

Dennis Steckel asked what the legal costs would be of supporting Bruce Driver's clients. Mr. Bratton estimated a minimum of \$10,000. Mr. Driver explained that his clients were not asking for financial support or legal assistance. Mr. Bratton said that, at a minimum, he will need to review the legal positions for the District.

Lee Spann moved that the District take a neutral position on Mr. Driver's proposal of the narrow scope of maximum utilization. Bob Arnold seconded the motion.

Dennis Steckel asked how the board would know what is included in Mr. Driver's proposal.

Butch Clark asked what the time frame is for development of the legal brief and a need for support if the board should decide to do so. Bruce Driver responded that he has until October 8, 1993 but will probably ask for an extension for filing. Mr. Driver offered to share the first outline of his brief with the board.

Susan Lohr asked if Mr. Driver needed anything in addition to a neutral position from the board. Mr. Driver responded that a one page brief stating the district's position of support for maximum utilization if limited to transmountain diversion would be helpful.

Ramon Reed made a motion to table the motion by Lee Spann until the board receives an outline of the proposed brief from Bruce Driver. Butch Clark seconded Mr. Reed's motion. The motion to table carried.

Mark Schumacher said that he is concerned that Bruce Driver does not yet have the support of all his clients for the compromise position offered by Mr. Driver.

Dick Bratton noted the memorandum provided by John Hill on protection of natural, socioeconomic and cultural environments in response to Susan Lohr's question at the last meeting. Mr. Hill's memorandum notes that there is no single comprehensive law for protection of socioeconomic and cultural values. Mr. Bratton pointed out the memorandum's reference to NEPA and Section 404 of the Clean Water Act. Susan Lohr said that at the last board meeting Mr. Bratton indicated that existing laws already covered the protections sought by the proposed High Country Citizens Alliance legal brief. Ms Lohr said that this memorandum did not document that the existing laws can provide this protection for natural, socioeconomic and cultural environments.

President Trampe thanked Bruce Driver for his presentation to the board.

8b. Board Member Bonding

Tyler Martineau referenced the memorandum prepared by Steven Pierson of Bratton & McClow and distributed to the board. Mr. Martineau explained that the bond application provided by Bratton & McClow is the same one discussed by the board several months ago.

At that time the board members were concerned about the disclosure of net worth and the authorization to investigate the financial matters of the applicant.

Following discussion of these issues by the board, John McClow suggested that the District submit the applications for the Western Surety bond with a cover letter requesting that the bonds be issued without the disclosure of net worth and authorization to investigate.

Bob Arnold moved that the District apply for the bonds for board members with a cover letter as defined by Mr. McClow. Mark Schumacher seconded the motion. The motion carried.

8c. Legal Opinion Concerning Control of Water within Streams

Dick Bratton said that John Hill prepared a complete new memorandum titled "Opinion on the Utilization of the District's Conditional Water Rights Including Instream Use to Create or Enhance Fish and Wildlife Habitat and Wetlands as a Means of Making Absolute or Satisfying the Diligence Requirement (REVISED)" to correct the first memorandum on this subject. Mr. Bratton recommended that the board dispose of the first memorandum and utilize this corrected memorandum. The board concurred with Mr. Bratton's recommendation.

8d. Other Legal Matters

John McClow provided an update on the Rocky Point project. He reported that NECO filed a motion that their license application be held in abeyance until 1995. Mr. McClow and Gunnison County filed a motion opposing the abeyance. He said that the response from the Bureau of Reclamation is that they do not oppose the abeyance.

9. TAYLOR PARK WATER MANAGEMENT AGREEMENT

Tyler Martineau reviewed his memorandum to the board on the recent negotiating meeting with the Bureau of Reclamation and his subsequent discussions on the new draft Taylor Park Water Management Agreement with the Bureau of Reclamation. He reported that the Bureau of Reclamation is working on language for a two tier method of payment. He said that the Bureau of Reclamation did not think that they could be flexible on the language regarding termination of the contract by any one party. He said that since the Upper Gunnison River Water Conservancy District will be the payer it may be to the District's advantage to be able to terminate unilaterally.

Dick Bratton suggested that the District approach the Bureau of Reclamation so that the language would indicate one party could terminate their part in the agreement without the contract being terminated for the other parties. Dennis Steckel suggested that the negotiating team try that approach.

Butch Clark asked if the Bureau of Reclamation could provide a yield analysis for the Taylor Park Reservoir particularly in regard to water available in the second filling. Ramon Reed asked for information on the prior year carryover of the 1st fill in the analysis. Tyler Martineau said that he will request this information from the Bureau of Reclamation.

Ramon Reed said that paragraph five in the draft agreement still needs to be split into two paragraphs to indicate that there are two separate issues.

10. GUNNISON RIVER (BLACK CANYON) CONTRACT

Tyler Martineau said that he had nothing to report. He reported that he did provide the input from board members and requested copies of other responses to the Bureau of Reclamation, but, to date, has not received any additional information back from them.

11. STREAM GAGING PROGRAM

Tyler Martineau said that there are two matters to discuss about the stream gaging program.

Mr. Martineau said that last year the Colorado River Water Conservation District agreed to fund the construction and operation of an East River stream gage but there has been some difficulty in gaining permission for the land use. He said that the funds could be lost if construction does not begin.

Several board members suggested that Mr. Martineau contact Wes Light for assistance in gaining permission from the land owner.


Tyler Martineau said that he has been discussing with the USGS staff the possibility of another site near the Hwy 135 bridge over the East River at the highway department shops in the state highway right-of-way. Mr. Martineau said that the USGS staff think they can construct the gaging station at this site and obtain reliable measurements.

Bob Arnold moved that the District change the location of the stream gage on the East River to the highway bridge site. Ramon Reed seconded the motion. Lee Spann offered an amendment to the motion that Mr. Martineau contact Wes Light and if there is not a positive response from the landowner in two weeks that the District proceed with the highway bridge site. Susan Lohr seconded the motion to amend. The motion to amend carried. The amended motion carried.

Tyler Martineau suggested that the Upper Gunnison River Water Conservancy District funds for another stream gage site be held in reserve until identification of another site which

will probably develop from the East River Study. There was board consensus that Mr. Martineau proceed with this approach.

12. MISCELLANEOUS MATTERS

Tyler Martineau referred the board to the August 2 letter by Dave Miller to Governor Romer. He also reported that Mr. Miller had made a presentation to the Legislative Water Interim Study Committee and as a result of this presentation the Colorado Water Conservation Board(CWCB) staff was asked to prepare an analysis of the refill water right. Mr. Martineau provided a response to Mr. Miller's comments on the Taylor Park Decree prepared by Chris Treese of the Colorado River Water Conservation District. 

Mr. Martineau said that the CWCB is hosting a tour of Western Slope water projects for the Legislative Water Interim Study Committee and asked if the board wants to provide lunch in Gunnison on August 17, 1993. The board members discussed possible locations and the types of lunch. Mark Schumacher suggested that Mr. Martineau prepare a presentation for the Committee and also join the Committee on the bus tour.

Ramon Reed moved that the District sponsor a lunch or brief program for the Legislative Water Interim Water Study Committee during the CWCB tour. Bob Arnold seconded the motion.

Dennis Steckel moved that the motion be amended to provide a barbeque lunch and that each board member pay for their own lunch to reduce the cost. Lee Spann seconded the motion to amend. The motion to amend carried. The amended motion carried.

Tyler Martineau reviewed his memorandum to the board on the purchase of a computer which will be able to execute the planning model program. He has selected the Computer Store based on the bids obtained. There were no comments from the board members.

Tyler Martineau referred the board to the letter received from Pam Bode, USFS District Ranger, asking for local sponsors for a water quality monitoring program in the West Elk Wilderness Area. He asked if the board wanted the District to participate. Susan Lohr said that her understanding from the USFS staff is that they are just accumulating information. Dennis Steckel suggested that Mr. Martineau check out this program further with the USFS staff.

Butch Clark said that he thinks the proposed Austin Dam is being reviewed and revived.

11. UNSCHEDULED CITIZENS

Steve Glazer said that he is concerned that the Colorado Water Conservation Board met in executive session to discuss the Arapahoe County appeal. Mr. Martineau said that the CWCB is anticipating litigation on this matter and that the staff interpretation was that an executive session was needed. He said that he would discuss Mr. Glazer's concerns with him after the meeting.

14. FUTURE MEETINGS

The next board meeting is scheduled for September 13, 1993 at 7:00 p.m. in the Multipurpose Building at the Gunnison County Fairgrounds.

15. ADJOURNMENT

President Trampe adjourned the meeting at approximately 11:05 p.m.

Respectfully submitted,

Mark Schumacher, Secretary

APPROVED:

William S. Trampe, President

Amount

SUBTOTAL: [4,270.00]

Taylor Park Res Management Contract

~~Availability Appeal~~

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

August 2, 1993

Professional services:

Administrative

- 06/29/93 SLP Review appropriateness of Crime Policy for Directors' liability under statutory authorities
- 06/30/93 SLP Research case authority on appropriate directors' liability policies
- 07/12/93 UGd Attend regular Board Meeting in Crested Butte
UGj Attend July Board meeting in Crested Butte (at no charge)
- 07/19/93 UGj Telephone conference with Mr. Martineau, Don Hamburg, Eric Kuhn re: Amendment 1 issues for Williams' bill
- 07/20/93 UGj Telephone conference with Mr. Martineau re: Amendment 1 research
- 07/22/93 jh Review Amendment and materials; conference with John McClow
- 07/31/93 UGd Review minutes of meeting of July 12, 1993

Amount

SUBTOTAL: [1,057.50]

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.

SUBTOTAL:

Amount
[4,270.00]

Taylor Park Res Management Contract

~~07/15/93 UGd Meeting with representative of Bureau of~~

Upper Gunnison River Water

Page 2

Availability - Appeal

07/02/93 UGd Conference with Ken Spann, Dick and John McClow re:
brief/issues; telephone conference with Barney White
re: brief/issues

07/03/93 UGd Review files re: (1) East River and tributaries'
~~water availability and (2) standard for proof of~~

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	<u>Amount</u>
SUBTOTAL:	[1,057.50]

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

Availability - Appeal

- 07/02/93 UGd Conference with Ken Spann, Dick and John McClow re: brief/issues; telephone conference with Barney White re: brief/issues
- 07/03/93 UGd Review files re: (1) East River and tributaries' water availability and (2) standard for proof of "availability"
- 07/06/93 KB Preparation of files for Brief
- UGd Meeting with Tyler and Bill re: availability appeal (Public Trust) and Division Engineer/District 59 Water Commission issues
- UGj Office conference with Dick Bratton to review trial materials for use in Supreme Court Brief
- 07/08/93 UGj Review of trial pleadings, briefs, testimony; outline of brief
- 07/13/93 UGd Telephone conference with Andy re: extension on meeting to discuss briefs
- 07/15/93 UGd Telephone conference with Barney, Andy, Mike Gehletta and Andy Mergen re: briefs/meeting
- 07/16/93 UGd Telephone conference with Bruce Driver; letter to opposers' attorneys; telephone conference with Tyler re: River District payment of Williams' bill (Amendment 1)
- 07/19/93 jh Preparation of memorandum on water availability issues
- 07/20/93 jh Preparation of memorandum on water availability issues
- 07/21/93 jh Preparation of memorandum on water availability issues
- jh Conference with Bruce Driver and Dick Bratton on "Public Values" issues; prepare notes
- UGd Work on availability issue and "maximum use"
- 07/22/93 jh Preparation of memorandum on water availability issues
- 07/23/93 jh Preparation of memorandum on water availability issues

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 DISBURSMENTS FOR WHICH WE HAVE NOT YET BEEN BILLED.

Amount

SUBTOTAL: [4,270.00]

Taylor Park Res Management Contract

07/15/93 UGd Meeting with representative of Bureau of
Reclamation, Uncompahgre, CRWCB and Upper Gunnison
District re: Agreement

SUBTOTAL: [225.00]

For professional services rendered \$5,552.50

Itemization of costs

-Telecopier expense	104.00
-Postage Expense	8.70
-Photocopier expense	206.40
-Long distance telephone expense	282.32

Total costs \$601.42

Total amount of this bill \$6,153.92

PAYMENT IN FULL IS DUE ON RECEIPT OF STATEMENT. A LATE CHARGE
OF 1½% 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.

OPERATIONAL EXPENSES PAID

July 12, 1993	U. S. West Communications-office telephone	\$184.75
July 12, 1993	The Paper Clip-office supplies	24.00
July 12, 1993	Secretarial Services-binding of 10 documents	27.50
July 12, 1993	Colo. State Treasurer-2nd Qtr. Unemploy- ment Insurance Tax	57.20
July 12, 1993	Silver World Publishing-June meeting notices	16.00
July 30, 1993	Gunnison Country Times-IIelp Wanted Ad	22.00
July 30, 1993	National Conference of State Legislatures- Moving Western publication	13.00
July 30, 1993	Tyler Martineau-June direct administrative travel expense	82.50
July 30, 1993	Chronicle & Pilot-June meeting notice	12.50
July 30, 1993	Special District Asso. of Mesa County-Tabor Update Workshop	20.00
July 30, 1993	Tyler Martineau-net salary for pay period 7/1/93-7/31/93	2,322.41
July 30, 1993	Patrice Thomas-net wages for pay period 7/1/93-7/31/93	683.60
July 30, 1993	Rita McDermott-net salary for pay period 7/1/93-7/31/93	251.45
July 30, 1993	Colorado Department of Revenue-CWT- July	213.45
July 30, 1993	First National Bank-FWT & FICA-July	1,522.74

OTHER EXPENSES PAYABLE

August 9, 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	25.00
Ramon Reed	attendance-\$25	25.00
Mark Schumacher	attendance-\$25 & 20 mi.@.25-\$5	25.00
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	August retainer fee	50.00
Bratton & McClow	August invoice	6,153.92
Williams, Turner, & Holmes, P.C.	April-May-June invoices-re: Union Park Project Water Availability	10,442.51
Williams, Turner, & Holmes, P.C.	July 31st invoice re: Union Park Project Water Availability	\$
Williams, Turner, & Holmes, P.C.	July 31st invoice re:	\$
	<hr/>	
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**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

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

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

Total Disbursed \$45,161.14

Total Disbursed-1993 Budget

\$39,005.30

Note: These amounts include Travel Expense

UGRWCD BUDGET SUMMARY-JULY 1993

	<u>JULY</u> <u>EXPENSE</u>	<u>YEAR -TO- DATE</u> <u>AS OF 7/31/93</u>	<u>1993 BUDGET</u>	<u>% EXPENDED</u>
Administrative Salary	\$3,323.78	\$24,504.65	\$45,000.00	54%
Secretary Salary	1,015.00	6,414.50	11,000.00	58%
Board Treasurer Salary	300.00	2,100.00	4,000.00	53%
Payroll Taxes & Benefits	412.07	3,206.07	7,000.00	46%
Staff Conference & Training	20.00	20.00	500.00	4%
Legal Retainer Fees	50.00	350.00	600.00	58%
Legal Exp & Eng. Related	6,002.56	44,400.00	65,000.00	68%
Audit & Accounting	874.30	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	0.00	50.00	300.00	17%
Insurance/Premises	0.00	0.00	500.00	0%
Office Telephone	184.75	1,066.57	2,700.00	40%
Attorney Telephone	0.00	0.00	500.00	0%
Legal Printing	50.50	379.65	1,300.00	29%
Administrative Travel	82.50	957.46	4,000.00	24%
Attorney Travel	48.32	761.14	2,000.00	38%
Board of Directors Travel	0.00	0.00	500.00	0%
Office Supplies	51.50	709.62	1,800.00	39%
Postage	0.00	518.00	1,200.00	43%
Copying	0.00	900.75	1,100.00	82%
Publications Acquisition	9.45	75.55	500.00	15%
Office Equipment	0.00	1,015.25	6,500.00	16%
Board of Directors Fees	225.00	2,625.00	5,000.00	53%
Board of Directors Mileage	129.50	703.00	1,400.00	50%
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	3,825.00	3,825.00	5,000.00	77%
Promotion & Guest Expense	0.00	75.70	1,500.00	5%
County Treasurer's Fees	749.95	6,026.41	7,000.00	86%
Subtotals	<u>\$17,354.18</u>	<u>\$106,158.62</u>	<u>\$197,600.00</u>	<u>54%</u>
Contingency			9,000.00	0%
Emergency Reserves			2,700.00	0%
Water Resource Protection & Development Reserves			37,000.00	0%
Totals	<u>\$17,354.18</u>	<u>\$106,158.62</u>	<u>\$246,300.00</u>	<u>43%</u>

