy in the 1994 budget, therefore, the payments to the Bureau of Reclamation, if any, would be allocated from within the existing levels of funding available to the district.

The board's discussion of budgeting for the Taylor Park Water Management Agreement was one among a number of discussions that will take place prior to the adoption of the 1994 budget. The proposed 1994 budget is currently scheduled to be presented to the board on October 11, 1993. A public budget hearing is tentatively scheduled for November 8, 1993, and final budget adoption is tentatively scheduled for December 6, 1993. Participation by the public is encouraged on all of the above dates.

The Taylor Park Water Management Agreement is being negotiated to utilize water stored in Taylor Park Reservoir as a part of the District's overall efforts to use and protect the water resources of the Upper Gunnison basin.

Very truly yours,



Tyler Martineau,  
Manager

# Upper Gunnison River Water Conservancy District

## M E M O R A N D U M

TO: Board Members,  
Upper Gunnison River Water Conservancy District

FROM: Tyler Martineau *TM*

DATE: September 15, 1993

SUBJECT: Amendment 1.

At the board meeting on September 13 Butch Clark requested a copy of a memorandum prepared by John McClow concerning Amendment 1. It turns out that we did provide a copy of that memorandum to the board in connection with Agenda Item 4, Consideration of Other Expenses Payable, for the August 9, 1993 board meeting. If any board member would like an additional copy of John McClow's memorandum please let me know. *✓*

SCHEDULED MEETING

Monday, September 13, 1993  
7:00 p.m.

Multi-Purpose Building - County Fairgrounds  
Gunnison, Colorado

A G E N D A

1. Call to Order.

2. Approval of August 9, 1993 Minutes.

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Upper Gunnison River Water Conservancy District

M E M O R A N D U M

TO: Board Members,  
Upper Gunnison River Water Conservancy District

FROM: Tyler Martineau *TM*

DATE: September 15, 1993

SUBJECT: Ground Water Quality Standards.

At the board meeting on September 13 we did not discuss whether the board should seek party status in the rulemaking hearings concerning the promulgation of new ground water quality standards statewide. The deadline for seeking party status is October 7 which is prior to our next board meeting. I provided a previous memorandum to the board on this subject on September 1, 1993 which was labeled for consideration under Agenda Item 13, Miscellaneous Matters. *of*

Given that the District is busy with other pressing matters I recommend that the board not seek party status. If there are any board members who feel that the district should seek party status please let me know by September 24. If there are a significant number of board members who desire to seek party status we will submit a letter prior to October 7. We will then ask the board whether it wishes to ratify the decision and continue to participate in the rulemaking at the October 11 board meeting.

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# Upper Gunnison River Water Conservancy District

## M E M O R A N D U M

TO: Board Members,  
Upper Gunnison River Water Conservancy District

FROM: Tyler Martineau *TM*

DATE: September 14, 1993

SUBJECT: Stream Gaging Program.

Mike Gross told me today that the Colorado River Water Conservation District would be willing to pay the local cost share in 1994 for operating the stream gage on the Taylor River above Taylor Park Reservoir which the board discussed at its meeting on the 13th. He asked that in return the Upper Gunnison District pay the local cost share for operating the stream gage on Cochetopa Creek which has been previously funded by the River District.

He suggested the following reason for the change in funding: The gage on the Cochetopa is intended to provide information needed in connection with the development of Upper Gunnison District water rights in the Cochetopa basin. He feels that it would be helpful if the Upper Gunnison District could show that it has paid the costs associated with the development of those water rights. There would be no such benefit to the Upper Gunnison District associated with funding the cost of a stream gage in the upper Taylor River basin. The net result of this approach would be that the Upper Gunnison District would be adding the cost of operating an additional stream gage to its 1994 budget since the Upper Gunnison District did not fund either the Taylor River gage or the Cochetopa gage in 1993.

*show info*

A discussion of the funding issues concerning these gages will be included on the agenda for the October board meeting.

# Upper Gunnison River Water Conservancy District

## SCHEDULED MEETING

Monday, September 13, 1993  
7:00 p.m.

Multi-Purpose Building - County Fairgrounds  
Gunnison, Colorado

### A G E N D A

1. Call to Order.
2. Approval of August 9, 1993 Minutes.
3. Consideration of Operational Expenses Paid.
4. Consideration of Other Expenses Payable. <sup>2/5</sup>
5. Monthly Budget Report.
6. Proposed Revisions to Bylaws.
7. Board Member Bonding.
8. Legal Matters.
  - a. Union Park Project Water Availability Appeal.
  - b. Other Legal Matters.
9. Curecanti National Recreation Area Management Assessment.
10. Aspinall Unit Operations.
11. Taylor Park Water Management Agreement.
  - a. Update on Negotiations with the Bureau of Reclamation.
  - b. Budgeting for Payment for Water.
12. Stream Gaging Program.
13. Miscellaneous Matters.
14. Unscheduled Citizens.
15. Future Meetings.
16. Adjournment.

**DRAFT**

**UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT**

**SCHEDULED BOARD MEETING MINUTES**

September 13, 1993

The Board of Directors of the Upper Gunnison River Water Conservancy District conducted a Scheduled Meeting on September 13, 1993 at 7:00 p.m. in the Multi-Purpose Building at the Rodeo Grounds, Gunnison, Colorado.

Board members present were: Robert Arnold, Ralph E. Clark, III, Susan Lohr, Ramon Reed, Mark Schumacher, Peter Smith, Lee Spann, Dennis Steckel, Doyle Templeton, William S. Trampe and Purvis Vickers.

Others present were:

L. Richard Bratton, Attorney  
John McClow, Board Attorney  
Tyler Martineau, Manager  
Patrice Thomas, Office Secretary  
Rita McDermott, Treasurer  
Diane Lothamer, City of Gunnison  
Enid Pepperd, KKYY  
Don Wilson  
Peggy Reece  
Lynnee Preston  
Frank Vader  
Steve Glazer  
Ken Spann, Gunnison County Stockgrowers Association  
John Chapman, National Park Service, Curecanti NRA  
Stan Irby, Gunnison County Stockgrowers Association  
Bob Irby, Rancher  
Greg Peterson, Gunnison County Stockgrowers Association  
Lucy High  
Carl Miller, Gunnison County Stockgrowers Association  
Matt Brown, Scenic River Tours  
Paul Vader, Rancher  
Judy Buffington, JMB Ranch  
Vevarelle Esty  
Marlene Zanetell, Gunnison County Commissioner  
Phyllis Guerreri, League of Women Voters & Rancher

## **1. CALL TO ORDER**

President Trampe called the meeting to order at approximately 7:10 p.m.

## **2. APPROVAL OF AUGUST 9, 1993 MINUTES**

President Trampe stated that the first item on the agenda was approval of the August 9, 1993 minutes which were mailed to the Board.

**Bob Arnold moved that the August 9, 1993 minutes be approved as circulated to the board. Butch Clark seconded the motion. The motion carried.**

## **3. CONSIDERATION OF OPERATIONAL EXPENSES PAID**

**Bob Arnold moved to approve Operational Expenses Paid, as prepared by the treasurer, for August 1993. Butch Clark seconded the motion. The motion carried.**

## **4. CONSIDERATION OF OTHER EXPENSES PAYABLE**

Lee Spann asked Dick Bratton if the majority of the work billed in the September invoice of \$8,979.82 was for work on the appeal. Mr. Bratton responded that a large part of the billing was for work done in anticipation of preparing the appeal brief.

