

expressed as original purposes for the Taylor Park Reservoir (pp. 5 - 6). These original purposes for the reservoir included, but are not restricted to, municipal, domestic, stock watering, manufacturing, and hydroelectric uses. This would provide great scope for possible uses but perhaps the scope is narrowed by the filing having mentioned only recreation, fishery and wildlife, and irrigation uses and by the Supreme Court's decision (Supreme Court Decision 90SA498, pp. 35 - 36). Exactly what can be done with the water requires more explanation to the Board and more thought.

The Supreme Court's decision notes that in the 1975 Agreement, the Bureau already accepted the idea of the District filing on all surplus flows in Taylor River (p. 5 and Supreme Court Decision 90SA498, pp. 23 - 24). It is therefore difficult to understand why later the Bureau might oppose this filing and necessitate the 1990 Agreement leading to the assignment. The answer may lie with the Interior Department's policy released in late 1988 and early 1989 on voluntary water transactions that involve its facilities. How that policy fits into the situation needs further explanation before looking at what to do with the 2nd Filling rights and making the assignment.

The 2nd Filling rights total 106,230 acre-feet. The District and other entities spent an estimated several hundred thousand dollars in public and private money to establish these rights. They will now be assigned in trust to the Bureau. With the assignment the District Board has an opportunity to consider what it wants to achieve through assignment and through management of these rights by the Bureau, while keeping in mind what is already accomplished under the 1975 Agreement. The 1975 Agreement already provides management for releases from Taylor Park Reservoir for the 1st Filling, and as a practical matter for all water coming through the reservoir, to achieve the desired stabilization of flows and benefits to irrigation headgate operation, recreation, and the fishery (p. 3). Whose water is released when is another matter. For this management of water releases, \$4,000 in total was paid annually to the Uncompahgre Valley Water Users Association to defray some of its cost in the operation and management at Taylor Park Reservoir (pp. 4 - 5). Under the 1990 Agreement, this amount was increased \$2,000 per year for the same purposes (pp. 5 -6 of the 1990 agreement) OR

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#### CONCEPTS FOR USE OF THE 2ND FILLING

Possible concepts for use of the 2nd Filling water are diverse but possibly constrained by the filing. The District Board needs to fully understand and consider its concept options before committing itself with the assignment. The Board also needs to consider the long term financial consequences of each concept option. Three alternative general concepts are already evident. More may be put forth. None of the three appears in conflict with either Agreements.

The first concept would have the District assign its absolute 2nd Filling rights, then later seek agreement for their management from the Bureau. The draft management agreement dated 10-21-92 is based on this concept and it would have the District pay a management fee to the Bureau based on how much water the rights produce in a given year. The Supreme Court's decision shows the amount produced by the 2nd Filling rights averages 19,905 acre-feet a year

(Supreme Court Decision 90SA498, p. 11). Discussion of a possible "guaranteed production" from the right focused on 20,000 acre-feet. At a discussed management cost of \$3 to \$4 per acre-foot, the annual charge to the District would be roughly \$60,000 to \$80,000. Under this concept, the District bears the additional expense of proving diligence and making absolute what remains as conditional under the water court decision. Eventually this too would be assigned to the Bureau. Additional annual expenses for the District would likely be covered by reimbursement from user fees, property taxes, or some combination.

A second concept option was briefly discussed during the recent work session. It would have the District assign both absolute and remaining conditional amounts of the 2nd Filling to the Bureau as a package. The Bureau would be responsible for making absolute what remains conditional. The Bureau would manage the water from the package at some fixed annual fee. Then District would meet the expense with user or beneficiary fees or from property taxes, though with unclear beneficiaries it appears that expenses would be actually covered by general property taxes. This concept deserves more clarification and thought.

Introduced with this memorandum is a third concept. It would have the District assign the 2nd Filling as a package to the Bureau. In return the Bureau would formalize its heretofore informal historic operations of the Aspinall Unit which over the past twenty-six years provided both subordination of the Bureau's Aspinall Unit rights and protection to upstream water users from downstream administrative calls. The 2nd Filling package gives the Bureau assured extra water to continue these operating practices. Historically no cost was associated with these practices and none is contemplated in the future. These operating practices fulfill "promises" made to the Upper Basin at the inception of the Curecanti Project and also provides practical management for the water passing through the Aspinall Unit.