UGRWCD
FINANCIAL DATA-7/1/93 THRU 7/31/93

Balance on Hand - June 30, 1993

Checking Account	\$14,857.85
Petty Cash	100.00
Time C.D.-FNB	2,656.89
Time C.D.-Wetlands Fund	926.29
Money Maker-GS&L	40,933.83
Time C.D.-FNB-Lake City	40,751.44
Passbook Svgs-CB St. Ban	40,000.00
Passbook Svgs-FNB	79,969.15

TOTAL FUNDS 6/30/93 \$220,195.45

Tax Receipt Collections thru June

Real Estate	\$164,067.98
Specific Ownership	6,979.35
Interest	612.84

Note: Treasurers' Fees are included \$171,660.17

June Tax Receipt Collections Paid in July

Real Estate	\$22,970.90
Specific Ownership	1,054.43
Interest	65.66

Note: Treasurers' Fees are included \$24,090.99

Interest on Investments received in July

558.74

TOTAL TO DATE \$244,845.18

Total Disbursements thru 7/31/93

17,354.18

TOTAL FUNDS 7/31/93 \$227,491.00

Balances as of 7/31/93

		INTEREST RATES	MATURITY DATES
Checking Account	\$21,768.91	2.25%	
Petty Cash	100.00		
Time C.D.-FNB of Gunnison (1 yr.)	2,680.07	3.50%	1/18/94
Time C.D.-Wetlands-FNB of Gunnison (1 yr.)	929.33	4%	8/16/93
Money Maker-GS&L	41,048.38	3.40%	
Time C.D.-FNB of Lake City (6 mo.)	40,751.44	3.50%	10/4/93
Passbook Savings-C.B. State Bank	40,000.00	3.25%	
Passbook Savings-FNB of Gunnison	80,212.87	3.25%	
TOTAL FUNDS 7/31/93	\$227,491.00		

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: August 3, 1993

SUBJECT: Agenda Item 4, August 9, 1993, Board Meeting --
Consideration of Other Expenses Payable.

?

*colorado
co. have
in
writing or
minutes from
River
District
on this*

Attached are copies of invoices for Andy Williams work in connection with the Union Park Project Water Availability Appeal for the months of April, May, and June. The Colorado River Water Conservation District (CRWCD) forwarded these bills to the Upper Gunnison River Water Conservancy District (UGRWCD) after our July board meeting. The CRWCD has requested that we pay 100% of Andy's bills and then they will reimburse us for the portion that is not connected with the UGRWCD cross appeal on the 620(f) hydropower issue.

Andy Williams has written me that none of the charges on the enclosed invoices are connected with the 620(f) issue. Therefore, the total amount of the bills (\$10,442.51) should be ultimately paid by the CRWCD.

Enclosed is a memorandum from John McClow that indicates that if the UGRWCD pays Andy Williams' bills and is then reimbursed by the CRWCD that the payments will count against the revenue and expenditure limitations under Amendment 1 for the UGRWCD.

I recommend that the board:

- 1) Refrain from paying Andy Williams bills at the present time.
- 2) Authorize a copy of John's memo to be provided to the CRWCD.
- 3) Request the board's attorney and me to follow up with the CRWCD to see if a way can be found for the CRWCD to pay Andy Williams bills without adversely affecting the UGRWCD with respect to Amendment 1.

Enclosures

M E M O R A N D U M

received
8/3/93

TO: TYLER MARTINEAU, Manager
Upper Gunnison River Water Conservancy District

FROM: JOHN H. McCLOW

DATE: August 3, 1993

The Colorado River Water Conservation District (CRWCD) wishes to have legal services performed by Williams, Turner and Holmes, P.C. (Williams), submitted to the Upper Gunnison River Water Conservancy District (UGRWCD) which would pay the bills, and then be reimbursed by CRWCD for Williams' work on the availability appeal not involving the UGRWCD cross-appeal concerned with hydroelectric power issues under 43 U.S.C., § 620f.

QUESTION: Can UGRWCD disburse funds to Williams and receive funds from CRWCD without violating the limitations placed upon UGRWCD by Article X, Section 20, of the Colorado Constitution (Amendment One)?

ANSWER: No.

DISCUSSION: Any analysis of Amendment One must be prefaced by repeating that the Amendment is both complex and ambiguous, and that no binding judicial interpretation of any provision thereof has yet been published. Despite a request from the Governor early this year, the Supreme Court specifically declined to respond to interrogatories designed to obtain the Court's interpretation of Amendment One. Finally, the general provisions of Amendment One provide that "all provisions are self-executing and severable and supersede conflicting State constitutional, State statutory, charter or other State or local provisions." Therefore, any precedent established under other statutes probably does not apply and any

analysis of the Amendment is presented upon a "best guess" basis since we have no authority (other than interpretations by others similarly situated) upon which to base our opinions. We can look for limited guidance to SB 74 (discussed below), which "represents the considered judgment of the General Assembly as to the meaning of Section 20 of Article X as it relates to state government."

Amendment One limits spending (directly) and revenue (indirectly) for districts such as CRWCD and UGRWCD. Seven terms are specifically defined within the text of the Amendment, but "revenue" is not one of them. The ordinary meaning of the term, which is typically applied by the courts when no definition is provided, is the income of a governmental entity from all sources appropriated for the payment of public expenses. Funds received from CRWCD would, therefore, appear to be "revenue" to UGRWCD for purposes of Amendment One. Amendment One limits increases in taxes, but does not limit increases in revenue *per se*. However, because the Amendment does contain a limitation on "fiscal year spending" which requires UGRWCD to refund revenues exceeding the annual spending limit, receipt of revenues in excess of the spending cap is "limited" by the requirement that such receipts be "refunded" to taxpayers of the district.

Payment by UGRWCD of the Williams bills would appear to be included within the definition in Section 2(e) of Amendment One of "fiscal year spending," since that definition includes "all district expenditures" from all sources, with very limited exceptions. Section 7(b) of the Amendment provides that the maximum annual change in UGRWCD's fiscal year spending is the amount of the prior calendar year's inflation, plus annual local growth (spending limit). If the funds received from CRWCD are paid to Williams, and that

payment increases the total amount disbursed by UGRWCD beyond the spending limit, UGRWCD would be acting in violation of the provisions of Amendment One.

Analyses prepared by the Colorado Municipal League, the Colorado Water and Power Development Authority, and a group of city and county attorneys headed by the Boulder City Attorney, have all interpreted the Amendment to provide that revenues transferred from one local government to another must be included in the revenue/spending limit of the receiving local government (as well as the transferring government). I can find nothing in the text of Amendment One upon which to base a disagreement with this interpretation.

Section 2(e) of Amendment One does except from the expenditures to be included in fiscal year spending "expenditures...from gifts" and "collections for another government." A gift is something that is bestowed voluntarily and without compensation. It might be arguable that the funds received from CRWCD for the payment of Williams' fees are a gift, but recent State legislation appears to disallow that interpretation. Senate Bill 93-74, which became effective June 6, 1993, addresses the interpretation of Amendment One at the state level. The provisions are not directly applicable to UGRWCD, but would surely be given weight in interpreting Amendment One as applied to districts.

Part of 93-74, which is now § 24-77-102(6) C.R.S. (1973), defines a gift as "something of value which is given to the state voluntarily by any person or entity, regardless of whether such person or entity specifies the purpose or purposes for which such thing of value is to be used." However, that provision goes on to provide that the term gift "does *not* include federal funds or any pecuniary compensation received by the state from any *other*

governmental entity" (emphasis supplied). The latter exclusion appears to preclude us from claiming that the funds received from CRWCD are a "gift" for purposes of Amendment One, since I believe CRWCD is a "governmental entity" in this context.

§ 24-77-102(1) defines "collections for another government" as follows:

" 'Collections for another government' means any tax revenues which are *collected by the state* for the benefit and use of any government other than the state *pursuant to the taxing authority of such other government* and which are passed through to the government for whose use such revenues were collected." (Emphasis supplied.)

I believe that the emphasized words exclude the CRWCD funds from any consideration as "collections for another government" since they were not collected pursuant to the taxing authority of UGRWCD.

WILLIAMS, TURNER & HOLMES, P.C.
ATTORNEYS AT LAW
COURTHOUSE PLACE BUILDING - 200 N. 6th STREET
MAILING ADDRESS - P.O. BOX 338
GRAND JUNCTION, COLORADO 81502-0338
TELECOPIER: (303) 241-3026
TELEPHONE: (303) 242-8282

RECEIVED

MAY 10 1993

COLORADO RIVER WATER
CONSERVATION DISTRICT

FILE # _____

Colorado River Water
Conservation Dist.
c/o Roland Fischer
P.O. Box 1120
Glenwood Springs, CO 81602

April 30, 1993

Tax ID #84-0809508
RE: UPPER GUNNISON -
ARAPAHOE CASE

ITEMIZED STATEMENT

PREVIOUS BALANCE

\$4162.86

PROFESSIONAL SERVICES RENDERED

April, 1993

5	Work on outline of Volume 8
6	Finish outlines of Volumes 8, 9 and 10
9	Outline Volume 11
12	Review notices of appeal; telephone conference with Mr. Bratton re question of opposition to CRWCD
13	Outline Volume 12 and begin Volume 13
14	Continue outline of Volume 13
15	Complete outlines of Volume 13 and 14
21	Work on eliminating exhibits not admitted and telephone conference with Mr. Bratton re CRWCD
23	Outline Volume 15
26	Review Stronk exhibits

TOTAL SERVICES

\$2487.50

DISBURSEMENTS

April, 1993

7	Photocopies
12	Long distance call

54.90
5.15

WILLIAMS, TURNER & HOLMES, P.C.
ATTORNEYS AT LAW
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GRAND JUNCTION, COLORADO 81502-0338
TELECOPIER: (303) 241-3026
TELEPHONE: (303) 242-6262

Colorado River Water

April 30, 1993

RE: UPPER GUNNISON -
ARAPAHOE CASE

Page 2

DISBURSEMENTS (Continued)

20	Photocopies	36.15	
21	Long distance call	6.00	

	2589.70	TOTAL DISBURSEMENTS	\$102.20

		BALANCE DUE	\$6752.56
			=====

PLEASE RETURN DUPLICATE COPY OF STATEMENT WITH REMITTANCE
** THANK YOU **

WILLIAMS, TURNER & HOLMES, P.C.
ATTORNEYS AT LAW
COURTHOUSE PLACE BUILDING - 200 N. 6th STREET
MAILING ADDRESS - P.O. BOX 338
GRAND JUNCTION, COLORADO 81502-0338
TELECOPIER: (303) 241-3028
TELEPHONE: (303) 242-6262

RECEIVED

JUN 07 1993

COLORADO RIVER WATER
CONSERVATION DISTRICT

FILE # _____

Colorado River Water
Conservation Dist.
c/o Roland Fischer
P.O. Box 1120
Glenwood Springs, CO 81602

May 31, 1993

Tax ID #84-0809508
RE: UPPER GUNNISON -
ARAPAHOE CASE

ITEMIZED STATEMENT

PREVIOUS BALANCE \$6752.56

CREDITS

May, 1993

18	Payment on account	846.55
18	Payment on account	1967.06
18	Payment on account	1349.25
	TOTAL CREDITS	----- \$4162.86

PROFESSIONAL SERVICES RENDERED

May, 1993

18	Telephone conference with Mr. Hamburg and review letter by <u>Zili6</u> to <u>Fischer?</u> UCR/Commission
25	Telephone conference with Mr. White and telephone conference with Mr. Bratton
26	Telephone conference with Mr. Bratton
27	Telephone conference with Mr. Hamburg; telephone conference with <u>Mr. Ross;</u> study Upper Colorado River Compact re letter to Commission
28	Prepare comments on Commission powers re letter to Commission

WILLIAMS, TURNER & HOLMES, P.C.
ATTORNEYS AT LAW
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Colorado River Water

May 31, 1993

RE: UPPER GUNNISON -
ARAPAHOE CASE

Page 2

PROFESSIONAL SERVICES RENDERED (Continued)

TOTAL SERVICES \$475.00

DISBURSEMENTS

May, 1993

25	Photocopies	36.15
26	Long distance call	5.50
27	Photocopies	41.85
28	Photocopies	36.90

* 595.40 TOTAL DISBURSEMENTS \$120.40

BALANCE DUE \$3185.10

PLEASE RETURN DUPLICATE COPY OF STATEMENT WITH REMITTANCE
** THANK YOU **

AWW/fi
UPPGUN 10001 4A

WILLIAMS, TURNER & HOLMES, P.C.
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TELEPHONE: (303) 242-6262

RECEIVED

JUL 0 8 1993

COLORADO RIVER WATER
CONSERVATION DISTRICT
FILE # _____

Colorado River Water
Conservation Dist.
c/o Roland Fischer
P.O. Box 1120
Glenwood Springs, CO 81602

June 30, 1993

Tax ID #84-0809508
RE: UPPER GUNNISON -
ARAPAHOE CASE

ITEMIZED STATEMENT

PREVIOUS BALANCE

\$3185.10

PROFESSIONAL SERVICES RENDERED

June, 1993

- 3 Outline transcript Volume 16; telephone conference with Mr. Bratton and telephone conference with Mr. White
- 4 Telephone conference with Mr. Hamburg; two telephone conferences with Mr. Bratton and read draft letter to Commission
- 4 Begin outline of transcript Volume 17
- 7 Telephone conference with Mr. Hamburg re letter to Commission
- 7 Work on outline of Volume 17
- 8 Two telephone conferences with Mr. Bratton and telephone conference with Mr. Mergen re letter to Commission; complete outline for Volume 17 and begin outline of Volume 18
- 9 Telephone conference with Mr. Hamburg and telephone conference with Mr. Bratton re commission letter and work on outline of Volume 18
- 10 Telephone conference with Mr. Bratton and study second letter from Zilis to Lochhead
- 10 Work on Volume 19

WILLIAMS, TURNER & HOLMES, P.C.
ATTORNEYS AT LAW
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Colorado River Water

June 30, 1993

RE: UPPER GUNNISON -
ARAPAHOE CASE

Page 2

PROFESSIONAL SERVICES RENDERED (Continued)

- 11 Finish Volume 19 and Volume 20
 - 14 Conference call re answer to letter to
Commission and other matters; review
U.S. briefs re recreation; letter to
Mr. Bohling re transcripts
 - 16 Review new draft of letter to
commission; telephone conference with
Mr. Hamburg
 - 17 Outline Volume 21
 - 18 Review issues and orders to prepare for
meeting in Denver
 - 22 Attend attorney conference in Denver
 - 23 Work on brief outline
 - 24 Work on outline of Volume 22
 - 24 Review of Record on Appeal in Water
Court, Montrose County Courthouse
 - 25 Finish outline of Volume 22; work on
brief outline
 - 25 Review of Record on Appeal in Water
Court, Montrose County Courthouse
 - 28 Work on outline for brief
 - 28 Compile duplicate Record on Appeal to
conform with index prepared by Water
Court; Bates stamping of documents
 - 29 Work on outline for brief
 - 29 Compile duplicate Record on Appeal to
conform with index prepared by Water
Court; Bates stamping of documents
 - 30 Work on brief outline
 - 30 Compile duplicate Record on Appeal to
conform with index prepared by Water
Court; Bates stamping of documents
-

WILLIAMS, TURNER & HOLMES, P.C.
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Colorado River Water

June 30, 1993

RE: UPPER GUNNISON -
ARAPAHOE CASE

Page 3

PROFESSIONAL SERVICES RENDERED (Continued)

TOTAL SERVICES \$7007.50

DISBURSEMENTS

June, 1993

3	Photocopies	34.35
3	Long distance call	3.50
4	Long distance call	5.25
7	Long distance call	5.90
9	Postage	2.41
11	Photocopies	33.45
23	Photocopies	36.60
23	Travel Expense/Andy Williams - Denver	29.50
23	District Court/Montrose County - copies of Court of Appeal documents	63.40
28	Photocopies	5.85
29	Photocopies	29.70

* 7257.41

TOTAL DISBURSEMENTS

\$249.91

BALANCE DUE

\$10442.51

PLEASE RETURN DUPLICATE COPY OF STATEMENT WITH REMITTANCE
 ** THANK YOU **

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: August 2, 1993

SUBJECT: Agenda Item 6, August 9, 1993, Board Meeting --
Schedule for Development of 1994 Budget.