Butch Clark asked about the July invoice of \$1,731.50 for Andy Williams. Tyler Martineau responded that this invoice is specifically related to work on the 620(f) brief. The Upper Gunnison River Water Conservancy District will pay Mr. Williams directly for these costs. Mr. Martineau said that the three outstanding bills from Mr. Williams are still under discussion with the Colorado River Water Conservation District(River District) regarding the procedure for payment. Lee Spann reported that discussion on this item will be part of the agenda for the October meeting of the River District. Purvis Vickers concurred with the information provided by Mr. Spann. Tyler Martineau said that he had talked with Eric Kuhn and that the memorandum provided by John McClow had persuaded the staff of the River District that there are valid Amendment 1 concerns to be addressed in the procedure for payment. Mr. Martineau said that the bulk of the amount owed Mr. Williams will be paid by the River District.

Tyler Martineau provided the board with an invoice of \$240.00 received from Lynn Cudlip of BIO-ENVIRONS for her work on the East River Study. He recommended approval of this invoice.

Mr. Martineau pointed out that an item for board member bond renewal of \$50.00 was included in Other Expenses Payable and the board may want to delay approval of this item until board member bond renewal is discussed in Agenda Item 6. The board was satisfied with the method of board bond renewal and thought that additional discussion would not be necessary.

Bob Arnold moved to approve Other Expenses Payable with the addition of Lynn Cudlip's bill for \$240.00. Susan Lohr seconded the motion. The motion carried.

## **5. MONTHLY BUDGET REPORT**

Rita McDermott, treasurer, said that it would be necessary to monitor the county treasurers' fees so that they do not exceed the budgeted amount. Tyler Martineau said that the fees are billed in proportion to the tax revenue collected by the County and disbursed to the District so that the fees should be lower during the last part of the fiscal year.

Tyler Martineau referred the board to the Attorney Invoices Received and Paid 1993 report. He said that the total year-to-date disbursed under the 1993 budget for legal expenses and engineering related on the report is \$45,159.22 which includes expenses only for work performed through July 1993. The budgeted amount for these expenses for all of 1993 is \$65,000.00. Mr. Martineau stated that with the addition of the August expenses payable of \$10,796.32 approved by the board at this meeting it appears that the District will be near the maximum amount budgeted for 1993 by the end of September.

Bob Arnold asked why the attorney telephone expenses were not billed to the separate budget line item of attorney telephone costs. Tyler Martineau explained that when Dick Bratton used a telephone calling card the expenses were billed to the separate line item, but that Mr. Bratton has computerized his billing and now all his legal expenses are billed together. Mr. Martineau said that the budget for 1994 will delete the separate line item for attorney telephone expenses to correspond with the way in which the legal and engineering expenses are now billed to the District.

Bob Arnold asked why there have not been any expenses recorded for rent or utilities in 1993. Tyler Martineau explained that Gunnison County has not yet finalized the legal agreement for rent and utilities for office space in the Multi-Purpose Building. He said that if the agreement is not finalized by December he will pay the budgeted amount to the County as he did last year.

Ramon Reed asked Dick Bratton to provide year-to-date totals in each billing category for his 1993 invoices to the board for the next meeting.

President Trampe asked for other comments.

Tyler Martineau asked for direction on how to proceed on the nearly depleted budget on the legal expenses and engineering related line item . President Trampe asked Mr. Bratton if the billing for September will be as large as the one received for August. Mr. Bratton said that yes, the September billing will be substantial. Lee Spann asked Mr. Martineau and Mr. Bratton to determine the budget increase needed for this line item for the remainder of 1993 and provide this information to the board for the next meeting.

Dennis Steckel mentioned that public comment would be needed prior to any budget revisions.

**Ramon Reed moved that an announcement of a public hearing on proposed budget revisions be published for the next board meeting. Butch Clark seconded the motion. The motion carried.**

## **6. PROPOSED REVISIONS TO BYLAWS**

Tyler Martineau referred the board to the September 1, 1993 draft of the bylaws and his memorandum which were circulated to the board by mail.

Butch Clark asked about the reference to public notice of any meeting at which a quorum of the board is in attendance. Mr. Martineau explained that this language is contained in the statute and it may be necessary to determine what constitutes a meeting of the board.

Butch Clark asked about Article II, Section 6 and how a quorum is determined when some members abstain from the vote. There was discussion by board members about this situation. Dick Bratton confirmed that a quorum is determined by the number of members in attendance when a meeting is convened. Mr. Bratton said that the other issue under discussion is how many members are sufficient for a vote. The consensus of the board was that this section matches the statute language and should be included in the bylaws as presented in this draft.

Butch Clark said that he would like to see a reference to the rules of order to be used by the District included in the bylaws.

Dick Bratton suggested clarification in Article I, Section 2 in the last sentence about appointment of the directors of the board. After discussion by the board, Mr. Martineau said that the language would be changed to make the sentence accurate and clear.

Dick Bratton said that executive sessions should be addressed in the bylaws.

Dennis Steckel suggested that the board hold a public hearing on the proposed revised bylaws at the next board meeting. There was board consensus on this suggestion.



## **7. BOARD MEMBER BONDING**

President Trampe asked if there were any comments; there were none.

## **8. LEGAL MATTERS**

### **8a. Union Park Project Water Availability Appeal**

Dick Bratton summarized three issues he wanted to bring to the board and suggested that the board may want to consider an executive session. The three issues presented by Mr. Bratton were handling of conditional water rights in the judge's decision, the memo from Bruce Driver and any decision relative to the information in the memo, and authorization of up to \$1000.00 for Duane Helton's to provide assistance to Mr. Bratton in proving the amount of water available.

Lee Spann moved that the board authorize the expenditure of funds up to \$1000 to hire Duane Helton to assist the legal defense in proving the amount of available water. Susan Lohr seconded the motion. The motion carried.

Butch Clark asked if Mr. Helton could include information on taking of water at the maximum flood flow. Mr. Bratton said that this information can be included.

Lee Spann suggested that the board proceed with discussion on Agenda Item #11 and public comment on the budgeting of payment for water in conjunction with the Taylor Park Water Management Agreement. Tyler Martineau said that John Chapman was present to provide information on Agenda Item #9 - Curecanti National Recreation Area Management Assessment.

President Trampe asked Mr. Bratton if he was finished with Agenda Item #8 - Legal Matters and Mr. Bratton said that he was.

## **9. CURECANTI NATIONAL RECREATION AREA MANAGEMENT ASSESSMENT**

Tyler Martineau referred to his memorandum to the board on this item and introduced John Chapman, Superintendent of Curecanti National Recreation Area, to explain the assessment process and his invitation to the board to participate in this process.

President Trampe thanked Mr. Chapman for the invitation and his presentation and asked if there were any questions.

Ramon Reed suggested that the District participate in the Curecanti National Recreation Area Management Assessment and recommended that Butch Clark attend for the District. Mr. Clark said that he was agreeable.

Mr. Chapman said that Mr. Clark could represent himself as well as the board unless directed otherwise by the board. Mr. Clark said that the District might want to appoint someone who represents only the District board.

President Trampe asked Peter Smith if he would be able to attend and represent the District board. Mr. Smith said yes.

Butch Clark will be invited by Mr. Chapman to attend the Curecanti National Recreation Area Management Assessment in another capacity.

## **11. TAYLOR PARK WATER MANAGEMENT AGREEMENT**

### **11a. Update on Negotiations with the Bureau of Reclamation**

Tyler Martineau said that the draft Taylor Park Water Management Agreement received from the Bureau of Reclamation on August 30, 1993 was provided to the District board members and to the Gunnison County Stockgrowers Association. He said that in addition, at this meeting, Dick Bratton was providing the board members with a draft of the agreement that Mr. Bratton and Mr. Martineau prepared, after meeting with President Trampe, to incorporate proposed comments of the District. Mr. Martineau suggested that the board receive public comments on budgeting for payment of water before discussion of these two drafts.

Tyler Martineau pointed out the major change in the most recent draft (August 30, 1993) received from the Bureau of Reclamation. He said that the previously proposed method of payment of a per acre foot charge for delivered water has been changed to an annual fee of \$10,000.00 unrelated to the delivery of water.