The 2nd Filling rights would assure an extra roughly 20,000 acre-feet a year against depletion upstream to the Aspinall Unit. From this the Bureau thus gains greater flexibility in its operations. A reasonable limit for the assignment would be protection to inbasin uses up to 60,000 acre-feet of depletion. Current annual depletion above the Aspinall Unit is estimated at 53,500 acre-feet with 212,000 acre-feet average annual diversion (R. Seaholm 1991, report to the Colorado Water Conservation Board, p. 12). The limit therefore allows further depletive water development of about 6,000 acre-feet but this amount is not likely to justify a major transmountain diversion project.

To existing inbasin users, the third concept offers certainty of future conditions, no cost, and administrative simplicity. At some time in the future, inbasin development may require basin-wide augmentation planning. When this is occurs, specific beneficiaries can be identified and the plans made self-financing, if the District is involved.

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#### SOME QUESTIONS REGARDING THE ASSIGNMENT

Regardless of concept, some general questions below need answering and the

answers need consideration before the District commits itself on an assignment of 2nd Filling rights. They include:

What does the 2nd filling decision actually provide - water resource protection or the opportunity to purchase such protection? *perhaps*

How can the District best recognize help it received from private entities in protecting the basin's water resources, and specifically in acquiring the 2nd Filling rights - should some of those bearing a major private financial burden be taxed again? *Enterprise*

How can the assignment be used to prevent 2nd Filling water from use in or enabling transmountain diversion?

Must an assignment of the rights be in perpetuity? What happens if there is later disagreement over management? Can the assignment provide for the District to enforce performance and at what cost? Can the assignment provide for return of the rights under certain circumstances?

Can the assignment define the kinds of services for which the District must pay the Bureau as a trustee for the water rights and those for which it need not pay? In turn, can the District identify who would benefit from these services and can it obtain adequate reimbursement allocating and collecting for the additional costs? Likely sources for the District of additional funding are: (1) water users generally; (2) specific water users; (3) the District's taxpayers through the property tax; and (4) other governmental entities. Should the assignment deal with potential allocation of costs to the District? *yes*

Why must the District hold the Bureau harmless for any damage whatsoever arising from Bureau's water management services? Can the assignment achieve a more reasonable balance of liability? Can the assignment achieve a sharing of commitment and obligations to protect existing water quality? *ok*

Why must definition of applicable reclamation laws to the assigned rights wait until after the assignment? The 10-21-92 draft management agreement specifically contemplates application of all reclamation laws. Application of all reclamation laws might not be appropriate in this situation and this matter might best be addressed up front in the assignment. *ok*

Can the assignment achieve greater certainty for the amount of the District's financial obligations in coming years? Under the first concept the yearly financial obligation varies greatly with the weather and this may present budgeting difficulties under Amendment 1. *Enterprise*  
*yes*

Can the assignment provide general conditions leading to a breach of contract for management? Under what general conditions ought the Bureau to be excused from and avoid liability for failing to perform? The 10-21-92 draft agreement excuses the Bureau if it can not perform its obligations because of restraint by a public authority - perhaps a Front Range water authority. Can the District do anything about the Bureau's failures if it is a sovereign entity? *ok*

**DRAFT**

UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT  
**SPECIAL BOARD MEETING MINUTES**

May 24, 1993

The Board of Directors of the Upper Gunnison River Water Conservancy District conducted a Special Meeting on May 24, 1993, at 7:00 p.m. in the Multi-Purpose Building at the Rodeo Grounds, Gunnison, Colorado.

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

Others present were:

L. Richard Bratton, Board Attorney  
Tyler Martineau, Manager  
Patrice Thomas, Office Secretary  
Steve Glazer, High Country Citizens Alliance  
Laura Anderson, Crested Butte Chronicle and Pilot

**1. CALL TO ORDER**

President Trampe called the meeting to order at approximately 7:15 p.m.

**2. DISCUSSION OF PROPOSED TAYLOR PARK RESERVOIR WATER MANAGEMENT AGREEMENT**

President Trampe suggested that the board review the draft Water Management Agreement and identify those items that raise a "red flag". The board concurred with this suggestion. A copy of the draft Water Management Agreement of March 1, 1993 is attached to these minutes.

Tyler Martineau provided an up-date on the schedule of negotiating sessions. The Bureau of Reclamation cancelled the June 10, 1993 session. The first negotiating session will be June 24, 1993 at 10:00 a.m in the Multipurpose Building at the Gunnison County Fairgrounds. Butch Clark asked if the first session will cover substantial issues. Mr. Martineau said that the Bureau of Reclamation has indicated that they expect to discuss

specifics of the agreement at the first session. Mr. Clark said that if time allows there may need to be discussion on issues at tonight's meeting.