The following is a suggested schedule for the development of the 1994 Budget:

August 9, 1993 Board Meeting
Board Authorizes Timetable for Development of the 1993 Budget.
Board Designates Its Budget Officer for Preparation of the 1994 Budget.

September 13, 1993 Board Meeting

October 11, 1993 Board Meeting
Staff Presents Proposed Budget and Budget Message to the Board.
Attorney Presents Preliminary Draft of Legal Services Contract to the Board.
Board Requests Revisions to Proposed Budget, Budget Message, and Legal Services Contract.
Board Establishes Budget Hearing Date.
Board Authorizes Notice of Budget to Be Published.

November 8, 1993 Board Meeting
Board Conducts Budget Hearing.
Board Requests Final Revisions to Budget, Budget Message, and Legal Services Contract.

December 6, 1993 Board Meeting (1st Monday of December)
Board Adopts Annual Budget Resolutions.
Board Executes Legal Services Contract.

This schedule would enable the District to meet two principal deadlines: 1) The proposed 1994 budget must be submitted to the board prior to October 15, 1993, and 2) The 1994 budget resolutions must be adopted and the mill levy certified to the County Commissioners by December 15, 1993. I recommend that the above schedule be adopted including any revisions desired by the board at the August 9 meeting.

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: July 27, 1993

SUBJECT: Agenda Item 7, August 9, 1993, Board Meeting --
Proposed Revisions to Bylaws.

Attached is a proposed revision of the bylaws of the Upper Gunnison River Water Conservancy District which addresses changes since the original bylaws were approved in 1959. The goal has been to make the revised bylaws more consistent with our statute and the reorganization decree entered in October, 1991. Relevant information has also been gathered from the statute and court decrees to include in the bylaws so that it is not necessary to look in a number of different places to determine how the board should conduct its affairs.

At the August 9, 1993 board meeting comments will be solicited from board members concerning the proposed revisions. 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.

DRAFT

August 2, 1993

PROPOSED REVISION OF

BY-LAWS

of

UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT

Robert Rade

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.

*Gunnison
division
property
owner
of
county
in
election.*

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

HP
37-45-114
(2)
Colo. Rev. Stat.

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 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.

*Recurred this
Waiver
workshop
see section 7*

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.

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

good

o

Section 8. Attendance. For the purpose of determining board member attendance at meetings as required by the Court Decree in Civil Action No. 5618 entered October 8, 1991, meetings shall include the regularly scheduled annual meeting and other regularly scheduled meetings of the board. Worksessions, special meetings of the board, committee meetings, and other meetings at which board members are in attendance shall not be considered meetings for the purposes of board member attendance. The appointment of any director who misses more than two successive regularly scheduled meetings or misses more than three regularly scheduled meetings per year shall be subject to review by the District Court.

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.

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

Why did you split up with

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.

ATTORNEY

Section 1. The Board of Directors shall, at the (it) (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

good

fiscal year or until (his) a successor is employed. The attorney (He) shall be paid such salary

over

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Why did you not use it?

ARTICLE VII

SEAL

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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.

ARTICLE IV

ATTORNEY

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*Why did you
spit up water*

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.

Term of office

Section 2. Election and Term of Office. 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 special election and that officer shall serve until the election at the annual meeting, and until a successor is elected and qualifies.

by the Board of Directors

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 ~~(it)~~ (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.

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

L. Richard Bratton
John H. McCLOW

John R. Hill, Jr.
Of Counsel

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

August 5, 1993

Board of Directors and Tyler Martineau
Upper Gunnison River Water Conservancy District
Gunnison, Colorado 81230

Dear Susan and Gentlemen:

I am enclosing a Memorandum which we had John Hill prepare in response to the Board's instructions at their last meeting relative to the request by the High Country Citizen's Alliance ("HCCA") to consider some kind of an association with them in conjunction with the proposed public trust, public values and maximum utilization arguments in the appeal in the availability case. As you know, this is a rather complex matter with regard to the technical legal issues, financial implications, and political ramifications. The enclosed memo addresses the technical legal issues.

In addition to the Memo and pursuant to discussions at the last meeting, the Board may also wish to consider other ramifications in determining whether or not to join HCCA in the maximum utilization argument. Among those are:

1. Water user organizations traditionally oppose novel ideas or even theories which threaten or are perceived to conflict with the settled law of prior appropriation. The maximum utilization argument is one of those theories and, as a result, there is a high probability of extensive "political" backlash from other water user organizations. We must balance this against the low probability of success with the maximum utilization argument as evidenced by the attached Memorandum from John Hill.
2. There will be some additional expense required if you decide to participate in the maximum utilization argument. It would be necessary to formulate the specific arguments and craft language which accurately reflects the Board's position resulting in significant attorney time and, therefore, expense. We do not know exactly what that will amount to, but if we decide to pursue it, it will be necessary, partially for legal reasons and partially for political reasons, to spend a considerable amount of time with the other parties involved in the litigation, in particular the Colorado River District, United States, and Crystal

BRATTON & McCLOW

Board of Directors
Upper Gunnison River Water Conservancy District
August 5, 1993
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Creek Homeowners, in addition to HCCA, and possibly entities who are not now parties. I can see where this could easily run as high as \$10,000.00 or more of additional expense.

3. If the Colorado Supreme Court would accept the maximum utilization argument, it would establish a precedent which could affect the District's ability and flexibility in its role as an appropriator and holder of water rights. We have devoted very little attention to this aspect of the issue and this should be discussed by the Board before it makes a final decision.
4. HCCA has suggested that one of the approaches they might take before the Supreme Court is that they should only consider the maximum utilization argument if they determine to remand the case on other grounds, i.e., a "backup" argument. While there is no way to predict the outcome of the case with any certainty because of its complexity, it appears at this time that it is unlikely the court will not find other grounds upon which to affirm Judge Brown's decision, i.e., it is likely, but there is no certainty, that Judge Brown's decision will be affirmed. If that is the case, then such an approach would be unnecessary.

I know that you want to make every effort to be cooperative with HCCA's offer, as do we. If any of you have any questions about either the Memo or this letter prior to the meeting, please feel free to call either me or John Hill as he will be in the office through next Monday and will attend the Board meeting on Monday evening.

Very truly yours,



L. Richard Bratton

LRB:ddc
Enclosure

MEMORANDUM

Date: August 5, 1993
From: John R. Hill, Jr.
To: Board of Directors, Upper Gunnison River Water Conservancy District
Subject: Public Trust, Public Values and Maximum Utilization

This responds to the Board's request for a memorandum on the legal ramifications of the Public Trust Doctrine and associated "public values" theories. The High Country Citizens Alliance and associated "environmental" parties (hereafter collectively "HCCA") appealed the water judge's order eliminating the Public Trust, public values and maximum utilization issues from consideration in the case. Apparently, HCCA originally intended to argue that one or more of these "doctrines" or "theories" are applicable to limit Arapahoe County's ability to appropriate water from the Gunnison River drainage for export to the East Slope. We now understand, through conversations with Bruce Driver, counsel for HCCA and others, that HCCA will confine its argument to the doctrine of maximum utilization. Specifically, that the doctrine of maximum utilization applies to prevent or limit appropriation of water beyond that required to sustain the public instream values. Furthermore, we understand that HCCA will argue that the Supreme Court need not address even the maximum utilization doctrine if it finds another ground upon which to affirm the water court. HCCA has asked the District to join in the maximum utilization argument. Accordingly, this memorandum addresses only the maximum utilization doctrine as a basis for limiting an appropriation of water to provide for instream values.

Summary

The Colorado Constitution guarantees the right to appropriate the unappropriated water of the natural streams of Colorado. In Colorado, rights in surface water are established by diversion and application to beneficial use. The courts merely confirm preexisting rights -- they do not "grant" rights. The policy of maximum utilization arose in a case involving the administration of the conjunctive use of ground and surface water. The legislature codified the policy as integration of the appropriation, use and administration of ground and surface water in such a way as to maximize the beneficial use of all of the waters of the state. In several cases discussed in this memorandum, the Colorado Supreme Court has stated that the policy of maximum utilization requires a balancing of all factors including environmental. This memorandum concludes that the courts do not have the authority to limit or deny an appropriation by considering "environmental" factors other than appropriations of minimum stream flows by the Colorado Water Conservation Board.

Colorado Law Pertaining to Appropriations

In order to place the maximum utilization theory in perspective, it will be helpful to review briefly the law of Colorado pertaining to appropriations of water. Colorado has followed the Doctrine of Prior Appropriation from the very beginning. Coffin v. Left Hand Ditch Co., 6 Colo. 443 (1886). The riparian doctrine was never applicable. Id. at 450. And, of significance in this case involving a trans-basin diversion, the right to water acquired by priority of appropriation is in no way dependent on the place of beneficial use. Id. at 449.

Two sections of the Colorado Constitution pertain to appropriation of water. Article XVI, § 5 provides that:

The water of every natural stream, not heretofore appropriated, within the state of Colorado, is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the state, subject to appropriation as hereinafter provided.

And Article XVI, § 6 provides in pertinent part:

The right to divert the unappropriated waters of any natural stream to beneficial use shall never be denied.

Thus, the "ownership" of unappropriated water remains in the state until some person diverts it and applies it to a beneficial use. Wyatt v. Larimer & Weld Irrigation Co., 1 Colo. App. 480, 29 P. 906 (1892) rev'd on other grounds, 18 Colo. 298, 33 P. 144 (1893).

In Colorado, an appropriation consists of diversion of water and application to beneficial use. Denver v. Northern Colorado Water Conservancy District, 130 Colo. 375, 276 P.2d 992 (1954); Farmers' Highline Canal & Reservoir Co. v. Southworth, 13 Colo. 111, 21 P. 1028 (1889). Unlike every other appropriation doctrine state, Colorado requires no permit to appropriate surface water. The Colorado courts do not award or give water rights -- a Colorado court decree merely confirms a preexisting right. Cline v. Whitten, 150 Colo. 179, 372 P.2d 145 (1962); see Cresson Consolidated Gold Mining & Milling Co. v. Whitten, 139 Colo. 273, 338 P.2d 278, 283 (1960) ("a decree in a water adjudication is only confirmatory of pre-existing rights; the decree does not create or grant any rights; it serves as evidence of rights previously acquired"). Thus, once a person has diverted water and applied it to a beneficial use, he has a water right. A water right is property protected by the constitutional guarantees relating to property. Wyatt, supra.

In addition to "absolute" water rights described above, Colorado recognized the right of a would-be appropriator to relate his priority back to the "first step" of an appropriation. Sieber v. Frink, 7 Colo. 148, 2 P. 901 (1883). The traditional "first step" of a conditional appropriation consists of two separate and distinct elements: (1) An intent to appropriate

water for application to beneficial use; and (2) an overt manifestation of that intent through physical acts sufficient to give notice to third parties. Denver v. Northern Colorado Water Conservancy District, 276 P.2d at 1001 (1954); City of Aspen v. Colorado River Water Conservation District, 696 P.2d 758 (Colo. 1985); Rocky Mountain Power Company v. Colorado River Water Conservation District, 646 P.2d 383, 357 (Colo. 1982); Fruitland Irr. Co. v. Kruemling, 62 Colo. 160, 162 P. 161 (1916). In 1979, the Colorado General Assembly enacted the following new provision, adding it to the section of the 1969 Act entitled "[s]tandards with respect to rulings of the referee and decisions of the water judge":

No claim for a conditional water right may be recognized or a decree therefor granted except to the extent that it is established that the waters can be and will be diverted, stored, or otherwise captured, possessed, and controlled and will be beneficially used and that the project can and will be completed with diligence and within a reasonable time. S.B. 481, C.R.S. § 37-92-305(9)(b).

This "can and will" provision has been applied by the courts to impose a new requirement in addition to the traditional "first step." Prior to the enactment of § 39-92-305(9)(b), the courts allowed conditional appropriators to "wait and see" if water would become available for appropriation or financing arrangements or other elements of project feasibility would be resolved. Southeastern Colorado Water Conservancy District v. City of Florence, 688 P.2d 715 (Colo. 1984).

To summarize, an "absolute" water right exists when water is diverted from a natural stream and applied to beneficial use. A conditional water right is created when the "first step" of an appropriation has been completed and the applicant demonstrates in court that it "can and will" complete the appropriation within a reasonable time. No permit or approval of government agency or official is required to appropriate surface water. The courts merely confirm by decree that an appropriation has been completed in which case the decree will be "absolute." Where the first step has been completed and the "can and will" requirement has been satisfied, a "conditional" decree will be entered. 9

Maximum Utilization

The concept of maximum utilization arose in Fellhauer v. People, 167 Colo. 320, 447 P.2d 986 (1968). The Colorado Supreme Court stated that:

It is implicit in [Art. XVI §§ 5 and 6 of the Colorado Constitution] that, along with vested rights, there shall be maximum utilization of the water of this state. As administration of water approaches its second century the curtain is opening upon the new drama of maximum utilization and how constitutionally that doctrine can be integrated into the

law of vested rights. We have known for a long time that the doctrine was lurking in the backstage shadows as a result of the accepted, though oft violated, principle that the right to water does not give the right to waste it.

Id. at 993-94. Fellhauer involved administration of the conjunctive use of ground and surface water in the Arkansas River. The Court used the term "maximum utilization" in the sense of maximizing diversion for "beneficial" as opposed to "wasteful" use. Consequently, that case does not support the argument that a water court has the authority to deny or limit an appropriation based upon instream values or other environmental considerations.

The General Assembly codified the policy of maximum utilization in the Water Right Determination and Administration Act of 1969 as follows:

It is hereby declared to be the policy of the state of Colorado that all water in or tributary to natural surface streams . . . originating in or flowing into this state have always been and are hereby declared to be the property of the public, dedicated to the use of the people of the state, subject to appropriation and use in accordance with sections 5 and 6 of article XVI of the state constitution and this article. As incident thereto, it is the policy of this state to integrate the appropriation, use, and administration of underground water tributary to a stream with the use of surface water in such a way as to maximize the beneficial use of all of the waters of this state.

103(4) - Beneficial use does not include waste.

C.R.S. 37-92-102(1).