### **11b. Budgeting for Payment of Water**

President Trampe clarified that the discussion at the last board meeting was regarding payments to the Bureau of Reclamation for water and the source of money for the payments in the District budget. He said that the change to a flat fee for payment has occurred since the last board meeting. President Trampe asked for comments from the user groups regarding budgeting for the payment of water.

Tyler Martineau said that he provided to the board a letter received from the Gunnison County Stockgrowers Association with their comments.

Carl Miller, President of the Gunnison County Stockgrowers Association, referred the board to the letter and pointed out the primary suggestions in the letter: (1) The Stockgrowers Board feel that the District should obtain funds for payment through general property tax revenues, (2) the payment, if any, should be locked in for five years with

renegotiation at that time, and (3) questions about the availability and cost of storage in Blue Mesa should be addressed.

Ramon Reed said that the 2nd fill water discussed in the draft Agreement is specifically identified for irrigation uses. Carl Miller said that other users will benefit from the water while it travels to the irrigators. Ramon Reed said that the portion of the 2nd fill water not earmarked for irrigation will be shepherded to Blue Mesa so it can't be diverted for irrigation.

Ken Spann said that the Gunnison County Stockgrowers Association sees the draft Agreement saying that the flat fee payment is for multipurpose water under the 2nd fill given to the Bureau of Reclamation and, therefore, there are multiple benefits to the basin even though reclamation law says that recreation and fishery uses are at no cost to the public.

Butch Clark said that in the application for the water right and in the decision there was reference to making it easy to irrigate during the high flow but not to divert out of the river to irrigate. He said if the water is used for the common use then payment should come from the users in common but if a specific user is a beneficiary then that user should pay. Ken Spann said that he disagreed.

Butch Clark said that the question is how to consider the water that can benefit all users.

Ken Spann said that the administrative costs of the District will be high if a user group is identified for payment.

Butch Clark said that moving water to Blue Mesa and using it for call protection, previously irrigators asked that others share the burden of allocation of water under a call, how would the board allocate the benefits of this water to others. He asked Ken Spann for his comments. Ken Spann asked if the District board has looked at the right to store District water in Blue Mesa. Tyler Martineau said that based on the refill decree water stored in Blue Mesa could only be used for replacement water for irrigators.

Butch Clark asked if it is depletive or diversionary. Tyler Martineau said that it's depletive.

Steve Glazer asked how the Bureau of Reclamation determined the \$10,000 figure since it seems inconsistent with historical costs and fees. Tyler Martineau said that the Bureau of Reclamation had provided an accounting schedule showing the calculation of administrative costs. He said that the District could probably negotiate for a reduced fee. President Trampe indicated that the board has not yet discussed the draft agreement which Mr. Glazer is referencing.

Butch Clark said that at the last negotiating session with the Bureau of Reclamation that their staff acknowledged that there would be no charge by the Bureau for wildlife and recreation and, therefore, the payment is for irrigation. Ken Spann said that discussion is for payment for the administration of the agreement. Lee Spann pointed out language in Section 4.a. of the draft agreement(received 8/30/93), "...to pay the United States an annual accounting charge for the administration of this agreement.", which he feels supports Ken Spann's position. Ramon Reed said that the language also states "...under the United States refill right for historic irrigation purposes by the Gunnison District."

Paul Vader asked why it was necessary to pay any amount since irrigation water had not been paid for in the past.

Stan Irby asked how the board would administer a separate use. Dennis Steckel wondered if there is a limited amount of water for irrigation how would the decision be made as to who receives the water. Stan Irby said that early decrees would probably decide that issue. Mr. Steckel said that the date of decrees probably would to some extent.

Purvis Vickers asked if there is a specific number of acre feet of water guaranteed for the amount of \$10,000.00 or if the \$10,000.00 is just for administration when it seems that the Bureau of Reclamation staff is already paid for this administration. Mr. Vickers also asked if the District would get credit for the water that goes to Blue Mesa or would it be gone. President Trampe said that the draft agreement does not yet state that there would be storage in Blue Mesa.

Bill Trampe said that there are a variety of commercial users that derive income from this water.

Butch Clark said that he would like to hear comments from recreational users as he understands that they need flows at certain times of the year. There were no comments.

Ramon Reed explained to Ken Spann that the Bureau of Reclamation, not the District Board, determined that the charge is for a specific component of water. He said that the District board is justified in examining if the beneficiaries of this water should pay for the cost. Mr. Reed said that the water right was assigned by the District to the Bureau of Reclamation. He said that he would prefer that there not be payment for the refill water but that the District has to pay the Bureau of Reclamation under the terms of the proposed agreement.

Ramon Reed proposed that the negotiating team ask the Bureau of Reclamation to apply for a change of water right to add M&I use to the refill and that this cost should be passed on to the user. Mr. Reed asked that this language be included in the draft agreement.

Ramon Reed said that the District will still have to determine the allocation of water whether the water is charged for or provided without charge and administrative work will still be involved.

Steve Glazer said that \$10,000 from taxpayer revenue is justified if there is storage in Blue Mesa. He said that the District could charge recreational and commercial users since the draft agreement doesn't specify who and how much the District would charge for the water. Mr. Glazer asked if the board wants to be involved in management of water for instream purposes.

President Trampe said that the District has tried to negotiate an annual release schedule to benefit all users. He said that if there is argument about which users pay for the water then it will be difficult to negotiate the release schedule for the benefit of all users.

Don Wilson asked how the District would charge subdivided ranches which use the water for many purposes.

Lee Spann said that water in the river is beneficial to all and the irrigators shouldn't be targeted. He said that the District should tell the Bureau of Reclamation that it is prepared to pay \$10,000.00 or less.

Butch Clark asked if the 19,900 acre feet in the 2nd fill will be used for optimum fishery and recreation or for irrigation because that decision would affect the release schedule of the water. Ken Spann said that if irrigators pay \$10,000.00 then they bought the right and can dictate how the water will be used and when. Butch Clark said that it matters which water comes first in the 2nd filling. Lee Spann said that the Uncompaghre Water users control another pool of water so Mr. Clark's question is answered by the past operation of the reservoir.

Butch Clark said that how to account for storage carryover makes a complicated pattern to determine a guaranteed stable annual yield through management of the Uncompaghre users water and the Bureau of Reclamation.

Mark Schumacher said that the user groups which meet to determine the annual release schedule need similar flows at similar times. Mr. Schumacher said that the amount of \$10,000 is much less than anticipated by the District and he thinks it is a great deal. Mr. Schumacher said that he would like to see recreational and fishery uses added to the agreement with the Bureau of Reclamation so that water would be administered for these uses.

Susan Lohr moved that the District Board instruct the negotiating team that the figure of \$10,000.00 is a maximum amount for payment and to try to reduce it, that the amount for payment be locked in for five years, and that payment internally come from property taxes for the benefit of the whole community. The negotiating team

**should proceed with the procurement of storage in Blue Mesa. Bob Arnold seconded the motion.**

Ramon Reed said that the Bureau of Reclamation has determined that the water for which there is a charge is for irrigation. The motion would require the general taxpayers to pay for water for a specific interest. Mr. Reed asked that before the vote that any board members who would benefit from this specific interest consider if they have a conflict of interest.

Dennis Steckel said that it is premature to put the amount of \$10,000.00 in the motion because it sets the amount prior to the negotiation. He said that it is important to discuss allocation and distribution of the water but that issue is separate from the amount of payment for the water.

Tyler Martineau said that the issue of how to allocate a finite amount of water for demand and supply during a time of shortage is a significant question but there are several approaches being considered to solve the downstream calls. He said other approaches under consideration are the Black Canyon Contract with the National Park Service, the Recovery Program with the U.S. Fish and Wildlife, and the Black Canyon National Park legislation. He said discussion of allocation during shortage is premature because the other approaches may make it unnecessary.