President Trampe suggested that the board first identify problem areas in the draft agreement for the negotiating team. Tyler Martineau said that there appear to be some major problems which need to be identified in the draft agreement and then conveyed to the Bureau of Reclamation immediately. He said that he is concerned that the board may spend time discussing controversial issues when the board needs to identify possible fatal flaws in the draft agreement first.

Ramon Reed, board member, and Steven Glazer, concerned citizen, had each provided a memorandum of their concerns to the board.

Butch Clark referred to the language on page 1 and said that it needs to be clear which Federal Acts apply to this agreement. He said that the board needs to question whether abiding by the Reclamation Reform Act would be to the District's detriment or benefit.

Ramon Reed said that it is important to understand the Federal Acts mentioned on page 1.

Dick Bratton identified two problems on page two. In paragraph(b) he suggested the addition of language to clearly distinguish the 1st fill storage right. He said that the figure of 19,200 acre-feet in the last sentence of page 2 is incorrect.

Tyler Martineau said that the entire last sentence of page 2 needs to be reworked.

Butch Clark said that page 2, paragraph(a) should set out that the District will not be obligated to take responsibility for any part of the Association's obligation to the United States government.

Dick Bratton suggested that the fourth line of page 2, paragraph(a) be changed to "...is obligated to repay all of the reimbursable costs...".

Dennis Steckel asked why the board is concerned about what the Uncompaghre Water Users Association pays. Dick Bratton said that Mr. Clark is concerned about the implications of the language in page 2, paragraph(a). Purvis Vickers asked if the Association has repaid the United States government. Mr. Bratton said no. Lee Spann said that the Association had lowered its debt with the proceeds from the salinity project.

Lee Spann suggested that Mr. Clark's suggestion of saying that the District is not responsible for others' obligations be included in the last line of paragraph(c) on page 2. Dick Bratton said it may be appropriate in section 6 because paragraph(c) refers to the

District's decree. Lee Spann said that paragraph(c) refers entirely to the District decree and not the cost.

President Trampe said that Mr. Clark's suggested language would be included in the appropriate location by the negotiating team.

In response to an audience question, Tyler Martineau said that the actual depletions taking place in the Upper Gunnison Basin are not known now but that the Gunnison planning model may provide the ability to determine them.

Ramon Reed said that in paragraph(e) on page 3 depletions prior to 1959 need to be clarified. Mr. Bratton asked about the word "future" addressing this concern. Mr. Reed said that he is talking about junior rights to the Aspinall Unit and the word "future" is not clear enough.

Butch Clark said that Randy Seaholm's memorandum to the Colorado Water Conservation Board concerning the Nature Conservancy donation water rights in the Black Canyon would be useful to check the figures in paragraph(e) on page 3.

*No  
depletions*

Butch Clark said that there is a problem with using paragraph(e) to define subordination. He wondered if there will be significant depletion.

Dennis Steckel said who knows what will be happening with water use in future years.

Dick Bratton and Butch Clark refined the language to be added to paragraph(e) on page 3, "... depletion by exercise of water rights junior to the Aspinall Unit of 40,000 acre-feet..."

Dick Bratton made a suggestion for line 4 of paragraph(i) on page 4. He would delete the words, "additional surplus".

Butch Clark said that in each place the phrase, "...40,000 acre-feet of depletions...", appears it should be defined clearly.

Ramon Reed asked if the 1975 Agreement includes the language of 40,000 acre-feet of depletions. Tyler Martineau and Dick Bratton indicated that it did not. Mr. Reed suggested that in paragraph(g) on page 4 a period be placed after "...by the Gunnison District," and that the words "which would result in a ...Economic Justification Report;" be deleted.

Dennis Steckel said that in the last line of paragraph(i) on page 4 the Gunnison District could be added to the Association and the United States which would nail down the cost of who would pay. He said if the District were added then the District would not be obligated

for capital expenditures. Tyler Martineau said that the Gunnison District should not pay for 1st storage capital expenditures and language to cover this fact should be added to the water management agreement.

Dick Bratton said that the cost of capital expenditures should be distinguished from the maintenance costs. Butch Clark said that the use of the 2nd fill water does not require use of facilities and the District is trying to manage a water level to enhance recreation.