It is clear from the plain language of both the Supreme Court and the General Assembly that the policy of maximum utilization is directed to the conjunctive use of ground and surface water so as to maximize the beneficial use of all of Colorado's water. The policy of maximum utilization as codified by the General Assembly contains not even the remotest suggestion that a court has the authority to deny or limit an appropriation because of adverse impact on the environment where the applicant has otherwise satisfied the requirements of an absolute or conditional appropriation. Were a court to do so it would, in effect, divest a right vested under settled Colorado law.

Despite the origin of the policy of maximum utilization in the conjunctive use of ground and surface water context and the plain language of the statute codifying the policy, HCCA apparently intends to argue that language in several cases supports the proposition that the so-called "doctrine" of maximum utilization provides a water court the authority to deny or limit an appropriation to protect instream public values.

The first case is Southeastern Colorado Water Conservancy District v. Shelton Farms, Inc.,

187 Colo. 181, 529 P.2d 1321 (1974). Shelton Farms involved a claim to water "salvaged" from evapotranspiration by cutting phreatophytes along the banks of the Arkansas River. The applicant, Shelton Farms, claimed the right to the "salvaged" water free from the priority system. The water court entered a decree for 131 acre-feet free from the call of the river. 529 P.2d at 1323. Southeastern appealed and the Colorado Supreme Court reversed. The Court relied upon its earlier cases on "salvaged" and "developed" water. "Developed" water is water not previously part of the river system and is free from the priority system. "Salvaged" water is water in the river system or its tributaries which would ordinarily go to waste.¹ "Salvaged" water is subject to call by prior appropriators. The Court noted that the trees, which didn't have to seek any water right, just "sucked up" the water from prior appropriators and that Shelton Farms was now taking water from the trees and also the prior appropriators. The Court stated that to grant Shelton Farms a water right would be a windfall which cannot be allowed, "for thirsty men cannot step into the shoes of a 'water thief' (the phreatophytes)." *Id.* at 1325. Responding to Shelton Farms argument that no one would be injured, and that the policy of maximum utilization would be advanced, the Court stated that injury occurred long ago when the water consuming trees "robbed" appropriators of water they would otherwise have received. Referring to C.R.S. § 37-92-306 (the postponement doctrine), the Court stated its holding as follows:

This section cannot be ignored, as it is part of [the Water Right Determination and Administration Act of 1969]. There is nothing in the plain language of the statute to exempt appellees' plan from the priority date system. Thus, we hold that all water decrees of any kind are bound to the call of the river, subject to any specific exemptions found within the law. To hold any other way would be to weaken the priority system, and create a super class of water rights never before in existence.

Id. at 1326. Thus, the Court disposed of the appeal by applying fundamental and settled rules of the Doctrine of Prior Appropriation.

Then, the Court went on to address the policy of maximum utilization:

We are not unmindful that the statute speaks of the policy of maximum beneficial and integrated use of surface and subsurface water. But efficacious use does not mean uplifting one natural resource to the detriment of another. The waters of Colorado belong to the people, but so does the land. There

¹In other words, "salvaged" water is water which has been nonbeneficially consumptively used (or at least perceived so) such as phreatophytes and which is not available for beneficial use. The question in cases like Shelton Farms is who gets to use the water "salvaged" by eliminating the phreatophytes?

must be a balancing effect, and the elements of water and land must be used in harmony to the maximum feasible use of both. As part of the same [1969 Act], [the legislature] points out that ' . . . beneficial use' shall also include the appropriation by the State of Colorado in the manner prescribed by law of such minimum flows between specific points or levels for and on natural streams and lakes as are required to preserve the natural environment to a reasonable degree.'

529 P.2d at 1326-27. The Court referred to the Colorado Water Conservation Board's (CWCB) authority to appropriate minimum stream flows to protect the environment to a reasonable degree as requiring a balancing between use of the land and water. As previously pointed out, the Court based its holding upon prior appropriation principles. Accordingly, the discussion of "maximum utilization" was not necessary to the Court's decision on the issues and is, therefore, dictum. Dicta are gratuitous statements by courts and are not regarded as precedent. Even if the above quoted statement is not dictum,² it does not support the proposition that a water court has the authority to deny or limit an appropriation by "balancing" the need to protect the environment with the need to divert water for beneficial use. The fact that the General Assembly has empowered the CWCB to appropriate instream flows does not give a court license to "balance" anything. If the CWCB has exercised its exclusive authority on a given stream and appropriated a minimum stream flow, that water is not available for appropriation. Otherwise, the applicant has a constitutional right to appropriate the unappropriated waters of the natural streams of the state. No "balancing" other than that effected by the CWCB appropriation is constitutionally permissible.

The next case to address "maximum utilization" is Alamosa-La Jara v. Gould, 674 P.2d 914 (Colo. 1984). This case involved rules and regulations made by the State Engineer limiting the use of surface and ground water in the San Luis Valley. The specific issue was the application of the "reasonable means of diversion" rule to require surface appropriators to use wells as a means of satisfying their appropriations.³

²Apparently, the Colorado Supreme Court does not regard the statements as dictum because it refers to the discussion as a "separate strand of analysis" in R.J.A. Even so, the Court's reasoning is flawed and it is doubtful if the Court would adhere to it if the issue were fully briefed and argued.

³The "reasonable means of diversion" rule originated in Schodde v. Twin Falls Land and Water Co., 224 U.S. 107 (1912) and was applied to ground water diversions through wells in Colorado Springs v. Bender, 148 Colo. 458, 366 P.2d 552 (1961). In essence, the rule is that each diverter on a water course must have a reasonable means of diversion and no appropriator can command the whole flow of the stream in order to take the portion to which he is entitled. It is codified at C.R.S. § 37-92-102(2)(b) and regarded as a component of or at least closely related to the policy of maximum utilization.

In remanding the case to the State Engineer, the Court stated:

We note that the policy of maximum utilization does not require a single-minded endeavor to squeeze every drop of water from the valley's aquifers. Section 37-92-501(2)(e) makes clear that the objective of "maximum use" administration is "optimum use."⁴ Optimum use can only be achieved with proper regard for all significant factors, including environmental and economic concerns. See section 37-92-102(3), C.R.S. (recognizing the need to correlate the activities of mankind with reasonable preservation of the natural environment). . .

674 P.2d at 935. Once again, the Court has cited the CWCB's exclusive authority to appropriate instream flows as grounds for considering environmental factors. Also once again, the above-quoted language does not authorize a water court to deny or limit an appropriation based upon the court's or a party's notion of the need to maintain instream flows. It simply refers to the CWCB's exclusive authority to appropriate minimum stream flows to protect the environment to a reasonable degree. If the CWCB has appropriated a minimum stream flow and if it is senior, it must be considered by the court in determining water availability. As pointed out above, this is the only permissible balancing.

In another case decided in 1984, the Colorado Supreme Court again discussed the policy of maximum utilization. R.J.A., Inc. v. The Water Users Association of District No. 6, 690 P.2d 823 (Colo. 1984) involved a claim to a developed water right by removal of a 3,000 year old deposit of peat moss. The applicant sought to distinguish Shelton Farms on the basis that the peat moss' consumption of water occurred before any appropriations and should not be regarded as a "water thief." The water court denied the application and the Colorado Supreme Court affirmed. The Court referred to its decisions in Shelton Farms and Alamosa-La Jara, reiterating the language from those cases previously discussed. After noting that alteration of natural conditions and vegetation in order to save water carried with it the potential for adverse effects on soil and bank stabilization, soil productivity, wildlife habitat, fisheries production, water quality, watershed protection and the hydrologic cycle, the Court stated that whether to recognize such rights

is a question fraught with important public policy considerations. As such, the question is especially suited for resolution through the legislative process.

690 P.2d at 828. Indeed, if not a constitutional amendment.

⁴C.R.S. § 37-92-502(2)(e) states: "All rules and regulations shall have as their objective the optimum use of water consistent with preservation of the priority system of water rights." (emphasis added).

And then, speaking of the General Assembly's approach to the issue, the Court noted:

In the 1969 Act, the General Assembly has used priority of appropriation as the sole criterion for ranking rights to tributary water. As we recognized in Shelton Farms, the general legislative policy of maximizing beneficial and integrated use of surface and subsurface water must be implemented with a sensitivity to the effect on other resources. The General Assembly has addressed the accommodation of the policy of maximum utilization of water and the policy of preservation of natural resources, but only in a limited way. It has expressed its concern that maximum utilization of water be balanced by preservation of the natural environment "to a reasonable degree" by authorizing appropriations on behalf of the people of the state of Colorado for that latter purpose.

690 P.2d at 828. (emphasis added). Note that the Court acknowledges again that the policy of maximum utilization is directed to conjunctive use of surface and ground water, which is not an issue in the Arapahoe County case. Also, of most significance, is the recognition that the "balancing" is achieved through appropriations by the CWCB.

Then, after noting that the General Assembly revised the definition of "plan for augmentation" to affirm that the salvage of tributary waters by eradicating phreatophytes does not provide an increased supply of water that may be utilized to support a plan for augmentation, the Court concluded:

These partial approaches to the problem reflect a cautious step-by-step legislative approach in addressing the issues. It is noteworthy, however, that in neither of these statutes has the legislature deviated from the basic priority system for tributary water when engrafting refinements upon the system.

690 P.2d 827-28. (emphasis added). Finally, the Colorado Supreme Court has acknowledged that it is the role of the legislature to "engraft" refinements on the priority system.

It is clear that Shelton Farms, Alamosa-La Jara and R.J.A. do not support the proposition that a Colorado water court has the authority to deny or limit an appropriation based upon environmental considerations. The only authority any of the opinions cite for consideration of the environment is the CWCB's authority to appropriate minimum stream flows to a reasonable degree. That authority is vested exclusively in the CWCB. C.R.S. § 37-92-102(3); City of Thornton v. City of Fort Collins, 830 P.2d 915 (Colo. 1992).

As discussed above, in Colorado, an absolute right to surface water is created by diverting water and putting it to beneficial use. The water court only confirms a preexisting right by decree. Thus, an argument that the policy of maximum utilization requires or even permits a court to deny or limit the right already created by diversion and application to beneficial use flies in the face of the very foundation of Colorado's prior appropriation system. It is no different with a conditional appropriation. One who has satisfied the "first step" and the "can and will" requirement has a conditional water right. It is not for the courts to deny or limit the right through "environmental" balancing beyond that achieved by CWCB appropriation.⁵

not arguing this

In view of the foregoing discussion, I do not believe that the Colorado Supreme Court will apply the policy of maximum utilization to limit or deny an appropriation for "environmental" reasons.

⁵Nothing in this memorandum should be understood as taking the position that a water court cannot consider the environmental feasibility of a proposed project as a part of the "can and will" analysis. Federal and state environmental laws may be significant obstacles to completion of a proposed water project. However, denial of a conditional water right on "can and will" grounds is not at all the same as denying or limiting the right for "environmental" reasons by applying the policy of maximum utilization or the Public Trust Doctrine.

MEMORANDUM

Date: August 10, 1993
From: John R. Hill, Jr
To: Board of Directors
Upper Gunnison River Water Conservancy District
Subject: Protection of Natural, Socioeconomic and Cultural
Environments.

This responds to a request that the Board be advised of the existence of any laws that would allow the protection of natural and socioeconomic environments. I understand the question to be posed in the context of Arapahoe County's attempt to divert water from the Taylor and East Rivers and their tributaries. The answer to the question is that there is no single comprehensive state or federal law protecting natural and social environments. There is a plethora of federal law dealing with individual components of the natural and social environments. These laws are generally triggered by an application for a federal regulatory or land use permit. Should the Arapahoe County project proceed any further, i.e. Arapahoe is successful in its appeal which is not very likely, these laws will come into play. In the interest of economy, I will simply relate to you what I know from almost 20 years of experience with water projects and the environment. I have not undertaken any specific research for this memorandum. Should you want to focus on a specific topic, I can certainly do that. I can tell you at this point, however, that there is no "magic bullet."

State Law

Colorado has laws that protect water and air quality. These laws regulate the discharge of pollutants into the air and water. In that sense, they do protect the natural environment. Because their focus is on discharges into the air and water, those laws do not offer any direct means of protecting the natural and socioeconomic environments of the Upper Gunnison River Basin. As discussed in my memorandum on maximum utilization dated August 5, 1993, the Colorado Water Conservation Board (CWCB) does have the authority to appropriate minimum stream flows "to protect the environment to a reasonable degree." C.R.S. § 37-92-102(3). The CWCB has the exclusive authority to make such appropriations. In practice, the environment is limited to the aquatic environment. While I have not undertaken to investigate the legislative history of the CWCB's authority, I believe that the legislative intent was to protect the aquatic environment from a biological viewpoint. This law could also arguably extend to recreational use of the streams, such as boating, and in that sense might be used to protect the socioeconomic environment of this region to

that limited degree.

The Colorado Land Use Act, could also be applied to protect the natural, social and economic environments through County regulations. Again, I have not undertaken any independent research on Gunnison County regulations and how they might be applied specifically to this issue. They certainly would be an issue as part of the "can and will" requirement of C.R.S. § 37-92-305(9)(b) should the Arapahoe County case proceed to Phase II.

As Arapahoe County itself acknowledged in the pretrial proceedings, it would have to obtain numerous permits from federal, state and local government agencies. Had the trial progressed into the next phase, Arapahoe County would have had to make some showing that it had a specific plan to deal with the issues raised in getting those permits. Most of the laws are procedural rather than substantive. There are several substantive federal laws which I will discuss briefly below.

Federal Law

It is important to note the distinction between substantive and procedural law. Substantive laws or regulations require certain criteria to be applied before certain actions can be permitted. For example, the National Environmental Policy Act (NEPA) contains the environmental policies and goals for the Nation. NEPA is procedural rather than substantive. It requires federal agencies to take a "hard look" at the environmental consequences of their actions. It is not a "project stopper," however. Federal courts may declare an environmental impact statement (EIS) inadequate and enjoin a project until the statement is adequate. Once the agency has procedurally complied with NEPA, however, the federal courts are powerless to stop a project. For example an adequate EIS might state that construction of Arapahoe's project will destroy the aquatic environment, render hundreds homeless, increase crime, and many other horrors. This alone will not stop the project. What would stop or cause the project to be modified, would be the permitting agencies' decisions not to permit the project or to impose conditions on it based upon the environmental impacts discussed in the EIS.

An example of a substantive requirement is found in the guidelines required to be applied by the Corps of Engineers in determining whether to issue a permit under § 404 of the Clean Water Act. The guidelines contain criteria designed to fulfill the purposes of the Act which are to restore and maintain the chemical, physical and biological integrity of the Nation's waters. One of the provisions of the guidelines prohibits permitting the discharge if there are less environmentally damaging practicable alternatives. This provision is largely responsible for "stopping" Two Forks Dam. The diversion structures contemplated by Arapahoe involve discharges of fill

material into waters of the United States and would require a § 404 permit. This could come into play in one of two ways. First, should there be a remand (not likely) of the case to the water court, the court could find that Arapahoe cannot satisfy the "can and will" requirement because it did not consider alternatives. The other way would be for the Corps of Engineers to deny the permit because there are less environmentally damaging alternatives.

Another example is the Endangered Species Act (ESA). If the project jeopardized the continued existence of an endangered species or adversely modified or destroyed critical habitat, no federal agency could lawfully permit the project. The four endangered fish in the Colorado River drainage will undoubtedly trigger consultation under the ESA. Simply put, the consultation process is to determine if the project will jeopardize, etc. Of course, if some graduate student were to find an endangered plant or animal species, say in the vicinity of one or more of the diversion points, that would contribute significantly to stopping the Arapahoe project.

There are federal laws protecting the cultural environment, the National Historic Preservation Act for example. In most instances, cultural resources can be relocated and they rarely stop projects.