Dick Bratton summarized the historical sequence of agreements between the District and the Bureau of Reclamation. He said that the Bureau wants payment for irrigation but it doesn't say how the District should obtain money for these payments. He said that if each year the payment is determined as a percentage of the use then it would be best for the District to control this determination. Mr. Bratton said that if the District were to determine use on a truly equitable base then the District would have to go down the River from Taylor Dam to Blue Mesa Reservoir to determine anticipated uses and the values thereof.

Lee Spann asked Dick Bratton if Mr. Spann has a conflict of interest on this vote. Mr. Bratton said that it would be okay to vote.

Bob Arnold said that this discussion provides a basis on which to build the District budget and that now the District can use \$10,000.00 or less as a budget figure. Mr. Arnold said that this matter is a budget issue and that he thinks that the administrative cost of personnel and purchase of measuring devices would outweigh the District payment of the \$10,000.00 figure.

Lee Spann called for the question on the motion.

**The motion carried with a vote of six to four.**

Purvis Vickers said that he voted against the motion because he did not want Hinsdale County property owners to have to pay for the water.

Dick Bratton said that the District controls the decree and if the District wanted to change the method of payment at a later date that could be done.

President Trampe said that the users will probably pay when an augmentation plan has to be developed.

Ramon Reed said that there are other points of the draft agreement to be discussed that are separate from the method of payment.

President Trampe asked if there were any other board comments before beginning the budget process. There were no comments.

President Trampe announced that the next negotiating session with the Bureau of Reclamation will be held on September 16, 1993 at 10:00 a.m. at the Gunnison County Courthouse.

#### **11a. Update on Negotiations with the Bureau of Reclamation**

The board returned to discussion of the proposed drafts of the Taylor Park Water Management Agreement in preparation for the next negotiating session with the Bureau of Reclamation. President Trampe clarified the two drafts provided to the board. He suggested that the board review Mr. Martineau's memorandum pointing out issues on which the negotiating team will need direction and also review the draft agreement prepared by Mr. Bratton and Mr. Martineau and provided to the board at this meeting.

The board examined the draft agreement prepared by Mr. Bratton and Mr. Martineau and provided comments page by page:

Pages 1, 2, and 3 - minor wording changes

Page 4, paragraph j - After discussion for clarification, there were no specific changes to this paragraph.

Page 5 - no comments

Page 6, paragraph h - The definition of "irrigation water" should be generalized to include all types of possible irrigation water and crops.

Page 6, paragraph 2.c. - Change the wording in the third line to indicate for the benefit of the Gunnison District rather than "...by the Gunnison District...". The question was asked if this paragraph was the appropriate

place to indicate that there would not be the requirement for NEPA compliance. All negotiating team members clarified that there is no new consumption of water associated with this proposed agreement.

Page 7, paragraph e - There were several suggestions for this paragraph. One point was that how the Uncompaghre Water Users use the 1st fill storage right affects what the District will have as a guarantee of water. The other comments were summarized by suggesting that the draft agreement indicate a refund of payment if the agreement is terminated.

Page 8 and Page 9, paragraph 3.c. - There were questions about the provisions for the exchange of water. There was discussion on whether or not the replacement water would be accounted for as a diversion or depletion and how the types of water would be calculated in an exchange. It was decided to rewrite this paragraph to state that when making replacement releases the District will only replace depletions not diversions.

Page 9 - It was mentioned that the concept of a service contract with this agreement for storage might be an approach to set a nominal fee paying for storage rather than an arbitrarily set administrative fee.

Page 10, paragraph 4.a. - It was suggested that in line 5 of this paragraph all the purposes for the refill right could be listed. A possibility to define multipurpose uses in the definition section and use that phrase in this paragraph was discussed.

Page 10, paragraph 4.b. - It was decided to leave this paragraph as in this draft agreement.

Page 11, paragraph 5.a. - The intent of this paragraph is that this applies to triple use water. It was suggested that at another meeting there be discussion about availability of water after ranches are subdivided.

Page 12 - no comments

Page 13 - The question was asked if the District needed to budget for liability insurance.

Page 15 - no comments

Page 16 - The request was made that standard contract articles be deleted from this agreement. It was also requested that the Bureau of Reclamation apply for a change of use for the 19,000 acre feet to include M&I use.



# Upper Gunnison River Water Conservancy District

## M E M O R A N D U M

TO: Board Members,  
Upper Gunnison River Water Conservancy District

FROM: Tyler Martineau *TM*

DATE: September 1, 1993

SUBJECT: Agenda Item 6, September 13, 1993, Board Meeting --  
Proposed Revisions to Bylaws.

Attached is the proposed revision of the bylaws of the Upper Gunnison River Water Conservancy District which includes changes requested by the board at the August 9, 1993 board meeting. The following changes have been incorporated in the new draft:

- 1) Section 8 of Article II concerning board member attendance at meetings has been deleted.
- 2) Section 9 of Article II concerning records of the district has been renumbered as Section 8.
- 3) Section 2 of Article III concerning election and term of office has been amended. The following sentence has been added at the beginning of the section: "Officers shall be elected by the Board of Directors at the annual meeting of the District." The words, "by the Board of Directors", have been added to the last sentence of the section following the words, "will be filled".

At the September 13, 1993 meeting board members will be requested to provide additional comments concerning the bylaws. If the board wishes to proceed with amending the bylaws, it would be appropriate to set a date for a public hearing to take public comment on the amendments.

September 1, 1993

**PROPOSED REVISION OF**  
**BY-LAWS**  
**of**  
**UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT**

**ARTICLE I**  
**BOARD OF DIRECTORS**

**Section 1.** The management of the business affairs and property of the District, pursuant to statute, shall be vested in a Board of Directors consisting of eleven members.

**Section 2.** *Appointment and Qualifications.* The members of said Board shall be appointed by the District Court in and for the Seventh Judicial District or elected as provided in Colo. Rev. Stat., ~~(1953; 149-6-9)~~ 1973, 37-45-114, and the court decree in Civil Action No. 5618 entered October 8, 1991, as the same has been or may be amended from time-to-time. Each Director shall be a real property owner and a resident of the ~~(District)~~ Division from which ~~(he)~~ the director may be appointed or elected. There shall be a director each from Gunnison County, Saguache County, and Hinsdale County and eight additional directors to represent Gunnison County by division.

**Section 3.** *Term of Office.* At the expiration of their respective terms as fixed by the order of the District Court of Gunnison County, Colorado, entered ~~(June 25, 1959)~~ October 8, 1991, appointment shall be made by the District Court for the term of ~~(two)~~ four years except for the term of one director from Division No. 8 which shall be for two years ending

at the time of the annual meeting in June 1996. Each director shall hold office during the term for which the director is appointed and until a successor is duly appointed and has qualified. The District shall maintain for public inspection at its offices during normal working hours a current list showing the names, counties of residence, and expiration dates of the terms of each member of the district's board of directors. Not more than sixty days and not less than forty-five days prior to expiration of a director's term, the conservancy district shall publish notice, once in a newspaper of general circulation within the district, that applications for appointment as director will be accepted by the court until thirty days prior to expiration of the director's term. The notice shall specify the address of the court to which resumes may be sent, shall specify that the applicant must have resided within the district for a period of one year, and must reside in and be the owner of real property within the particular county and division whose director's term is expiring. The court shall fill, for the duration of the unexpired term, any vacancy which may occur on the board.

**Section 4. *Oath and Bond.*** Each Director shall, pursuant to statute, before entering upon the duties of ~~(his)~~ office take and subscribe an oath as required by Colo. Rev. Stat., 1973, 37-45-115(1), (statute), and shall ~~(give)~~ furnish a corporate surety bond in the sum of \$1,000.00 conditioned for the faithful and honest performance of the duties of ~~(his)~~ that office.