Butch Clark proposed that in paragraph(h) on page 4, line 3 the following language should be added for clarification - "...shall be used within the boundaries of the Upper Gunnison River Water Conservancy District." He said that he would prefer also adding language to state that this water is not for transmountain diversion. Ramon Reed asked if this language would be consistent with the 1975 Agreement. Dick Bratton said that the language in paragraph(h) copies the contract language in the 1975 Agreement. Ramon Reed suggested that the language in paragraph(h) remain as in the draft water management agreement and the 1975 Agreement.

Purvis Vickers asked about paragraph(h), page 4, line 3. He wondered how long "...shall be used by the Gunnison District..." applies. He pointed out that proposed federal legislation would require that the Bureau of Reclamation charge for all water. Dick Bratton said that paragraph (h), page 4 uses language from the 1975 Agreement. Mr. Vickers said that the District should consider the proposed federal legislation when negotiating the water management agreement.

President Trampe pointed out paragraph(a), page 5 as a problem area.

Dick Bratton asked about completing the blank, "...for a period of\_\_ years.", in paragraph(2a), page 5. He said that someone suggested forty years with a right to renew for another forty years. Butch Clark said that the 1975 Agreement states a period of fifty years. Ramon Reed asked if it would make sense to specify fifty years in this draft. Lee Spann said that if the 1975 Agreement expires and the water management agreement is still in effect that a piggyback benefit can be achieved. Mr. Spann favors fifty years in paragraph(2a), page 5. Mr. Bratton suggested that the right to renew be for an additional fifty years.

Butch Clark asked if choice of the word "supplemental" in paragraph(c) on page 6 was purposeful in terms of the Reclamation Reform Act. Dick Bratton replied that the language was not in relation to the Reclamation Reform Act but is included to insure that the 1975 Agreement is not modified by the water management agreement. Butch Clark said that it looks like a catch-22 to him and requested that the use of "supplemental" be explained.

President Trampe pointed out paragraph(d) on page 6. Ramon Reed asked for a legal explanation of termination of the agreement at any time. Mr. Bratton said that the negotiating team will try to have this language removed. Mr. Reed said that he could understand termination if either party failed to meet their obligations but not termination at

any time with ninety days notice by any party. Butch Clark suggested that this paragraph be rewritten to conform with language in page 15 of the 1975 Agreement. This suggestion would require consent of all the parties for the contract to terminate.

Dick Bratton suggested that the language, "and the 1990 Agreement," be added to the second line of paragraph(3a) on page 6 following "...of the 1975 agreement" and the language, "subject to Reclamation's final approval of the release schedule.", be deleted. Butch Clark suggested that the release schedule be based on the decisions at the annual Taylor Park Reservoir operations meeting. Dick Bratton suggested that the language, in accordance with the provisions of the 1975 contract and annual release schedule developed by all four parties., be added following "and the 1990 Agreement."

Lee Spann said that paragraph(e) on page 6 should be broadened to include the failure of any of the parties in meeting their obligations not just the Gunnison District. Dennis Steckel said as it is written it implies that the District will be the entity to fail. Ramon Reed said that it also implies that the Bureau of Reclamation will not fail in meeting its obligations. Lee Spann was concerned that this paragraph could create problems between the District and the Uncompaghe Valley Water Users Association.

Dick Bratton said that paragraph(3a), page 6 should specify that there will be no additional charges other than those identified in the 1975 Agreement and the 1990 Agreement. He also said that it should specify no charge for fishery and recreational use as suggested in Mr. Reed's memorandum.

Tyler Martineau said that there has been a change in the intention of the Bureau of Reclamation. In his recent discussions they have said that of the total 106,000 acre-feet of refill water that 87,000 acre-feet is recreational and fishery use and 19,000 acre-feet are multi-use. The Bureau's intention is that they receive payment for the multi-use water. Ramon Reed said that he disagrees that 19,000 acre-feet is always multi-use water but he does not mind payment for the amount of multi-use water that is actually used. Mr. Martineau said that the 19,000 acre-foot amount given was his mistake and that the Bureau would require payment for the actual amount of multi-use water stored up to a limit of 19,000 acre-feet. Mr. Reed said that if all 106,000 acre-feet were single use water in one year that there should be no payment in that year. Butch Clark said that payment for water was only identified for agricultural use. Tyler Martineau said that the Bureau of Reclamation would identify it as multi-use water. Butch Clark said that phrase should be avoided.