I know of no law that protects the socioeconomic environment. Such impacts must be addressed in the NEPA process and considered by the permitting agencies to the extent that they have authority to do so. For example the Corps of Engineers may not grant a § 404 permit if to do so would be contrary to the public interest. The Corps' public interest review is an all-encompassing general balancing process. Should Arapahoe County ever get to the point of applying for § 404 permits, most any impact you could imagine would be appropriate for consideration in the Corps' public interest review. Participating in the NEPA process and agency permitting processes is a time consuming and expensive undertaking but that is the only way I know of to look after the natural and social environment.

Conclusion

This is by no means a complete discussion. However, it should serve to illustrate that there is no single comprehensive law to protect the natural and socioeconomic environment. None of the applicable laws will be triggered until Arapahoe applies for a permit. Then, the closest thing to a comprehensive evaluation will be the NEPA and Corps Engineers permitting process. For now, the most direct and effective way to protect these resources is to continue to oppose Arapahoe's water rights application. Should those efforts not be successful, a carefully considered and focused participation in selected federal permitting

processes offers the best prospects for protecting the natural and socioeconomic environments.

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

L. Richard Bratton
John H. McClowJohn R. Hill, Jr.
Of CounselDenver Office:
999 Eighteenth Street, Suite 1350
Denver, Colorado 80202
Telephone: (303) 295-3613
Telecopier: (303) 294-9933

August 6, 1993

VIA FAX NO. 641-6727Tyler Martineau, Manager
Upper Gunnison River Water Conservancy District
275 South Spruce Street
Gunnison, Colorado 81230

RE: UGRWCD Directors' Liability Bond

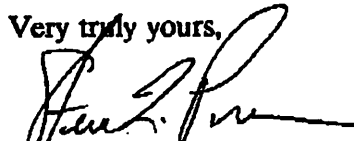
Dear Mr. Martineau:

Please find herewith transmitted the application form used by the Upper Arkansas Water Conservancy District in providing Director liability bonds. The bond is a Public Employee Position Schedule Bond.

I have discussed the type of bonds used for Director liability with the following Districts: Colorado, Rio Grande and the Upper Arkansas. Each District uses a bond that is substantially the same, based upon my conversations with them. The bond used by the Upper Arkansas appears to satisfy both the statute and the courts original organizational order for the UGRWCD. As you can see, the financial disclosure requirements are very limited.

If you have any questions, please do not hesitate to give me a call.

Very truly yours,


Steven L. PiersonSLP:ddc
Enclosure

Western Surety Company

Individual
Partnership
Corporation

Public Official 1
Agency 2
Produce 3
Referee, Receiver, etc. 4
Survivor 5
License 6
Real Securities 7

Form 10 APPLICATION FOR BOND—ANY KIND

Applicant (For partnership, give full names of partners and trade names) Please print _____ Taxpayer I.D. or S.S. # _____ Age _____

Address _____ (Street and Number) _____ (City) _____ (State) _____ (Zip) _____

Occupation or business _____ How long so engaged? _____

Type of Bond **Public Emp. Position Sel.** Amount of Bond **6** Effective Date _____

Complete name and address of Obligor _____

FINANCIAL STATEMENTS
Check applicable section on the reverse to see whether a financial statement is necessary.

ASSETS		LIABILITIES	

Gross Sales - Two Years Ago _____ Last Year _____ Net Income - Two Years Ago _____ Last Year _____

INDEMNITY

The undersigned applicant and indemnitor hereby request Western Surety Company (the "Company") to become surety for the above bond. The undersigned hereby certify the truth of all statements in the application, authorize the Company to verify this information and to obtain additional information from any sources, and jointly and severally agree:

- To pay the usual premiums, including renewal premiums.
- To completely INDEMNIFY the Company from and against any liability, loss, cost, attorney's fees and expenses whatsoever which the Company shall at any time sustain as surety or by reason of having been surety on this bond or any other bond issued for applicants, or for the enforcement of this agreement, or in obtaining a release or evidence of satisfaction with such bonds.
- To furnish the Company with satisfactory and conclusive termination evidence that there is no further liability on this bond or any other bond issued for applicant.
- Upon demand by the Company for any reason whatsoever to deposit certain funds with the Company as to succeed in the event that a claim against the Company by reason of such suretyship.
- That the Company shall have the right to handle or settle any claim or suit in great faith. An itemized statement of loss and expense incurred by the Company, sworn to by an officer of the Company, shall be prima facie evidence of the fact and extent of the liability of the undersigned to the Company.
- That the Company may decline to become surety on any bond and may cancel at any time any bond without cause and without any liability which might arise therefrom.
- That the Company shall, without reserve, have the right to stop the payment, terms and conditions of any bond issued by the Company and all agreements shall apply to any such altered bond.
- That if a contract of performance bond is issued hereunder, the undersigned hereby assigns to the Company any claims now due or hereafter becoming due under the contract, including all deferred payments and retained percentages, supplies, tools, plants, equipment and materials due or paid on the contract, and
- At the Company's discretion, the indemnity agreement shall be governed in all respects by the laws of the State of South Dakota and the undersigned applicant and indemnitor consent to the jurisdiction of the courts of the State of South Dakota and the United States District Court for the District of South Dakota in all actions or proceedings arising from or relating to this indemnity agreement.
- That this indemnity may be cancelled at any subsequent liability by an independent upon written notice to the Company at Sioux Falls, South Dakota 57102, effective ten (10) days after the earliest date that the same shall have been cancelled all bonds to have the applicant.

Signed this _____ day of _____, 19_____

Agency _____
Agent's Code _____
Address _____
City _____ State _____ Zip _____

AGENT'S RECOMMENDATION

Your recommendation will be helpful and may be the difference between getting a refusal or having the bond written. Tell us what you think is possible in this applicant.

AGENT: Check here if this correspondence was previously faxed to WSCO. _____
Form 10-11-89 ©WSCO 1989

PUBLIC

Net Worth: \$	Date:	Term of Office:
------------------	-------	-----------------

FIDELITY BOND

Annual Salary	Are bank accounts reported for someone not authorized to deposit or withdraw from the bank? <input type="checkbox"/> Yes <input type="checkbox"/> No	Ever discharged from any employment? <input type="checkbox"/> Yes <input type="checkbox"/> No Why?
Last position held? Reason for leaving?	How long in present position?	Applicant's net worth: \$

PROBATE BOND

Name of deceased (Ward)	Date of death	Date of appointment
Name and address of attorney (if none, do not write the bond; submit it to our underwriters.)		Assets of estate or trust (describe)
Applicant's net worth: \$		Applicant's net worth: \$
Are guardianship funds to be used for support of minor? <input type="checkbox"/> Yes <input type="checkbox"/> No		What is the source of the guardianship funds? (If an insurance policy, attach a copy of the policy or a copy of the order authorizing monthly expenditures.)
Who are the heirs of this estate?		
Will any business of the estate be continued by fiduciary? <input type="checkbox"/> Yes <input type="checkbox"/> No		Is this bond required on the demand of an interested person? <input type="checkbox"/> Yes <input type="checkbox"/> No
Name and address of court:		
What is the applicant's experience in handling fiduciary responsibilities?		

HAVE PRINCIPAL SIGN THIS APPLICATION.

Plaintiff	Name and address of principal's attorney
Defendant	Name and location of Court
	Applicant's net worth: \$

LICENSE AND

Name and location of Court	Name of Defendant
Name and address of attorney	
Explain purpose of bond (submit copy of relevant documents)	

HAVE PRINCIPAL SIGN THIS APPLICATION.

Net worth: \$	Serial Number and description (Please submit a copy or sample of the form it was on.)	Date of instrument
	Describe manner of loss	
If registered, in whose name?		



Western Surety Company

HOME OFFICE:
 P.O. Box 5077
 Sioux Falls, South Dakota 57117-5077
 (800) 331-6033
 339-0160 in SD
 FAX 1 (605) 335-0357

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: August 3, 1993

SUBJECT: Agenda Item 9, August 9, 1993, Board Meeting --
Taylor Park Water Management Agreement

The second negotiating session for the development of the Taylor Park Water Management Agreement was held on July 15. The U. S. Bureau of Reclamation (USBR) continued the first read-through of the March 1, 1993 draft of the agreement from where they left off on June 24. The USBR also responded to each of the issues raised in our memorandum to the board dated June 4, 1993.

The following major points were raised by the USBR during the course of the meeting:

- 1) They will provide language in the agreement that makes it clear that the 1982 Reclamation Reform Act does not apply. *sk*
- 2) The United States will probably be unable to agree to language that would require mutual consent of all the parties in order for the agreement to be terminated.
- 3) The USBR made a proposal that the payment for multi-purpose (irrigation, fishery, and recreation) water could be broken into two components:
 - a) The first component would be a nominal annual administrative charge which would be a lump-sum amount to paid every year regardless of whether any water was used by the district.
 - b) The second component would be a per acre-foot charge for water actually used in any one year. The amount of the charge would be based upon the level of actual benefits received.

*?
No charge
for fishery
and rec.*

*(a)
factored into
cost of
water for
irrigation*

This approach represents a significant change for the USBR in that the district and/or water users would only be paying for water actually used, and there would be no minimum amount of water to be purchased each year.

Enclosed is a revised version of the proposed contract prepared by the USBR which incorporates many changes requested by the Upper Gunnison District. The new language to be inserted in the proposed agreement to address payment for water has not been completed by the USBR as of today but may be available for our meeting on August 9.

The next negotiating session for the Taylor Park Water Management Agreement will be held on August 12, 1993, at 10:00 a.m. at the Multipurpose Building in Gunnison.

Enclosure

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, is 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, to be used for recreational purposes, including fishery and wildlife, while the water is impounded in the reservoir, and controlled at times and in quantities calculated to enhance the fishery and recreational uses of 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 ruled that 19,200 acre-feet of said refill right**

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for 106,230 acre-feet decreed for fishery and recreation purposes may also be used for irrigation 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 having a conditional decree (as part of the 61,530 acre-feet); and,

(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 releases of water from Taylor Park Reservoir and the regulation of releases at the Aspinall Unit in order to benefit the Gunnison District, the Association, and the Colorado District; the

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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 and releases from Taylor Park Reservoir and the Aspinall Unit, that have occurred since execution of the 1975 agreement, are managed in a manner to provide a means to coordinate, account for, and protect the water stored and controlled for the purposes of enhancing recreation, fishery, and wildlife benefits as well as historic irrigation resulting from the refill right.

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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 the production and raising of agricultural crops, the raising of livestock and other beneficial uses.

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

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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 Taylor Park Reservoir by 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 affects due to the 1975 agreement and the April 16, 1990 agreement.

e. Any one party may terminate 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.

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 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

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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.

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 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

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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. Any such releases shall be first charged against any water in storage under the refill right.

RATE AND METHOD OF PAYMENT

4. a.

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 a minimum amount each year of ____ acre feet of refill water to be used by the Gunnison District for irrigation and recreation and fishery purposes. 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.

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

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water release schedule for the upcoming period, the United States decision regarding releases shall prevail until a satisfactory water release schedule is developed, or the dispute can be resolved.

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 a general obligation 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 other causes, 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 Gunnison District pursuant to this agreement, and in such an 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

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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. 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.

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
P.O. Box 11568
125 South State Street

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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

**THE UNCOMPAHGRE VALLEY WATER
USERS ASSOCIATION**

ATTEST:

Secretary

By _____
President

**THE UPPER GUNNISON RIVER WATER
CONSERVANCY DISTRICT**

ATTEST:

Secretary

By _____
President

**THE COLORADO RIVER WATER
CONSERVATION DISTRICT**

ATTEST:

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

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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,

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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.

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 *TMA*

DATE: August 6, 1993

SUBJECT: Agenda Item 12, August 9, 1993, Board Meeting --
Miscellaneous Matters - Planning Model Computer.

The 1993 budget for the Upper Gunnison River Water Conservancy District includes funds for the purchase of a computing system which will be capable of running the Gunnison Basin Planning Model. The computer will also be used for the Water Accounting Spreadsheet being developed for the Gunnison Basin and for word processing. My expectation is that the planning model will be available for the District to begin testing in the next month or so, therefore, I have obtained proposals from several local computer vendors for the computing system. I am presently considering proposals from:

Alpine Computer Solutions, Crested Butte
The Computer Store, Gunnison

The proposals received from each vendor were different in terms of the amount of service, support, and training that would be included in the package price for the system. Therefore, in evaluating the proposals I made significant dollar adjustments to each proposal to make them as equivalent as possible. After making the adjustments the total package price for each of the proposals was within \$100.00 of the others. Based upon consideration of a range of factors including the proposed equipment, service, training, and other support I am planning to select the Computer Store to provide the proposed computer system. The cost for the system including hardware and software will be \$ 4,990.00.

Reply To: 2320

Date: JUL 22 1993

Tyler Martineau
Upper Gunnison River Water Conservancy District
275 S. Spruce
Gunnison, CO 81230

RECORDED
7/22/93

Dear Tyler:

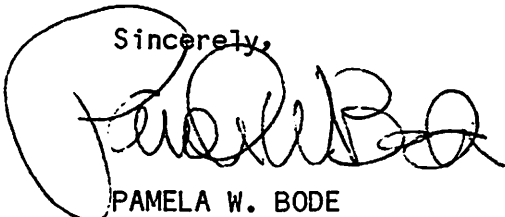
The Taylor River Ranger District of the Gunnison National Forest is working to coordinate a Water Quality Monitoring Program for drainages which originate in the West Elk Wilderness Area. The goal of this Program is to create a network of water quality data collected and shared by Curecanti National Recreation Area, Crawford State Recreation Area, Rocky Mountain Biological Lab, the Taylor River and Paonia Ranger Districts, and other interested parties.

Many of the watersheds that begin in the West Elk Wilderness are currently being monitored downstream by the National and State Recreation Areas. However, this information is evaluated at the local rather than the watershed scale.

The intention of the Water Quality Monitoring Program for the West Elk Wilderness is to compile stream and still-water monitoring data from the entire watershed to determine the overall aquatic integrity of the area over time. Aquatic health is a solid indicator of ecosystem health. Ecosystem health is essential for the health of surrounding communities. Therefore, it is imperative that a long-term water quality monitoring program is initiated within the West Elk Wilderness.

The Forest Service needs assistance to make this Program a reality. Your organization can help by contributing a donation of funding or labor which would go directly toward the collection and analysis of still-water samples. This donation would be matched by the Forest Service Regional Office. If your organization has interest in this Program, please contact Darla DeRuiter or Darrel Jury at (303) 641-0471. Thank you very much for your consideration.

Sincerely,



PAMELA W. BODE
District Ranger



Upper Gunnison River Water Conservancy District

SCHEDULED MEETING

Monday, July 12, 1993
7:00 p.m.

Old Town Hall
302 Elk Avenue
Crested Butte, Colorado

A G E N D A

1. Call to Order.
2. Approval of June 21, 1993 Minutes.
3. Consideration of Operational Expenses Paid.
4. Consideration of Other Expenses Payable.
5. Monthly Budget Report.
6. Approval of 1992 Audit.
7. Resolutions Authorizing Establishment of Bank Accounts with First National Bank of Gunnison, First National Bank of Lake City, and Gunnison Savings & Loan.
8. River Watch Program - Crested Butte Middle School.
9. Legal Matters.
 - a. Union Park Project Water Availability Appeal.
 - b. Board Member Bonding Requirements.
 - c. Legal Opinion Concerning Control of Water within Streams.
 - d. Other Legal Matters.
10. Taylor Park Water Management Agreement.
11. Gunnison River (Black Canyon) Contract.
12. Proposal for Use of Water Rights for Wildlife Purposes.
13. Legislative Interim Committee on Water.
14. Miscellaneous Matters. *Thanks to Ds*
15. Unscheduled Citizens. ↓
16. Future Meetings. *1) SCS water quality workshop. To Jul 92. Monitor Friends by 9:00-3:30 call call immediately. see minutes. 2) 42-5068.*
17. Adjournment. *(2) C.B.M.R. attend - not represent Board. instruction of low water during winter. (2) EDS Habitat.*

UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT

SCHEDULED BOARD MEETING MINUTES

July 12, 1993

The Board of Directors of the Upper Gunnison River Water Conservancy District conducted a Scheduled Meeting on July 12, 1993 at 7:00 p.m. in the Old Town Hall Building in Crested Butte, Colorado.