**Section 5. *Compensation.*** Each director shall receive as compensation for the director's service such sum as shall be ordered by the court and necessary travel expenses actually expended while engaged in the performance of the director's duties.

**ARTICLE II**  
**MEETINGS OF THE BOARD OF DIRECTORS**

**Section 1. Annual Meeting** A regularly scheduled annual meeting of the Board of Directors shall be held ~~(on the 9th day of July, 1959 and)~~ on the 1st Monday following the ~~7th~~ 15th day of June of each and every year ~~(thereafter, of each year)~~ at the office or principal place of business of the District in Gunnison, Colorado ~~(law office of E.L. Dutcher, Gunnison, Colorado,)~~ at the hour of ~~(2:00)~~ 1:00 o'clock P.M.; provided however, that the President of the District may, for good cause, change the place or hour of such meeting from the place and hour herein specified; provided further, that such meetings shall be held within the geographical boundaries of the District.

**Section 2. Regularly Scheduled Meeting of the Board.** Regularly scheduled meetings of the Board of Directors may be held at such regular intervals, and at such time and place as may be determined by the Board of Directors; provided however, that the President of the District may, for good cause, change the place or hour of such meetings; provided further, that such meetings shall be held within the geographical boundaries of the District.

**Section ~~3~~(2). Special Meetings of the Board.** A special meeting of the Board of Directors may be held at any time and place within the boundaries of the District, upon the call of the President or of any four members of the Board of Directors.

**Section ~~4~~(3). Notice of Meetings.** A written notice of all regularly scheduled meetings shall be given by mail to each Director, by mailing such notice not less than ten days prior to the date and hour of such meeting. Notice of all special meetings of the Board shall be given by mailing a written notice thereof to each Director not less than ninety-six

hours prior to the date and hour of such meeting. All notices shall specify the place and hour of the meeting. The District shall cause publication of regularly scheduled meetings to appear at least ten days before each meeting is held in the Gunnison Country Times, the Crested Butte Chronicle, the Lake City Silver world, and the Saguache Cresent. If any of said newspapers ceases to exist, publication shall be made in a newspaper of similar circulation, if any. Public notice <sup>of</sup> any meeting at which a quorum of the board members is in attendance or expected to be in attendance shall be posted in a designated public place no less than twenty-four hours prior to the holding of the meeting.

**Section 5 (4). Waiver of Notice of Meetings.** The notice herein required to be given to each director of any regularly scheduled or special meeting of the Board of Directors may be waived (by any or) with the concurrence of all the Directors and shall be deemed to have been waived in the event any one of the following shall occur for each director:

- (a) If a Director shall sign a written waiver of such notice.
- (b) If a Director shall attend the meeting in question, and such fact appears from the minutes.
- (c) If a Director shall sign the minutes or record of proceedings of such meeting.

*Conflicts of interest*  
*Subcommittee*  
**Section 6(5). Quorum.** Six members of the Board of Directors shall constitute a quorum thereof for the transaction of any business. The concurrence ~~(affirmative-vote)~~ of a majority of the Directors in attendance shall be sufficient for the determination of any matter within the duties of the Board, except as otherwise provided herein or by statute.  
*including abstentions*

**Section 7. Public Meetings.** All meetings of three or more members of the Board of Directors at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.

Section 8. Records. The board shall keep written minutes of its proceedings. The records of the District shall be public records as defined by section 24-72-202 (6), C.R.S., 1973. The board shall keep in a well-bound book a record of all of its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees, and all corporate acts which shall be open to inspection of all owners of property in the District, as well as to all other interested parties. The official records and files of the District shall be kept at the office of the District which shall be located in the City of Gunnison, Gunnison County, Colorado.

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**ARTICLE III**  
**OFFICERS**

**Section 1. Designation.** The officers of the Board shall be a Chairman, who shall be the President of the District, Vice Chairman, who shall be the Vice President of the District, a Secretary and a Treasurer. All officers shall be members of the Board of Directors except the Secretary, or the (Secretary-)Treasurer who may be one and the same person, and such person(s) may or may not be a member of the Board, as the Board may from time-to-time determine. The Secretary and/or Treasurer (shall) may be paid such salary as may from time-to-time be determined by the Board of Directors.

**Section 2. Election and Term of Office.** Officers shall be elected by the Board of Directors at the annual meeting of the District. The term of office of each officer shall be for one year from the date of (his)the officer's election at the annual meeting, and until (his)a successor is elected and qualifies. Any vacancies which occur will be filled by the Board of

Directors by special election and that officer shall serve until the election at the annual meeting, and until a successor is elected and qualifies.

**Section 3. *Duties of Officers.*** The duties of the officers of the District shall be such as are prescribed and provided by statute of the State of Colorado, and shall otherwise be the same as those of officers of public corporations. Additional duties may be imposed upon any officer by amendment of these By-Laws or by motion or resolution of the Board of Directors.

**Section 4. *Committees.*** The Board of Directors, by resolution adopted by a majority of the entire Board, may, from time-to-time, designate from among its members an Executive Committee and such other committees and alternate members thereof, as they deem desirable, each consisting of three or more members with such power and authority, to the extent permitted by law, as may be provided in such resolution. Each such committee shall serve at the pleasure of the Board.

## **ARTICLE IV**

### **ATTORNEY**

**Section 1.** The Board of Directors shall, at the ~~(tr)~~ ~~(organization)~~ meeting at which the District's annual budget is adopted, employ an attorney who shall act as attorney for the District and whose term shall be for one year commencing on the first day of the District's fiscal year or until ~~(his)~~a successor is employed. The attorney ~~(He)~~ shall be paid such salary and expenses as the Board of Directors may determine.

**ARTICLE V**  
**CHIEF ENGINEER AND OTHER EMPLOYEES**

The Board of Directors may employ (~~appoint~~) a chief engineer and such other agents and assistants as may be needful; and each of them shall be paid such salary and expenses as the Board of Directors may determine.

**ARTICLE VI**  
**CHECKS AND DRAFTS**

Section 1. Checks and Drafts. All checks, drafts, notes or orders for the payment of money issued in the name of the District shall require both a signature and countersignature. Said signature and countersignature shall be by such officer or officers, or agent or agents of the District as shall from time to time be determined by resolution of the Board of Directors.

Section 2. Deposits. All funds of the District not otherwise employed shall be deposited from time to time to the credit of the District in such banks, trust companies or other depositories as determined by resolution of the Board of Directors.

**ARTICLE VII**  
**SEAL**

**Section 1. Seal.** The seal of the District shall consist of two concentric circles with



the name of the District between such circles, and the year of incorporation, "1959", and the word "Colorado", within the inner circle.

**ARTICLE VIII**  
**AMENDMENTS.**

These By-Laws may be amended at any time by a majority vote of the eleven members of the Board of Directors.

**DRAFT**

**UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT**

**SCHEDULED BOARD MEETING MINUTES**

September 13, 1993

The Board of Directors of the Upper Gunnison River Water Conservancy District conducted a Scheduled Meeting on September 13, 1993 at 7:00 p.m. in the Multi-Purpose Building at the Rodeo Grounds, Gunnison, Colorado.

Board members present were: Robert Arnold, Ralph E. Clark, III, Susan Lohr, Ramon Reed, Mark Schumacher, Peter Smith, Lee Spann, Dennis Steckel, Doyle Templeton, William S. Trampe and Purvis Vickers.