Ramon Reed suggested that paragraph(3a), pages 6 and 7 be reworded to say which water will be paid for rather than which water will not be paid for. Lee Spann said that the negotiating team will need to work on clarification in this area. Butch Clark said that this issue is critical to the District. Ramon Reed and Dennis Steckel said that it is at the heart of the water management agreement.



In answer to an audience question, Dick Bratton said that in the 86 CW 203 court case a maximum of 13,000 acre-feet of refill water was applied to beneficial use in one year.

Dick Bratton suggested that the first sentence on page 7 be rearranged - "by the Colorado State Engineers Office, against diversion by intervening appropriators."

Butch Clark said that paragraph(b), page 7 should state that there is no charge against the 60,000 acre-feet subordination for fishery and recreation releases from Taylor Park Reservoir. Only quantities of water actually depleted should count against the subordination. Ramon Reed said that his memorandum addresses his concern on the measurement of depletion versus diversion quantities. He said that only actual depletion quantities should count against the Aspinall subordination and the agreement should be unambiguous on this point. Dennis Steckel said that paragraph(b), page 7 refers to irrigation use so why shouldn't it be measured as stated in the paragraph.

Tyler Martineau agreed with Mr. Reed and said that the last sentence of paragraph(5a) on page 8 needs clarification.

Butch Clark said that there should be no depletion associated with fishery uses.

Dick Bratton said that no depletions which occur as a result of the use of refill storage should be counted against the 40,000 acre-feet subordination because the Bureau will be paid for the refill through the water management agreement.

Ramon Reed said that the negotiating team can clarify this point and refine the language.

Butch Clark pointed out that in a dry year there won't be a 2nd fill.

Lee Spann asked if they were thinking that there might not be a need for the water management agreement.

Tyler Martineau said that the Bureau of Reclamation's objective is to provide a benefit to the District when downstream calls occur. He said that cancellation of the refill water stored in Taylor Park Reservoir on the November 1 date each year and other language in this draft agreement would not allow the stated objective to be accomplished.

Butch Clark and Lee Spann suggested the negotiating team ask the Bureau of Reclamation to explain how the agreement would work in practice.

Ramon Reed said that section 7, page 9 covers the Bureau of Reclamation in these matters and other liability.

Bill Trampe, in response to an audience comment, said that there is a trade off between January-February minimum flows for the fishery and ice jaming near Dos Rios.

Lee Spann said that all of page 8 needed a "red flag".

President Trampe asked if there was agreement by the board that the District should be charged for depletions only. There was agreement. Tyler Martineau stated that there may be some instances in which the District would need to release and pay for refill water to cover the amount diverted by an irrigator.

Ramon Reed said that the Bureau of Reclamation should have a difficult time justifying a minimum payment in a year that no irrigation water is needed because there would be no accounting or management services. Dennis Steckel commented that the Bureau of Reclamation would still retain the staff needed to provide these services.

Lee Spann asked how the District can move from conditional to absolute decrees under this payment schedule. Dick Bratton responded that recreation use can be applied to make part of the decree absolute but under this agreement payment will need to be made for agricultural use in order for the agricultural portion to be made absolute. Ramon Reed said that 13,000 acre-feet of the 19,000 acre-feet for agricultural use is absolute. He said if the difference of 6,000 acre-feet is thrown out then the 106,000 acre-feet still would not be reduced.

Bill Trampe said that it is necessary to get the 2nd fill stored first in order to perfect the refill decree.

Dick Bratton said that the word "release" in paragraph(5a), page 8 could trigger application of the Reclamation Reform Act.

Ramon Reed said that the blank in paragraph(4a), "...shall not exceed \_\_\_acre feet annually.", should be 19,200 acre-feet. Tyler Martineau said that this number would open the District to being billed for 19,200 acre-feet.

Ramon Reed said that the key concept in paragraph(5a), page 8 should be that the Upper Gunnison River Water Conservancy District should specify the amount of refill water to be used each year. Butch Clark suggested inserting language to the effect that the amount will be determined annually at the Taylor Park Reservoir operations meeting.

Lee Spann suggested that the negotiating team present the concerns with paragraphs(4a) and (5a) on page 8 and see what the Bureau of Reclamation is willing to do.

Butch Clark said that before the spring operations meeting that agricultural users of the water could indicate their needs and commitment to that year's water use. Bill Trampe

said that would be possible as long as the irrigators can know the downstream demands so that the board does not commit to purchase water which is not needed.