Board members present were: Robert Arnold, Ralph E. Clark, III, Susan Lohr, Ramon Reed, Mark Schumacher, Peter Smith, Dennis Steckel, Doyle Templeton, and William S. Trampe. Board members not present were Lee Spann and Purvis Vickers.

Others present were:

L. Richard Bratton, Board Attorney
John McClow, Board Attorney
Tyler Martineau, Manager
Patrice Thomas, Office Secretary
Rita McDermott, Treasurer
Laura Anderson, Crested Butte Chronicle/Pilot Reporter
Carl Miller, Gunnison County Stockgrowers
Ken Spann, Gunnison County Stockgrowers
Vince Rogalski, Mayor of Mt. Crested Butte
Steve Glazer, HCCA and POWER
Jim Starr, Citizen
Kathy J. Biln, Citizen of Gothic
Bill Crank, Town of Crested Butte
Jim Schmidt, Town of Crested Butte
John Cairns, Rocky Mountain Biological Laboratory
Jean Cairns, Citizen of Gothic
Betty Templeton, Gunnison County
Vicky Morin, Water Resource Management Company
Jenny Knox, Water Resource Management Company
Joe Knox, Water Resource Management Company
Keith Kepler, Colorado Division of Water Resources

Sue Navy, HCCA
Lynnee Preston, Citizen
Gary Sprung, HCCA
Dave Gillard, Crested Butte Town Council
John Hess, Town of Crested Butte
Doug Clifford, HCCA member
Kenny Stralder, HCCA member
Susan Brown, River Watch
Tommy Rozman, River Watch
Matthew Grinewich, River Watch
B. J. Rozman, River Watch
Peter Rijks, River Watch
Kelly Rugeberg, River Watch
Steph Gunckel, River Watch
Adrienne Hall, Rocky Mountain Biological Laboratory
Catherine Rideout, Rocky Mountain Biological Laboratory

1. CALL TO ORDER

President Trampe called the meeting to order at approximately 7:14 p.m. President Trampe expressed appreciation to the High Country Citizens Alliance for hosting the reception for the board, and to The Bakery Cafe and The Bagel Shop for providing refreshments.

2. APPROVAL OF JUNE 21, 1993 MINUTES

President Trampe stated that the first item on the agenda was approval of the June 21, 1993 minutes which had been circulated to the Board by mail. Board members pointed out several typographical errors.

Bob Arnold moved that the June 21, 1993 minutes be approved as circulated to the board. Butch Clark seconded the motion. The motion carried.

Tyler Martineau reported on the aquatic biological monitoring workshop provided for the board by the Rocky Mountain Biological Laboratory. Mr. Martineau and President Trampe thanked Susan Lohr, John Cairns, and Dick Pratt for providing such an interesting learning experience. Mr. Martineau asked board members to complete and return the workshop evaluation.

3. CONSIDERATION OF OPERATIONAL EXPENSES PAID

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

4. CONSIDERATION OF OTHER EXPENSES PAYABLE

Bob Arnold moved to approve Other Expenses Payable except for payment of board of directors' fees and mileage to members not present at this meeting. Susan Lohr seconded the motion. The motion carried.

Ramon Reed had questions about Andy Williams' bill and the division of payment between the Upper Gunnison River Water Conservancy District and the Colorado River Water Conservation District. Dick Bratton said that Mr. Williams' bill relates to the exchange and not to the availability trial. He said that he had not requested the work and that this situation would not occur again.

Mr. Bratton said that the Colorado River Water Conservation District suggested that all of Mr. Williams' bills for the Arapahoe water availability appeal be sent to the Upper Gunnison River Water Conservancy District. The Colorado River Water Conservation District would then reimburse the District for their share. Ramon Reed said that this approach would make a difference in the budget. Mr. Martineau said that he wrote the Colorado River Water Conservation District to suggest that two separate bills be submitted, with one to the Upper Gunnison River Water Conservancy District and one to the Colorado River Water Conservation District, by Mr. Williams because of the budgetary concerns with Amendment 1.

5. MONTHLY BUDGET REPORT

There were no comments by Tyler Martineau or Rita McDermott on the Monthly Budget Report prepared by the treasurer. Bob Arnold asked about the percentage of legal fees billed to date. Dick Bratton said that he and John McClow will provide an estimate of the legal expenses that may be incurred before December 31, 1993 at the next board meeting.

Tyler Martineau reported on the summary of current interest rates prepared for the board by Rita McDermott. He noted that she also added the interest rates to each account listed on the monthly financial data sheet. Mr. Martineau reported that the balance in the

checking amount was reduced to about \$15,000 which provides an adequate amount for cash flow.

6. APPROVAL OF 1992 AUDIT

President Trampe asked for comments about the 1992 audit prepared by Kimberly Temple, CPA. Rita McDermott did not have comments. Tyler Martineau noted that the audit is favorable and that errors noted in last year's audit have been corrected. Butch Clark recognized Tyler Martineau and Rita McDermott for their good work in preparation for the 1992 audit.

Ramon Reed asked for an explanation of the accounts receivable in Note 3 on page 9 of the 1992 Audit Report. Rita McDermott said that these receipts were received in January 1993 but were payments from each county for December, 1992. Ramon Reed wondered why these amounts were broken out from property taxes in Note 4.

Ramon Reed asked for an explanation of funds held for others in Note 6 on page 10. Dick Bratton said that two different principles apply for the funds in this category. He said that the principal and interest earned on the application fees could be used by the District as part of the District funds. He explained that the principal amount of the water rental deposit by Homestake Mining should be returned and that Homestake Mining would be contacted. He said he would try to get Homestake to agree to let the District keep the interest earned on the deposit. Tyler Martineau explained that the auditor had found these funds while trying to determine ownership of accounts earning interest.

Bob Arnold moved to adopt the 1992 Audit Report. Ramon Reed seconded the motion. The motion carried.

7. RESOLUTIONS AUTHORIZING ESTABLISHMENT OF BANK ACCOUNTS WITH FIRST NATIONAL BANK OF GUNNISON, FIRST NATIONAL BANK OF LAKE CITY, AND GUNNISON SAVINGS & LOAN

Bob Arnold moved to adopt Resolutions 93-4, 93-5, and 93-6 authorizing establishment of bank accounts with the First National Bank of Gunnison, the First National Bank of Lake City, and Gunnison Savings and Loan. Butch Clark seconded the motion. The motion carried.

8. RIVER WATCH PROGRAM - CRESTED BUTTE MIDDLE SCHOOL

President Trampe introduced Susan Brown and students from the River Watch Program for their presentation. Susan Brown said that the River Watch Program is sponsored by the Colorado Division of Wildlife, Rocky Mountain Biological Laboratory, and the Crested Butte Schools. It has been operational since September 1990.

The students presented information on their activities this summer. They said that they take samples from four local rivers and test for six parameters. They test for temperature, metals (iron, cadmium, copper and lead), dissolved oxygen, pH, alkalinity, and hardness. The students and Susan Brown then answered questions from the audience and the board members.

In answer to the questions the following information was provided. The current results have indicated that river conditions are normal. The information will be provided to the Division of Wildlife to provide baseline data on the water quality so that future changes can be noted. Samples are currently being collected on the Slate River at Crested Butte, Gunnison River at Almont, Taylor River at Almont, and East River at Almont. Samples are taken twice a week during May and June tapering off to once a month from September to March. The schools in Gunnison may be included in the River Watch program in 1995.

9. LEGAL MATTERS

a. Union Park Project Water Availability Appeal

Dick Bratton reported that a motion to extend the deadline for filing of briefs with the Colorado Supreme Court until September 8, 1993 had been filed by Arapahoe County. He said that the attorneys for the opposers held a meeting to divide the work for the appeal and if this request for extension is granted, it will also allow the opposers more time to prepare their briefs.

Ramon Reed asked if the group had considered the comments provided to Mr. Bratton by the board at the last meeting. Mr. Bratton responded that Bruce Driver and David Getches are to discuss the Public Trust Doctrine, Public Values, maximum use issues and develop a proposal for the group of attorneys to consider.

Butch Clark acknowledged the memorandum to the board from Gary Sprung of High Country Citizens Alliance and asked President Trampe if it would be acceptable for Mr. Sprung to make a presentation to the board.

Mr. Sprung outlined his position on the Public Trust Doctrine and public values as presented in his July 3, 1993 memorandum. Mr. Sprung asked for the board's response to the possibility of utilizing his suggestions in the Colorado Supreme Court appeal.

Butch Clark asked Mr. Bratton about the issues to be brought forth in Phase 2 of the availability trial and whether the Public Trust Doctrine could be pursued at that time. Mr. Bratton said no, that Phase 2 would focus on feasibility.

Butch Clark said that he hears in the proposal by Mr. Sprung that these issues would be held in abeyance, but if the Colorado Supreme Court remands the case then these issues would be brought forward.

Butch Clark said that he is worried about Arapahoe County bringing in the Upper Colorado River Commission and adding amicus briefs. Mr. Bratton responded that this concern is the same as the 620(f) issue.

Susan Lohr asked if Mr. Sprung's proposal that Judge Brown's decision might be overturned and the case remanded is a likely scenario. Mr. Bratton and Mr. McClow said that it is not likely.

John McClow clarified that Mr. Sprung was asking the board to join High Country Citizens Alliance in arguing the issues or at least not to oppose the effort of the High Country Citizens Alliance efforts to argue the issues presented by Mr. Sprung. Mr. McClow pointed out that Judge Brown's opinion was based on fact and it is rare that the appellate court will overturn a case based on fact. Mr. McClow said that it is his opinion that it is important to stay focused on the facts of the case and that Mr. Sprung's proposal could be a distraction.

Susan Lohr said that the District may not want to support the proposal legally but it should not oppose the proposal.

Ramon Reed said that he supports Ms. Lohr's suggestion and also agrees with Mr. McClow that the case needs to be focused and presented as simply as possible. He asked that the attorney for High Country Citizens Alliance speak to the District's board if High Country Citizens Alliance decides to proceed with their proposal.

Butch Clark said that in the 620(f) brief there may be an opportunity to address maximum utilization. He also said that some of the arguments presented by Mr. Sprung might be used in connection with the permitting of the Union Park project. Mr. Bratton said that the 620(f) brief is based on a specific statute and that maximum utilization is based on unrelated legal principles and is more of a political approach.

Mr. Bratton said that he believes the board has three choices. The choices would be to support High Country Citizens Alliance, to oppose them, or to do nothing. He said there

would be significant cost implications with the first two choices. Mr. Bratton said that his opinion is that it is unlikely the Supreme Court would so quickly recognize additional public values such as public trust because the Supreme Court fairly recently took two big steps in its previous decisions in the refill case and the private instream case.

Peter Smith asked Mr. Bratton if there were any problems with Susan Lohr's suggestion that the District not oppose High Country Citizens Alliance. Mr. Bratton replied that because of the retroactive effect of the Public Trust Doctrine it could have major impact on existing water rights. He went on to say that this decision is a policy position for the board rather than a legal issue.

Peter Smith requested a memorandum from Mr. Bratton at the next board meeting on the legal ramifications of the choices before the board concerning public trust and public values. Dennis Steckel agreed that the board should take no position at this time but obtain additional information. Susan Lohr asked that Mr. Bratton also inform the board if there are any laws that would allow the protection of natural and socioeconomic environments.

Mr. Bratton said that he will present a report to the board on the legal ramifications at the next board meeting. He said that in addition to the legal issues he is concerned about the possible political ramifications of a backlash opposing the public values. Mr. Bratton said that if this matter is settled then the law will apply to future efforts at transmountain diversion. Mr. Bratton said that he is concerned that if the Public Trust Doctrine is introduced then the Front Range water associations may try to challenge the Can and Will Doctrine.

Tyler Martineau shared Mr. Bratton's concern of a political backlash. He said that the Colorado Water Conservation Board recently circulated proposed rules and regulations for instream flows. Two regulations which would recognize public values involve the conversion of a conditional water right to an instream flow and injury to an instream right resulting from inundation by a reservoir. Mr. Martineau said that the Colorado Water Congress passed a resolution in opposition to these two regulations. He said that the opposition was led by the Northern Colorado Water Conservancy District and Colorado Springs. He said that they are ready to fight these efforts by the Colorado Water Conservation Board to incorporate public values into the regulations.

President Trampe asked if the consensus of the board was to continue gathering information and to make a decision when informed. The board agreed with this approach.

9b. Board Member Bonding Requirements

Dick Bratton reported that he did not yet have the application for the bond for the

board as a group, but that he would provide it. The group application he will provide would not require individual disclosures by the board members.

9c. Legal Opinion Concerning Control of Water within Streams

Dick Bratton reported that John Hill will be in Gunnison from about July 14, 1993 until August 14, 1993. He and Mr. Hill will discuss the legal opinion during that time.

9d. Other Legal Matters

John McClow said that he had nothing to report on the Union Park project.

10. TAYLOR PARK WATER MANAGEMENT AGREEMENT

Tyler Martineau reviewed the historical background of the Taylor Park Water Management Agreement and his memorandum to the board summarizing the first negotiating meeting with the Bureau of Reclamation on June 24, 1993.

Ramon Reed said that he was pleased with the Bureau of Reclamation staff response at the first negotiating session but the more complex issues still need to be addressed. He said that he thinks that payment for a minimum amount of water involves two separate issues. One issue is whether the Bureau of Reclamation can provide a minimum amount of water in a dry year. The other issue is whether the District must purchase a minimum amount of water in a wet year.

Ramon Reed also made a suggestion concerning the calculation of the administrative fee to be paid for irrigation water. Mr. Reed stated that if the District purchased no irrigation water then the Bureau of Reclamation would bear all of the administrative costs for use of the refill water. This is because the Bureau has previously indicated that the costs for fishery and recreation water use will be paid entirely by the United States. When the District does purchase water for irrigation use the administration fee paid by the District should be only for the increment in the cost brought about by adding the irrigation use to the fishery and recreation use.

Dick Bratton asked about industrial and domestic uses. Mr. Reed said that these uses are not a part of the decree at this time.

Bill Trampe said that if the Bureau of Reclamation cannot provide a supply of water in a dry year then there is no further need to discuss any type of payment for water.

Butch Clark said that the water is now assigned to the Bureau of Reclamation and that management by the Bureau of Reclamation should not create costs until there is discussion of storage of the water.

Tyler Martineau asked for comments by members of the Gunnison County Stockgrowers Association. They replied that their comments had been provided to the District in an earlier letter and will be raised again in the future at the appropriate time.

11. GUNNISON RIVER (BLACK CANYON) CONTRACT

Tyler Martineau summarized his July 1, 1993 memorandum to the board and noted specific items for the board's focus. Mr. Martineau asked if there were additional suggestions for changes to the draft Purpose and Need Statement by the cooperating agencies. The board indicated satisfaction with the draft. Mr. Martineau said that the Memorandum of Agreement Among Lead and Cooperating Agencies for Gunnison River Contract National Environmental Policy Act Compliance asks for the District's agreement to perform functions of participation in development of the EIS. Mr. Martineau suggested that the District can make sure the Upper Gunnison benefits are protected by doing a study of the effect of the contract on water rights in the Upper Gunnison basin.