Others present were:

L. Richard Bratton, Attorney  
John McClow, Board Attorney  
Tyler Martineau, Manager  
Patrice Thomas, Office Secretary  
Rita McDermott, Treasurer  
Diane Lothamer, City of Gunnison  
Enid Pepperd, KKYY  
Don Wilson  
Peggy Reece  
Lynnee Preston  
Frank Vader  
Steve Glazer  
Ken Spann, Gunnison County Stockgrowers Association  
John Chapman, National Park Service, Curecanti NRA  
Stan Irby, Gunnison County Stockgrowers Association  
Bob Irby, Rancher  
Greg Peterson, Gunnison County Stockgrowers Association  
Lucy High  
Carl Miller, Gunnison County Stockgrowers Association  
Matt Brown, Scenic River Tours  
Paul Vader, Rancher  
Judy Buffington, JMB Ranch  
Vevarelle Esty  
Marlene Zanetell, Gunnison County Commissioner  
Phyllis Guerreri, League of Women Voters & Rancher

## **1. CALL TO ORDER**

President Trampe called the meeting to order at approximately 7:10 p.m.

## **2. APPROVAL OF AUGUST 9, 1993 MINUTES**

President Trampe stated that the first item on the agenda was approval of the August 9, 1993 minutes which were mailed to the Board.

**Bob Arnold moved that the August 9, 1993 minutes be approved as circulated to the board. Butch Clark seconded the motion. The motion carried.**

## **3. CONSIDERATION OF OPERATIONAL EXPENSES PAID**

**Bob Arnold moved to approve Operational Expenses Paid, as prepared by the treasurer, for August 1993. Butch Clark seconded the motion. The motion carried.**

## **4. CONSIDERATION OF OTHER EXPENSES PAYABLE**

Lee Spann asked Dick Bratton if the majority of the work billed in the September invoice of \$8,979.82 was for work on the appeal. Mr. Bratton responded that a large part of the billing was for work done in anticipation of preparing the appeal brief.

Butch Clark asked about the July invoice of \$1,731.50 for Andy Williams. Tyler Martineau responded that this invoice is specifically related to work on the 620(f) brief. The Upper Gunnison River Water Conservancy District will pay Mr. Williams directly for these costs. Mr. Martineau said that the three outstanding bills from Mr. Williams are still under discussion with the Colorado River Water Conservation District(River District) regarding the procedure for payment. Lee Spann reported that discussion on this item will be part of the agenda for the October meeting of the River District. Purvis Vickers concurred with the information provided by Mr. Spann. Tyler Martineau said that he had talked with Eric Kuhn and that the memorandum provided by John McClow had persuaded the staff of the River District that there are valid Amendment 1 concerns to be addressed in the procedure for payment. Mr. Martineau said that the bulk of the amount owed Mr. Williams will be paid by the River District.

Tyler Martineau provided the board with an invoice of \$240.00 received from Lynn Cudlip of BIO-ENVIRONS for her work on the East River Study. He recommended approval of this invoice.

Mr. Martineau pointed out that an item for board member bond renewal of \$50.00 was included in Other Expenses Payable and the board may want to delay approval of this item until board member bond renewal is discussed in Agenda Item 6. The board was satisfied with the method of board bond renewal and thought that additional discussion would not be necessary.

Bob Arnold moved to approve Other Expenses Payable with the addition of Lynn Cudlip's bill for \$240.00. Susan Lohr seconded the motion. The motion carried.

## **5. MONTHLY BUDGET REPORT**

Rita McDermott, treasurer, said that it would be necessary to monitor the county treasurers' fees so that they do not exceed the budgeted amount. Tyler Martineau said that the fees are billed in proportion to the tax revenue collected by the County and disbursed to the District so that the fees should be lower during the last part of the fiscal year.

Tyler Martineau referred the board to the Attorney Invoices Received and Paid 1993 report. He said that the total year-to-date disbursed under the 1993 budget for legal expenses and engineering related on the report is \$45,159.22 which includes expenses only for work performed through July 1993. The budgeted amount for these expenses for all of 1993 is \$65,000.00. Mr. Martineau stated that with the addition of the August expenses payable of \$10,796.32 approved by the board at this meeting it appears that the District will be near the maximum amount budgeted for 1993 by the end of September.

Bob Arnold asked why the attorney telephone expenses were not billed to the separate budget line item of attorney telephone costs. Tyler Martineau explained that when Dick Bratton used a telephone calling card the expenses were billed to the separate line item, but that Mr. Bratton has computerized his billing and now all his legal expenses are billed together. Mr. Martineau said that the budget for 1994 will delete the separate line item for attorney telephone expenses to correspond with the way in which the legal and engineering expenses are now billed to the District.

Bob Arnold asked why there have not been any expenses recorded for rent or utilities in 1993. Tyler Martineau explained that Gunnison County has not yet finalized the legal agreement for rent and utilities for office space in the Multi-Purpose Building. He said that if the agreement is not finalized by December he will pay the budgeted amount to the County as he did last year.

Ramon Reed asked Dick Bratton to provide year-to-date totals in each billing category for his 1993 invoices to the board for the next meeting.

President Trampe asked for other comments.

Tyler Martineau asked for direction on how to proceed on the nearly depleted budget on the legal expenses and engineering related line item . President Trampe asked Mr. Bratton if the billing for September will be as large as the one received for August. Mr. Bratton said that yes, the September billing will be substantial. Lee Spann asked Mr. Martineau and Mr. Bratton to determine the budget increase needed for this line item for the remainder of 1993 and provide this information to the board for the next meeting.

Dennis Steckel mentioned that public comment would be needed prior to any budget revisions.

**Ramon Reed moved that an announcement of a public hearing on proposed budget revisions be published for the next board meeting. Butch Clark seconded the motion. The motion carried.**

## **6. PROPOSED REVISIONS TO BYLAWS**

Tyler Martineau referred the board to the September 1, 1993 draft of the bylaws and his memorandum which were circulated to the board by mail.

Butch Clark asked about the reference to public notice of any meeting at which a quorum of the board is in attendance. Mr. Martineau explained that this language is contained in the statute and it may be necessary to determine what constitutes a meeting of the board.

Butch Clark asked about Article II, Section 6 and how a quorum is determined when some members abstain from the vote. There was discussion by board members about this situation. Dick Bratton confirmed that a quorum is determined by the number of members in attendance when a meeting is convened. Mr. Bratton said that the other issue under discussion is how many members are sufficient for a vote. The consensus of the board was that this section matches the statute language and should be included in the bylaws as presented in this draft.

Butch Clark said that he would like to see a reference to the rules of order to be used by the District included in the bylaws.

Dick Bratton suggested clarification in Article I, Section 2 in the last sentence about appointment of the directors of the board. After discussion by the board, Mr. Martineau said that the language would be changed to make the sentence accurate and clear.

Dick Bratton said that executive sessions should be addressed in the bylaws.

Dennis Steckel suggested that the board hold a public hearing on the proposed revised bylaws at the next board meeting. There was board consensus on this suggestion.

## **7. BOARD MEMBER BONDING**

President Trampe asked if there were any comments; there were none.

## **8. LEGAL MATTERS**

### **8a. Union Park Project Water Availability Appeal**

Dick Bratton summarized three issues he wanted to bring to the board and suggested that the board may want to consider an executive session. The three issues presented by Mr. Bratton were handling of conditional water rights in the judge's decision, the memo from Bruce Driver and any decision relative to the information in the memo, and authorization of up to \$1000.00 for Duane Helton's to provide assistance to Mr. Bratton in proving the amount of water available.

Lee Spann moved that the board authorize the expenditure of funds up to \$1000 to hire Duane Helton to assist the legal defense in proving the amount of available water. Susan Lohr seconded the motion. The motion carried.

Butch Clark asked if Mr. Helton could include information on taking of water at the maximum flood flow. Mr. Bratton said that this information can be included.

Lee Spann suggested that the board proceed with discussion on Agenda Item #11 and public comment on the budgeting of payment for water in conjunction with the Taylor Park Water Management Agreement. Tyler Martineau said that John Chapman was present to provide information on Agenda Item #9 - Curecanti National Recreation Area Management Assessment.

President Trampe asked Mr. Bratton if he was finished with Agenda Item #8 - Legal Matters and Mr. Bratton said that he was.

## **9. CURECANTI NATIONAL RECREATION AREA MANAGEMENT ASSESSMENT**

Tyler Martineau referred to his memorandum to the board on this item and introduced John Chapman, Superintendent of Curecanti National Recreation Area, to explain the assessment process and his invitation to the board to participate in this process.

President Trampe thanked Mr. Chapman for the invitation and his presentation and asked if there were any questions.

Ramon Reed suggested that the District participate in the Curecanti National Recreation Area Management Assessment and recommended that Butch Clark attend for the District. Mr. Clark said that he was agreeable.

Mr. Chapman said that Mr. Clark could represent himself as well as the board unless directed otherwise by the board. Mr. Clark said that the District might want to appoint someone who represents only the District board.

President Trampe asked Peter Smith if he would be able to attend and represent the District board. Mr. Smith said yes.

Butch Clark will be invited by Mr. Chapman to attend the Curecanti National Recreation Area Management Assessment in another capacity.

## **11. TAYLOR PARK WATER MANAGEMENT AGREEMENT**

### **11a. Update on Negotiations with the Bureau of Reclamation**

Tyler Martineau said that the draft Taylor Park Water Management Agreement received from the Bureau of Reclamation on August 30, 1993 was provided to the District board members and to the Gunnison County Stockgrowers Association. He said that in addition, at this meeting, Dick Bratton was providing the board members with a draft of the agreement that Mr. Bratton and Mr. Martineau prepared, after meeting with President Trampe, to incorporate proposed comments of the District. Mr. Martineau suggested that the board receive public comments on budgeting for payment of water before discussion of these two drafts.

Tyler Martineau pointed out the major change in the most recent draft (August 30, 1993) received from the Bureau of Reclamation. He said that the previously proposed method of payment of a per acre foot charge for delivered water has been changed to an annual fee of \$10,000.00 unrelated to the delivery of water.

### **11b. Budgeting for Payment of Water**

President Trampe clarified that the discussion at the last board meeting was regarding payments to the Bureau of Reclamation for water and the source of money for the payments in the District budget. He said that the change to a flat fee for payment has occurred since the last board meeting. President Trampe asked for comments from the user groups regarding budgeting for the payment of water.

Tyler Martineau said that he provided to the board a letter received from the Gunnison County Stockgrowers Association with their comments.

Carl Miller, President of the Gunnison County Stockgrowers Association, referred the board to the letter and pointed out the primary suggestions in the letter: (1) The Stockgrowers Board feel that the District should obtain funds for payment through general property tax revenues, (2) the payment, if any, should be locked in for five years with

renegotiation at that time, and (3) questions about the availability and cost of storage in Blue Mesa should be addressed.

Ramon Reed said that the 2nd fill water discussed in the draft Agreement is specifically identified for irrigation uses. Carl Miller said that other users will benefit from the water while it travels to the irrigators. Ramon Reed said that the portion of the 2nd fill water not earmarked for irrigation will be shepherded to Blue Mesa so it can't be diverted for irrigation.

Ken Spann said that the Gunnison County Stockgrowers Association sees the draft Agreement saying that the flat fee payment is for multipurpose water under the 2nd fill given to the Bureau of Reclamation and, therefore, there are multiple benefits to the basin even though reclamation law says that recreation and fishery uses are at no cost to the public.

Butch Clark said that in the application for the water right and in the decision there was reference to making it easy to irrigate during the high flow but not to divert out of the river to irrigate. He said if the water is used for the common use then payment should come from the users in common but if a specific user is a beneficiary then that user should pay. Ken Spann said that he disagreed.

Butch Clark said that the question is how to consider the water that can benefit all users.

Ken Spann said that the administrative costs of the District will be high if a user group is identified for payment.

Butch Clark said that moving water to Blue Mesa and using it for call protection, previously irrigators asked that others share the burden of allocation of water under a call, how would the board allocate the benefits of this water to others. He asked Ken Spann for his comments. Ken Spann asked if the District board has looked at the right to store District water in Blue Mesa. Tyler Martineau said that based on the refill decree water stored in Blue Mesa could only be used for replacement water for irrigators.

Butch Clark asked if it is depletive or diversionary. Tyler Martineau said that it's depletive.

Steve Glazer asked how the Bureau of Reclamation determined the \$10,000 figure since it seems inconsistent with historical costs and fees. Tyler Martineau said that the Bureau of Reclamation had provided an accounting schedule showing the calculation of administrative costs. He said that the District could probably negotiate for a reduced fee. President Trampe indicated that the board has not yet discussed the draft agreement which Mr. Glazer is referencing.



Butch Clark said that at the last negotiating session with the Bureau of Reclamation that their staff acknowledged that there would be no charge by the Bureau for wildlife and recreation and, therefore, the payment is for irrigation. Ken Spann said that discussion is for payment for the administration of the agreement. Lee Spann pointed out language in Section 4.a. of the draft agreement(received 8/30/93), "...to pay the United States an annual accounting charge for the administration of this agreement.", which he feels supports Ken Spann's position. Ramon Reed said that the language also states "...under the United States refill right for historic irrigation purposes by the Gunnison District."

Paul Vader asked why it was necessary to pay any amount since irrigation water had not been paid for in the past.

Stan Irby asked how the board would administer a separate use. Dennis Steckel wondered if there is a limited amount of water for irrigation how would the decision be made as to who receives the water. Stan Irby said that early decrees would probably decide that issue. Mr. Steckel said that the date of decrees probably would to some extent.

Purvis Vickers asked if there is a specific number of acre feet of water guaranteed for the amount of \$10,000.00 or if the \$10,000.00 is just for administration when it seems that the Bureau of Reclamation staff is already paid for this administration. Mr. Vickers also asked if the District would get credit for the water that goes to Blue Mesa or would it be gone. President Trampe said that the draft agreement does not yet state that there would be storage in Blue Mesa.

Bill Trampe said that there are a variety of commercial users that derive income from this water.

Butch Clark said that he would like to hear comments from recreational users as he understands that they need flows at certain times of the year. There were no comments.

Ramon Reed explained to Ken Spann that the Bureau of Reclamation, not the District Board, determined that the charge is for a specific component of water. He said that the District board is justified in examining if the beneficiaries of this water should pay for the cost. Mr. Reed said that the water right was assigned by the District to the Bureau of Reclamation. He said that he would prefer that there not be payment for the refill water but that the District has to pay the Bureau of Reclamation under the terms of the proposed agreement.

Ramon Reed proposed that the negotiating team ask the Bureau of Reclamation to apply for a change of water right to add M&I use to the refill and that this cost should be passed on to the user. Mr. Reed asked that this language be included in the draft agreement.

Ramon Reed said that the District will still have to determine the allocation of water whether the water is charged for or provided without charge and administrative work will still be involved.

Steve Glazer said that \$10,000 from taxpayer revenue is justified if there is storage in Blue Mesa. He said that the District could charge recreational and commercial users since the draft agreement doesn't specify who and how much the District would charge for the water. Mr. Glazer asked if the board wants to be involved in management of water for instream purposes.

President Trampe said that the District has tried to negotiate an annual release schedule to benefit all users. He said that if there is argument about which users pay for the water then it will be difficult to negotiate the release schedule for the benefit of all users.

Don Wilson asked how the District would charge subdivided ranches which use the water for many purposes.

Lee Spann said that water in the river is beneficial to all and the irrigators shouldn't be targeted. He said that the District should tell the Bureau of Reclamation that it is prepared to pay \$10,000.00 or less.

Butch Clark asked if the 19,900 acre feet in the 2nd fill will be used for optimum fishery and recreation or for irrigation because that decision would affect the release schedule of the water. Ken Spann said that if irrigators pay \$10,000.00 then they bought the right and can dictate how the water will be used and when. Butch Clark said that it matters which water comes first in the 2nd filling. Lee Spann said that the Uncompaghre Water users control another pool of water so Mr. Clark's question is answered by the past operation of the reservoir.