Butch Clark asked if the District can challenge any conclusions of the EIS if the District is a cooperating agency in the preparation of the EIS. John McClow said that it could.

Butch Clark asked if the District would do the work for Mr. Martineau's suggested study or if the federal agency staff would do the work and then the District would review their study. Mr. Martineau explained that currently there is not a proposal to address water rights in the Upper Gunnison basin, so he does not know who would be asked to perform the study. However, it's possible that the District would be asked to do the work.

JW
Butch Clark said that if Blue Mesa is treated like Lake Powell then there is a benefit of developing an EIS below Blue Mesa and not above Blue Mesa. Tyler Martineau said that the impacts of the proposals for full river administration above and below Blue Mesa will need to be analyzed.

Ramon Reed said that the study would be a good idea and that the Gunnison Planning Model should be a good first step. He said that the District would need to consider its available resources to perform the study. Mr. Martineau said that such a study could involve

substantial costs. Mr. Reed said that the District could say that it could not do such a study if it finds out that it is not capable of doing what is asked.

Tyler Martineau said that at this juncture they are asking for comments on the proposed memorandum of agreement and asking for suggestions to provide assistance in the District's area of expertise. Butch Clark noted that the proposed memorandum of agreement provides for additional comments in areas of expertise in item V-I.

Tyler Martineau said that, based on the board's comments, he won't comment on the proposed memorandum of agreement but will say that the District is comfortable with the principles. He asked if the board wants him to suggest the study of the impact of the contract on Upper Gunnison basin water users.

Dennis Steckel said that this type of study is needed but asked about the time frame for obtaining information. Mr. Martineau said that the District data would be available in about two years and that discussions and development of the Gunnison River Contract will probably continue for about five years.

President Trampe clarified that an EIS that will describe impacts upstream and downstream is important. He also suggested that the water rights analysis suggested by Mr. Martineau be included as part of the EIS process. Dick Bratton said that how it is presented could affect how much of the work could be done by Bureau of Reclamation staff.

Tyler Martineau asked if the District should take the initiative to build support among the other entities for the District objective to preserve the historical benefits of the Aspinall Unit.

Butch Clark favored this approach and said that there would still be potential for a legislative solution.

Mr. Martineau pointed out that there might be risks but he believes it is important to pursue each opportunity aggressively.

Dennis Steckel said that the District needs a small quantity of water from the reservoir. He said a positive outlook should be encouraged that would allow for minor adjustments in management and results that would not hurt any of the entities.

Ramon Reed said that he is not aware of any downsides to continuing the historical operation of the Aspinall Unit. Mr. Martineau said that the historical operation has meant that there has been enough water released from Aspinall so that the Uncompaghre Valley Water Users couldn't place a call and this fact concerns them. Mr. Reed said that if their water needs are met what is the problem. Mr. Bratton guessed that they are anticipating the outcome of the availability trial. Mr. Reed said that this consideration would not be part of the historical operation.

Tyler Martineau said that Mike Gross had explained that they want to exercise the call to demonstrate use for protection of their water right. The downside is that historically there has been free water below Crystal Dam and future water will be contracted. The endangered species protection may make it necessary to release additional water to satisfy those considerations and downstream rights under contract. If releases from the Aspinall Unit are made to both satisfy the downstream water rights and to meet Black Canyon/endangered species needs, then, there may be less water in Blue Mesa each year and the reservoir could get low for recreational uses.

*all
the
water*

Ramon Reed said that this scenario is not part of the historical operation of the Aspinall Unit.

Dennis Steckel said that it would be a mockery of water law if the Uncompaghre Water Users have to make a call to demonstrate use when their use of the water is already demonstrated and documented.

Tyler Martineau asked if the board would authorize he, Dick Bratton and John McClow to resolve these issues and to build support for preserving the historical benefits from the Aspinall Unit through the contract. President Trampe indicated the board's consensus for this authorization.

12. PROPOSAL FOR USE OF WATER RIGHTS FOR WILDLIFE PURPOSES

Tyler Martineau said that John Hill's presentation to the board on May 10, 1993 had brought up the discussion of alternative approaches to the use of water rights. Mr. Martineau reviewed his June 30, 1993 memorandum to the board about the approach suggested by board member, Doyle Templeton.

Doyle Templeton provided background information on his proposal to obtain a storage right and a direct flow right so that a wet pond can be created for a wildlife area on Tomichi Creek. He said that the major benefit would be to create a wetlands for wildlife and to keep the water.

Bill Trampe asked if there would be consumptive use because of diversion that would affect senior downstream water rights. Mr. Trampe also asked about the inundation of wetlands by creation of additional wetlands.

Ramon Reed asked what regulations and permits would need to be met. Tyler Martineau said a 404 permit would be needed for a new diversion. Dick Bratton said review of a non-jurisdictional reservoir from the division engineer and maybe a water rights change procedure would be needed.

Ramon Reed said that he thought it is a great idea but is it practical in terms of meeting the regulations and possible legal challenges.

Peter Smith said that he likes the idea of small projects like this one.

Butch Clark said that he thought it is practical. The USGS has a model to show how much water is being stored. He said it would be a cheap way to store water as well as a benefit for wildlife habitat.

Dick Bratton suggested that other projects like this one could be joint projects for mitigation with developers to provide funding.

Ramon Reed asked if there is any difference between this proposal and a stock pond. Bill Trampe said that this proposal includes a diversion; stock ponds do not.

Dennis Steckel suggested that the board gather more information and consider this proposal as a pilot project after further investigation.

President Trampe asked Tyler Martineau to proceed with Mr. Steckel's suggestion.

Dick Bratton said that the amount of the benefit to the District would be proportional to the amount of money that would need to be spent to develop the project.

Tyler Martineau said that the environmental benefits are evident but the amount of water stored would be small.

13. LEGISLATIVE INTERIM COMMITTEE ON WATER

Tyler Martineau said that the schedule of topics for the interim committee's hearings will include basin of origin issues which may mean facilitation of transfers of water.

Butch Clark asked if all hearings will be held in Denver. Mr. Martineau said that he would check on the locations.

Ramon Reed asked that Senator Linda Powers be asked to speak at the next board meeting on the interim committee's activities. Mr. Martineau said that he had invited her earlier and she has a conflict for that date.

14. MISCELLANEOUS MATTERS

Tyler Martineau said that he had received a questionnaire asking if the District planned to have a special election in November so that Hinsdale County could plan for it. The board consensus was that no special election was anticipated.

Tyler Martineau reported that Gunnison County development of population estimates and descriptions of existing wastewater treatment facilities for the East River study is delayed. He asked if the District should develop its own data or wait for the Gunnison County data. Mr. Martineau said that he would prefer to use the Gunnison County data to avoid duplication in work and results. Mr. Martineau said that the Bureau of Reclamation indicated that it could carryover funds to pay for the District's East River study in 1994.

Bob Arnold asked how much time would be needed for the District staff to gather this data. Based on Mr. Martineau's estimate Mr. Arnold said that not much time would be gained over the Gunnison County collection of information if the District started their collection of data now.

Ramon Reed said that as long as the funding source would not be lost that it would be best to wait for the Gunnison County East River data. The board agreed with Mr. Reed's comment.

Butch Clark said that he will attend the Crested Butte Mountain Resort meeting on snowmaking and instream flow but not as a representative of the District board. President Trampe said that the Upper Gunnison River Water Conservancy District has received no formal notice of this meeting.

15. UNSCHEDULED CITIZENS

Gary Sprung said that the Ford Foundation study on the economic value of water used for instream purposes will be released soon and he would be available to present it to the board as an agenda item. President Trampe asked Mr. Sprung to let Mr. Martineau know when the study is released.

There were no other comments.

16. FUTURE MEETINGS

The next board meeting is scheduled for August 9, 1993 at 7:00 p.m. It will be held in the Multi-Purpose Building, County Fairgrounds, Gunnison, Colorado.

17. ADJOURNMENT

President Trampe adjourned the meeting at approximately 10:35 p.m.

Respectfully submitted,

Mark Schumacher, Secretary

APPROVED:

William S. Trampe, President

OPERATIONAL EXPENSES PAID

June 14, 1993	U. S. West Communications-office telephone	\$133.91
June 14, 1993	The Paper Clip-office supplies	29.02
June 14, 1993	Tyler Martineau-May direct administrative travel expense	67.50
June 14, 1993	Postmaster-5 rolls-.23 stamps & 3 rolls-.25 stamps	202.00
June 14, 1993	Chronicle & Pilot-May notice	12.50
June 21, 1993	Water Quality Control Commission-copy of regulation	5.00
June 30, 1993	M.C.I.-office telephone	4.13
June 30, 1993	Tyler Martineau-net salary for pay period 6/1/93-6/30/93	2,322.41
June 30, 1993	Patrice Thomas-net wages for pay period 6/1/93-6/30/93	599.41
June 30, 1993	Rita McDermott-net salary for pay period 6/1/93-6/30/93	251.45
June 30, 1993	Colorado Department of Revenue-CWT-June	207.20
June 30, 1993	First National Bank-FWT & FICA-June	1,478.62

OTHER EXPENSES PAYABLE

July 12, 1993 Scheduled Meeting at Crested Butte

Bob Arnold	attendance-\$25 & 60 mi.@.25-\$15	\$40.00
Ralph Clark III	attendance-\$25 & 60 mi.@.25-\$15	40.00
Susan Allen Lohr	attendance-\$25 & 8 mi.@.25-\$ 2	27.00
Ramon Reed	attendance-\$25 & 60 mi.@.25-\$15	40.00
Mark Schumacher	attendance-\$25 & 40 mi.@.25-\$10	35.00
Peter Smith	attendance-\$25 & 60 mi.@.25-\$15	40.00
Lee Spann	attendance-\$25 & 66 mi.@.25-\$16.50	41.50
Dennis Steckel	attendance-\$25 & 60 mi.@.25-\$15	40.00
Doyle Templeton	attendance-\$25 & 124 mi.@.25-\$31	56.00
William Trampe	attendance-\$25 & 46 mi.@.25-\$11.50	36.50
Purvis Vickers	attendance-\$25 & 180 mi.@.25-\$45	70.00
I.. Richard Bratton	July retainer fee	50.00
Bratton & McClow	July invoice	5,100.88
Williams, Turner, & Holmes, P.C.	May 31st-invoice re: exchange	920.00
Bureau of Reclamation	May 31st-invoice re: water rights-Taylor Res. East River Water Supply & Water Quality Study	3,000.00
Bio-Environs	Cost for completing water quality report for East River/Slate River project	825.00
Kimberly Temple,C.P.A.	Audit, etc.	874.30

UGRWCD BUDGET SUMMARY-JUNE 1993

	<u>JUNE</u> <u>EXPENSE</u>	<u>YEAR -TO- DATE</u> <u>AS OF 6/30/93</u>	<u>1993 BUDGET</u>	<u>% EXPENDED</u>
Administrative Salary	\$3,323.78	\$21,180.87	\$45,000.00	47%
Secretary Salary	890.00	5,399.50	11,000.00	49%
Board Treasurer Salary	300.00	1,800.00	4,000.00	45%
Payroll Taxes & Benefits	345.31	2,794.00	7,000.00	40%
Staff Conference & Training	0.00	0.00	500.00	0%
Legal Retainer Fees	50.00	300.00	600.00	50%
Legal Exp & Eng. Related	7,153.32	38,397.44	65,000.00	59%
Audit & Accounting	0.00	0.00	1,200.00	0%
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	0.00	50.00	300.00	17%
Insurance/Premises	0.00	0.00	500.00	0%
Office Telephone	138.04	881.82	2,700.00	33%
Attorney Telephone	0.00	0.00	500.00	0%
Legal Printing	12.50	329.15	1,300.00	25%
Administrative Travel	67.50	874.96	4,000.00	22%
Attorney Travel	72.20	712.82	2,000.00	36%
Board of Directors Travel	0.00	0.00	500.00	0%
Office Supplies	29.02	658.12	1,800.00	37%
Postage	202.00	518.00	1,200.00	43%
Copying	0.00	900.75	1,100.00	82%
Publications Acquisition	5.00	66.10	500.00	13%
Office Equipment	0.00	1,015.25	6,500.00	16%
Board of Directors Fees	450.00	2,400.00	5,000.00	48%
Board of Directors Mileage	65.00	573.50	1,400.00	41%
Uncompahgre Water Users	0.00	3,000.00	3,000.00	100%
CWC Membership	0.00	400.00	500.00	80%
WSC Water Workshop	1,200.00	1,200.00	1,200.00	100%
Water Resources Study	0.00	0.00	5,000.00	0%
Promotion & Guest Expense	0.00	75.70	1,500.00	5%
County Treasurer's Fees	1,507.22	5,276.46	7,000.00	75%
Subtotals	\$15,810.89	\$88,804.44	\$197,600.00	45%
Contingency			9,000.00	0%
Emergency Reserves			2,700.00	0%
Water Resource Protection & Development Reserves			37,000.00	0%
Totals	\$15,810.89	\$88,804.44	\$246,300.00	36%

**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

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

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

Total Disbursed \$39,110.26

Total Disbursed-1993 Budget \$32,954.42

Note: These amounts include Travel Expense

UGRWCD
FINANCIAL DATA-6/1/93 THRU 6/30/93

Balance on Hand - May 31.1993

Checking Account	\$71,900.83
Petty Cash	100.00
Time C.D.-FNB	2,656.89
Time C.D.-Wetlands Fund	923.15
Money Maker-GS&L	40,815.80
Time C.D.-FNB-Lake City	40,378.08
Passbook Savings	27,969.15

TOTAL FUNDS 5/31/93 \$184,743.90

Tax Receipt Collections thru May

Real Estate	\$114,697.90
Specific Ownership	5,732.92
Interest	584.84

Note: Treasurers' Fees are included \$121,015.66

May Tax Receipt Collections Paid in June

Real Estate	\$49,370.08
Specific Ownership	1,246.43
Interest	28.00

Note: Treasurers' Fees are included \$50,644.51

Interest on Investments received in June 617.93
TOTAL TO DATE \$236,006.34

Transfer from Checking Acct. to Savings Acct. 018-686 \$52,000.00
Transfer from Checking Acct. to Crested Butte State Bank 40,000.00

Total Disbursements thru 6/30/93 15,810.89
TOTAL FUNDS 6/30/93 \$220,195.45

Balances as of 6/30/93

		INTEREST RATES	MATURITY DATES
Checking Account	\$14,857.85	2.25%	
Petty Cash	100.00		
Time C.D.-FNB of Gunnison (1 yr.)	2,656.89	3.50%	1/18/94
Time C.D.-Wetlands-FNB of Gunnison (1 yr.)	926.29	4%	8/16/93
Money Maker-GS&L	40,933.83	3.40%	
Time C.D.-FNB of Lake City (6 mo.)	40,751.44	3.50%	10/4/93
Passbook Savings-C.B. State Bank (to be opened)	40,000.00	3.25%	
Passbook Savings-FNB of Gunnison	79,969.15	3.25%	
TOTAL FUNDS 6/30/93	\$220,195.45		

WILLIAMS, TURNER & HOLMES, P.C.
 ATTORNEYS AT LAW
 COURTHOUSE PLACE BUILDING - 200 N. 6th STREET
 MAILING ADDRESS - P.O. BOX 338
 GRAND JUNCTION, COLORADO 81502-0338
 TELECOPIER: (303) 241-3026
 TELEPHONE: (303) 242-8282

Upper Gunnison River Water
 Conservancy District
 c/o Richard Bratton
 Box 669
 Gunnison, CO 81230