Butch Clark said that how to account for storage carryover makes a complicated pattern to determine a guaranteed stable annual yield through management of the Uncompaghre users water and the Bureau of Reclamation.

Mark Schumacher said that the user groups which meet to determine the annual release schedule need similar flows at similar times. Mr. Schumacher said that the amount of \$10,000 is much less than anticipated by the District and he thinks it is a great deal. Mr. Schumacher said that he would like to see recreational and fishery uses added to the agreement with the Bureau of Reclamation so that water would be administered for these uses.

Susan Lohr moved that the District Board instruct the negotiating team that the figure of \$10,000.00 is a maximum amount for payment and to try to reduce it, that the amount for payment be locked in for five years, and that payment internally come from property taxes for the benefit of the whole community. The negotiating team

**should proceed with the procurement of storage in Blue Mesa. Bob Arnold seconded the motion.**

Ramon Reed said that the Bureau of Reclamation has determined that the water for which there is a charge is for irrigation. The motion would require the general taxpayers to pay for water for a specific interest. Mr. Reed asked that before the vote that any board members who would benefit from this specific interest consider if they have a conflict of interest.

Dennis Steckel said that it is premature to put the amount of \$10,000.00 in the motion because it sets the amount prior to the negotiation. He said that it is important to discuss allocation and distribution of the water but that issue is separate from the amount of payment for the water.

Tyler Martineau said that the issue of how to allocate a finite amount of water for demand and supply during a time of shortage is a significant question but there are several approaches being considered to solve the downstream calls. He said other approaches under consideration are the Black Canyon Contract with the National Park Service, the Recovery Program with the U.S. Fish and Wildlife, and the Black Canyon National Park legislation. He said discussion of allocation during shortage is premature because the other approaches may make it unnecessary.

Dick Bratton summarized the historical sequence of agreements between the District and the Bureau of Reclamation. He said that the Bureau wants payment for irrigation but it doesn't say how the District should obtain money for these payments. He said that if each year the payment is determined as a percentage of the use then it would be best for the District to control this determination. Mr. Bratton said that if the District were to determine use on a truly equitable base then the District would have to go down the River from Taylor Dam to Blue Mesa Reservoir to determine anticipated uses and the values thereof.

Lee Spann asked Dick Bratton if Mr. Spann has a conflict of interest on this vote. Mr. Bratton said that it would be okay to vote.

Bob Arnold said that this discussion provides a basis on which to build the District budget and that now the District can use \$10,000.00 or less as a budget figure. Mr. Arnold said that this matter is a budget issue and that he thinks that the administrative cost of personnel and purchase of measuring devices would outweigh the District payment of the \$10,000.00 figure.

Lee Spann called for the question on the motion.

**The motion carried with a vote of six to four.**

Purvis Vickers said that he voted against the motion because he did not want Hinsdale County property owners to have to pay for the water.

Dick Bratton said that the District controls the decree and if the District wanted to change the method of payment at a later date that could be done.

President Trampe said that the users will probably pay when an augmentation plan has to be developed.

Ramon Reed said that there are other points of the draft agreement to be discussed that are separate from the method of payment.

President Trampe asked if there were any other board comments before beginning the budget process. There were no comments.

President Trampe announced that the next negotiating session with the Bureau of Reclamation will be held on September 16, 1993 at 10:00 a.m. at the Gunnison County Courthouse.

#### **11a. Update on Negotiations with the Bureau of Reclamation**

The board returned to discussion of the proposed drafts of the Taylor Park Water Management Agreement in preparation for the next negotiating session with the Bureau of Reclamation. President Trampe clarified the two drafts provided to the board. He suggested that the board review Mr. Martineau's memorandum pointing out issues on which the negotiating team will need direction and also review the draft agreement prepared by Mr. Bratton and Mr. Martineau and provided to the board at this meeting.

The board examined the draft agreement prepared by Mr. Bratton and Mr. Martineau and provided comments page by page:

Pages 1, 2, and 3 - minor wording changes

Page 4, paragraph j - After discussion for clarification, there were no specific changes to this paragraph.

Page 5 - no comments

Page 6, paragraph h - The definition of "irrigation water" should be generalized to include all types of possible irrigation water and crops.

Page 6, paragraph 2.c. - Change the wording in the third line to indicate for the benefit of the Gunnison District rather than "...by the Gunnison District...". The question was asked if this paragraph was the appropriate

place to indicate that there would not be the requirement for NEPA compliance. All negotiating team members clarified that there is no new consumption of water associated with this proposed agreement.

Page 7, paragraph e - There were several suggestions for this paragraph. One point was that how the Uncompaghre Water Users use the 1st fill storage right affects what the District will have as a guarantee of water. The other comments were summarized by suggesting that the draft agreement indicate a refund of payment if the agreement is terminated.

Page 8 and Page 9, paragraph 3.c. - There were questions about the provisions for the exchange of water. There was discussion on whether or not the replacement water would be accounted for as a diversion or depletion and how the types of water would be calculated in an exchange. It was decided to rewrite this paragraph to state that when making replacement releases the District will only replace depletions not diversions.

Page 9 - It was mentioned that the concept of a service contract with this agreement for storage might be an approach to set a nominal fee paying for storage rather than an arbitrarily set administrative fee.

Page 10, paragraph 4.a. - It was suggested that in line 5 of this paragraph all the purposes for the refill right could be listed. A possibility to define multipurpose uses in the definition section and use that phrase in this paragraph was discussed.

Page 10, paragraph 4.b. - It was decided to leave this paragraph as in this draft agreement.

Page 11, paragraph 5.a. - The intent of this paragraph is that this applies to triple use water. It was suggested that at another meeting there be discussion about availability of water after ranches are subdivided.

Page 12 - no comments

Page 13 - The question was asked if the District needed to budget for liability insurance.

Page 15 - no comments

Page 16 - The request was made that standard contract articles be deleted from this agreement. It was also requested that the Bureau of Reclamation apply for a change of use for the 19,000 acre feet to include M&I use.

Tyler Martineau asked if there were any objections to points raised in his memorandum to the board. Butch Clark said that the wet/dry figures prepared by the Bureau of Reclamation for 1987 should be used for the analysis discussed in item 18 of the memorandum.

## 10. ASPINALL UNIT OPERATIONS

Tyler Martineau briefly summarized his memorandum to the board on the Aspinall Unit Operations and, in the interests of time, asked the board members to read the other items in the memo. He also provided copies to the board of the draft Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin. He noted that the timeline to regulate flows for fish is beginning and this will trigger river administration at some point down the road.

## 12. STREAM GAGING PROGRAM

Tyler Martineau told the board that the United States Geological Survey (USGS) planned to discontinue the Taylor River stream gage above the Taylor Park Reservoir unless the District wants to fund its continuance in water year 1994.

**Butch Clark moved that the District undertake the \$3,800.00 annual fee to fund the continuing operation of the Taylor River stream gage above the Taylor Park Reservoir. Susan Lohr seconded the motion.**

Ramon Reed asked what the benefits of this stream gage would be to the District. Tyler Martineau said that this stream gage was important to Arapahoe County in determining availability benefits. He said the best benefit to the District is the hydrologic data for the defense against export of water. Ramon Reed asked if the record of releases and levels from Taylor Park Reservoir prepared by the Bureau of Reclamation would provide all the information needed. Mr. Martineau said that this information is adequate and that the stream gage data would be additional.

Peter Smith said that it would be unwise to give up a stream gage that can provide additional hydrologic data. Ramon Reed said that it might be a beneficial use of funds to use this money for stream gages in other locations. Tyler Martineau said that it is his opinion that there is a greater need for data from stream gages in other locations.

Bill Trampe said that the opposers might fund this stream gage because instream flows are unique and the data may be important to them to collect.