May 31, 1993

 Tax ID #84-0809508
 WATER RIGHTS -
 TAYLOR RESERVOIR

ITEMIZED STATEMENT

PREVIOUS BALANCE \$303.40

CREDITS

April, 1993

14 Payment on account 303.40

TOTAL CREDITS \$303.40

PROFESSIONAL SERVICES RENDERED

April, 1993

16 Audit letter

TOTAL SERVICES \$30.00

BALANCE DUE \$30.00

PLEASE RETURN DUPLICATE COPY OF STATEMENT WITH REMITTANCE
 ** THANK YOU **

Date Rec'd 6/2/93 Addn. Ckd.
 Inv. Appr. TM Amt. Appr. 30.00
 Pd. Date Acct.# 4332
 Bd. Mbr. Appr. Date CK#
 Board Member Initials

RECEIVED MAY - 7 1993

WILLIAMS, TURNER & HOLMES, P.C.
ATTORNEYS AT LAW
COURTHOUSE PLACE BUILDING - 200 N. 6th STREET
MAILING ADDRESS - P.O. BOX 338
GRAND JUNCTION, COLORADO 81502-0338
TELECOPIER: (303) 241-3026
TELEPHONE: (303) 242-6282

Upper Gunnison River Water
Conservancy District
c/o Richard Bratton
Box 669
Gunnison, CO 81230

April 30, 1993

Tax ID #84-0809508
RE: EXCHANGE

ITEMIZED STATEMENT

PREVIOUS BALANCE \$0.00

PROFESSIONAL SERVICES RENDERED

Date Rec 7/2/93 Addn. Ckd. not
Inv. Appr. Amt. Appr.
Pd. Date Acct.#
Bd. Mbr. Appr. Date CK#
Board Member Initials

April, 1992

6 Study Supreme Court case re exchanges

April, 1993

- 15 Consideration of available documentary evidence
- 16 Work on exhibits and locate testimony by Stanton in Arapahoe case and TPR case; compare exhibits
- 20 Review 86CW203 for evidence to be used in exchange case
- 21 List evidence in Arapahoe Case and 86CW203, which can be used in exchange case
- 22 Continue to review available evidence; memo to file and letter to Mr. Bratton

TOTAL SERVICES \$920.00

BALANCE DUE \$920.00

PLEASE RETURN DUPLICATE COPY OF STATEMENT WITH REMITTANCE
** THANK YOU **

AWW/fi
UPPERG 10003 4A

Kimberly S. Temple, CPA, PC
P.O. Box 1228
123 W. Tomichi Avenue
Gunnison, CO 81230

Upper Gunnison River Water
Conservancy District
275 S. Spruce St.
Gunnison, CO 81230

Date Rec'd 6/27/93 Addn. Ckd. ?
Inv. Appr. KTW Amt. Appr. 274.30
Pd. Date _____ Acct. # 4333
Bd. Mbr. Appr. Date _____ CK# _____
Board Member Initials _____

June 28, 1993

	<u>Hrs/Rate</u>	<u>Amount</u>
Professional services		
04/10/93 Bev Started working trial balance and audit, proof of cash.	2.00 65.00/hr	NO CHARGE
04/12/93 Bev Worked on audit, proof of cash, taxes receivable and interest income.	4.00 65.00/hr	NO CHARGE
04/13/93 Che Typed confirmations.	2.50 18.00/hr	45.00
04/14/93 Che Made changes to confirmation letters and printed.	0.50 18.00/hr	9.00
04/15/93 Che Mailed confirmations.	0.40 18.00/hr	7.20
04/19/93 Bev Copied and read minutes from meeting.	3.50 65.00/hr	NO CHARGE
04/20/93 Bev Capital purchases and accounts payable.	1.50 65.00/hr	97.50

Upper Gunnison River Water

Page 2

		<u>Hrs/Rate</u>	<u>Amount</u>
04/21/93	Bev Worked on audit and started audit programs.	5.00 65.00/hr	325.00
04/22/93	Bev Prepared guideware audit programs and check lists.	1.80 65.00/hr	NO CHARGE
04/29/93	Bev Met with Tyler and went over internal control information.	3.00 65.00/hr	NO CHARGE
05/03/93	Bev Finished financial statements.	1.00 65.00/hr	65.00
05/25/93	Bev Talked with Tyler regarding funds held for others.	0.50 65.00/hr	32.50
06/08/93	Bev Started entering 1992 financial statement numbers. Worked on notes.	3.70 65.00/hr	NO CHARGE
06/09/93	Bev Organized file. Completed audit programs.	2.00 65.00/hr	NO CHARGE
	Rho Reviewed financial statement for typing errors.	0.60 21.00/hr	12.60
	Che Made changes to audit notes.	2.50 18.00/hr	45.00
06/10/93	Bev Reviewed notes.	0.60 65.00/hr	39.00
	Che Made changes to notes.	3.50 18.00/hr	63.00
06/11/93	Bev Reviewed and delivered draft to Tyler Martineau.	0.50 65.00/hr	32.50
06/23/93	Bev Met with Tyler and made changes to audit.	1.00 65.00/hr	65.00

	<u>Hrs/Rate</u>	<u>Amount</u>
06/23/93 Che Printed audit and made changes.	1.50 18.00/hr	27.00
06/24/93 Che Finished printing audit report.	0.50 18.00/hr	9.00
	<hr/>	<hr/>
For professional services rendered	42.10	\$874.30
		<hr/>
Balance due		\$874.30
		<hr/>

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

June 29, 1993

Professional services:

Administrative

- 05/25/93 UGd Conference with Tyler re: use of funds deposited
with exchange contracts (Homestake, Avion)
- 06/10/93 UGd Review minutes of meeting
- 06/18/93 SP Research appropriateness of bond other than
corporate surety bond for Directors; telephone
conversation with Tom Thompson on same; research
other types of bonds
- 06/21/93 SP Telephone conference with Attorney Ken Baker re:
bond type used for Directors of Arkansas River
District; telephone conference with Ralph Curtis on
same; telephone conference with insurance company
re: Public Employees Name Schedule Bond requirements
and fees

UGd Revise resolution; telephone conference with Tyler
re: resolution and agenda for annual meeting;
prepare for meeting

UGd Attend annual meeting

UGj Attend Annual Board Meeting (at no
charge)

NO CHARGE

Amount

SUBTOTAL:

[855.00]

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.

Dominquez Reservoir

06/21/93 UGj Review of Supreme Court ruling reversing Water Court
Summary Judgment

Amount

SUBTOTAL:

[50.00]

Availability - Appeal

05/25/93 UGd Conference with Tyler re: Arapahoe approach to Upper
Colorado River Commission

UGd Conference with Andy, Barney re: Arapahoe - Upper
Colorado River Commission

05/26/93 UGd Review Barney's memo; telephone conference with
Barney, Don re: approach to Commission; telephone
conference with Andy

05/28/93 UGd Telephone conference with Mike Gehletta and Andy
Mergen re: Arapahoe effort to get support of Upper
Colorado River Commission

06/02/93 UGd Telephone conference with Scott Loveless; revise
letter to Kepler, letter to Tyler, Mike and Jim

06/04/93 UGd Telephone conferences with Andy (2), Don Hamburg,
Mike Gheleta (2), re: response to Upper Colorado
River Commission; review Barney's draft of letter

06/09/93 UGd Telephone conference with Don Hamburg re: Arapahoe
request to Upper Colorado River Commission;
telephone conference with Tyler

UGd Work on files re: hydropower rights

06/10/93 SP Review pleadings, motions and orders in Arapahoe
matter re: hydropower issue; organize and indicate
authorities cited for appeal brief

UGd Telephone conference with Andy re: strategy for
dealing with Upper Colorado River Commission issue

06/11/93 SP Review authorities compiled for completeness; review
jurisdictional authorities for incorporation into
list

**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.

- 06/14/93 UGd Prepare for conference call; conference call with attorneys for parties re: response to Upper Colorado River Commission and to plan strategy for appellate briefs; telephone conference with David Getches
- 06/15/93 UGd Telephone conference with Scott Loveless re: Upper Colorado River Commission
- 06/16/93 UGd Telephone conference with Bruce Driver, Mike Gehletta; draft letter to various attorneys re: notice of meeting
- 06/21/93 UGd Telephone conference with Don Hamburg; revise language in letter to Upper Colorado River Commission
- 06/22/93 UGd Meeting in Denver with various attorneys to discuss strategy, work (brief), assignments
- 06/23/93 SP Review compiled authorities for completeness re: Arapahoe matter
- 06/24/93 SP Research federal cases re: Arapahoe matter; procure copies of authorities on same
- UGd Review Index of Record to Supreme Court
- 06/27/93 UGd Review Court Judgment re: East River points of diversion

Amount

SUBTOTAL: [2,545.00]

Private Instream Flow Rights

- 06/08/93 UGd Telephone conference with Andy; telephone conference with Andy and Andy Mergen (Department of Justice), Mike Gross and Jim Hokit
- 06/10/93 UGd Telephone conference with Bureau of Reclamation (Grand Junction), Tyler; draft cover letter to Hokit with letter to Kepler

SUBTOTAL: [115.00]

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.

Taylor Park Res Management Contract

05/23/93 jh Conference with Dick Bratton re: Taylor Park Reservoir administration

06/23/93 UGd Review Taylor Park Reservoir Management Contract; conference with Bill, Tyler and John re: provisions of contract

UGj Review draft of Taylor Park Reservoir Storage Agreement and review with Dick Bratton, Mr. Trampe, Mr. Martineau

06/24/93 UGd Draft proposed revisions to contract; telephone conference with Tyler and Barney White

UGj Attend Taylor Reservoir contract negotiations (at no charge) NO CHARGE

Amount

SUBTOTAL: [1,140.00]

For professional services rendered \$4,705.00

Itemization of costs

-Telecopier expense	152.00
-Lodging at Quality Inn South, Denver, 6/21/93 (Dick Bratton)	40.32
-Photocopies	9.80
-Parking fees while in Denver, 6/22/93	8.00
-Long distance telephone expense	87.91
-Postage expense	27.35
-Photocopier expense	70.50

Total costs \$395.88

Total amount of this bill \$5,100.88

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: June 28, 1993

SUBJECT: Agenda Item 6, July 12, 1993, Board Meeting --
Approval of 1992 Audit.

Enclosed is a copy of the 1992 Audit for the Upper Gunnison River Water Conservancy District prepared by Kimberly Temple, CPA. The Audit is required to be transmitted to the State Auditors Office by July 31, 1993, therefore, we recommend that the board consider approval of the Audit at the July 12, 1993 board meeting.

*Matters reported over year
result of getting started up.
Congratulations to Tyler and to Rita*

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: June 28, 1993

SUBJECT: Agenda Item 7, July 12, 1993, Board Meeting --
Resolutions Authorizing Establishment of Bank
Accounts.

Attached are copies of draft resolutions which would authorize bank accounts to be maintained by the Upper Gunnison River Water Conservancy District at the following institutions:

First National Bank of Gunnison
First National Bank of Lake City
Gunnison Savings and Loan

We have not found any record of previous actions authorizing the establishment of accounts with these banks, therefore, I recommend adoption of the attached resolutions at the board meeting on July 12.

DRAFT

RESOLUTION 93-__

I HEREBY CERTIFY that I am the duly elected and qualified Secretary of the Upper Gunnison River Water Conservancy District and the keeper of the records and seal of said District and that the following is a true and correct copy of a resolution duly adopted at a regular meeting of the Board of Directors of said District held in accordance with the By-Laws of said District on the _____ day of _____, 1993.

"Be It Resolved, that First National Bank of Lake City be, and it is hereby, designated a depository of this District and that funds so deposited may be withdrawn upon a check, draft, note or order of the District.

"Be It Further Resolved, that all checks, drafts, notes or orders drawn against said account be signed by any one of the following:

NAME	TITLE
William S. Trampe	President
Robert Arnold	Vice President

and countersigned by any one of the following:

Tyler Martineau	Manager
Rita D. McDermott	Treasurer

whose signatures shall be duly certified to said Bank, and that no checks, drafts, notes or orders drawn against said Bank shall be valid unless so signed.

"Be It Further Resolved, that said Bank is hereby authorized and directed to honor and pay any checks, drafts, notes or orders so drawn, whether such checks, drafts, notes or orders be payable to the order of any such person signing and/or countersigning said checks, drafts, notes or orders, or any of such persons in their individual capacities or not, and whether such checks, drafts, notes or orders are deposited to the individual credit of the person so signing and/or countersigning said checks, drafts, notes or orders, or to the individual credit of any of the other officers or not. This resolution shall continue in force until further written notification to said Bank.

In Witness Whereof, I have hereunto affixed my name as Mark Schumacher, Secretary and have caused the seal of said District to be hereto affixed this _____ day of _____, 1993.

Secretary

DRAFT

RESOLUTION 93-__

I HEREBY CERTIFY that I am the duly elected and qualified Secretary of the Upper Gunnison River Water Conservancy District and the keeper of the records and seal of said District and that the following is a true and correct copy of a resolution duly adopted at a regular meeting of the Board of Directors of said District held in accordance with the By-Laws of said District on the _____ day of _____, 1993.

"Be It Resolved, that Gunnison Savings and Loan be, and it is hereby, designated a depository of this District and that funds so deposited may be withdrawn upon a check, draft, note or order of the District.

"Be It Further Resolved, that all checks, drafts, notes or orders drawn against said account be signed by any one of the following:

NAME	TITLE
William S. Trampe	President
Robert Arnold	Vice President

and countersigned by any one of the following:

Tyler Martineau	Manager
Rita D. McDermott	Treasurer

whose signatures shall be duly certified to said Bank, and that no checks, drafts, notes or orders drawn against said Bank shall be valid unless so signed.

"Be It Further Resolved, that said Bank is hereby authorized and directed to honor and pay any checks, drafts, notes or orders so drawn, whether such checks, drafts, notes or orders be payable to the order of any such person signing and/or countersigning said checks, drafts, notes or orders, or any of such persons in their individual capacities or not, and whether such checks, drafts, notes or orders are deposited to the individual credit of the person so signing and/or countersigning said checks, drafts, notes or orders, or to the individual credit of any of the other officers or not. This resolution shall continue in force until further written notification to said Bank.

In Witness Whereof, I have hereunto affixed my name as Mark Schumacher, Secretary and have caused the seal of said District to be hereto affixed this _____ day of _____, 1993.

Secretary

DRAFT

RESOLUTION 93-__

I HEREBY CERTIFY that I am the duly elected and qualified Secretary of the Upper Gunnison River Water Conservancy District and the keeper of the records and seal of said District and that the following is a true and correct copy of a resolution duly adopted at a regular meeting of the Board of Directors of said District held in accordance with the By-Laws of said District on the _____ day of _____, 1993.

"Be It Resolved, that First National Bank of Gunnison be, and it is hereby, designated a depository of this District and that funds so deposited may be withdrawn upon a check, draft, note or order of the District.

"Be It Further Resolved, that all checks, drafts, notes or orders drawn against said account be signed by any one of the following:

NAME	TITLE
William S. Trampe	President
Robert Arnold	Vice President

and countersigned by any one of the following:

Tyler Martineau	Manager
Rita D. McDermott	Treasurer

whose signatures shall be duly certified to said Bank, and that no checks, drafts, notes or orders drawn against said Bank shall be valid unless so signed.

"Be It Further Resolved, that said Bank is hereby authorized and directed to honor and pay any checks, drafts, notes or orders so drawn, whether such checks, drafts, notes or orders be payable to the order of any such person signing and/or countersigning said checks, drafts, notes or orders, or any of such persons in their individual capacities or not, and whether such checks, drafts, notes or orders are deposited to the individual credit of the person so signing and/or countersigning said checks, drafts, notes or orders, or to the individual credit of any of the other officers or not. This resolution shall continue in force until further written notification to said Bank.

In Witness Whereof, I have hereunto affixed my name as Mark Schumacher, Secretary and have caused the seal of said District to be hereto affixed this _____ day of _____, 1993.

Secretary