Ramon Reed said that the Bureau of Reclamation needs to convey its prediction of water use on a timeline determined by assessing upcoming needs from the bottom up.

Butch Clark suggested May 1 for the annual meeting. Lee Spann suggested that an annual refill meeting be included in the water management agreement. Ramon Reed asked where an annual meeting is mentioned in the draft agreement. Tyler Martineau said it was included in paragraph(11) on page 11.

Ramon Reed said that the annual refill meeting should also be included in language on page 5 and page 8 for the method to determine water use.

Dick Bratton pointed out the first full sentence on page 9. He said that it needs to indicate that the Upper Gunnison River Water Conservancy District will not be bound to pay for the water, if any, released unilaterally by the Bureau of Reclamation.

Purvis Vickers asked if anyone knew in which years the downstream irrigators have called for water. He said that he objects to paying for a specific amount of water if it is not used.

Ramon Reed said that there is no cost to the Bureau of Reclamation if the water is not used.

Purvis Vickers asked if the payment for agricultural use must be determined now. Dennis Steckel said that someone else could make this agreement if the District doesn't. It was said by another board member that this water is committed by decree to the District.

Ramon Reed asked what the average annual agricultural use is. Dick Bratton replied that in the court case only the years of maximum use were determined and not all the years were used for this information.

Dennis Steckel said that if all the water is multiuse then it does not have to be used only for agriculture. Dick Bratton said that it could be used for recreation. Mr. Steckel said that it would not need to be paid for as recreation use.

Tyler Martineau said that an added use of irrigation cannot be perfected without paying for it.

Bill Trampe said that it is important to realize that the future uses are going to be different from the past. He said, as an irrigator, that it's very difficult to determine future use by irrigators.

Ramon Reed said that he agreed with Mr. Trampe and that it was important to provide for an annual determination of use by the District, not the Bureau of Reclamation, so that changing needs for water in the future can be accommodated under the water management agreement.

Dick Bratton said that someone will have to pay for the water. President Trampe and Ramon Reed concurred that a big issue is who pays for the water used.

Butch Clark said that in the second sentence of paragraph(4a) on page 8, that the word "only" should be added following "...Taylor Park Reservoir".

Dennis Steckel said to add no later than \_\_\_ of every year.

Butch Clark said that a process for the District to review the charges determined by the Bureau of Reclamation should be added to the water management agreement.

Tyler Martineau asked if there was consensus that the District ask for a variable amount of water to be stored each year to be determined by the district and to be discussed with the Bureau of Reclamation at an annual meeting. There was consensus.

Butch Clark pointed out the "40,000 acre-feet" language appears on page 8 and asked that it be clarified again.

Tyler Martineau suggested that the second sentence of paragraph(5a), page 8 be amended to read, "The consumptive uses of this water will be accounted...".

Ramon Reed asked for an example of a scenario in which all the water would be depletion. Tyler Martineau said that it would be if there were a call on the irrigators by the senior downstream users.

Ramon Reed said that this draft agreement says that the irrigators can't divert water unless they pay for it.

Butch Clark said that evaporation of fishery and recreation water should not be counted against the 60,000 acre-foot subordination.

Ramon Reed asked what was meant by general obligation in paragraph(6a), page nine. Dick Bratton said that it meant that the District would be obligated for payment to the Bureau and the District could not require the Bureau of Reclamation to look to the local users to fulfill the obligations to the Bureau. The District would act as manager for the Bureau of Reclamation.

Butch Clark asked how Amendment 1 affects this obligation. Dick Bratton said that if the District has contracts with individual users there would be no problem but a general

obligation might be at odds with the provisions of Amendment 1. He said that the District cannot bind future boards. Dennis Steckel said that this is another reason why it is important to determine annually the amount of water to be used and to be paid for.

Dick Bratton said that he would study the ramifications of Amendment 1 to the water management agreement.

Butch Clark said that he wants to avoid perpetual liens in the agreement.

Dick Bratton said that it would be difficult to obligate the entire district for a certain amount of money.

Ramon Reed said that the first sentence of paragraph(6b), page nine needs clarification. He said that he understands that payment needs to be made or they won't give additional water but the sentence does not state it correctly. Mr. Reed also said that the words, "or other causes", in the first sentence of paragraph(7) on page 9 is entirely too broad in context of liability considerations and should be removed.

Butch Clark said that the phrase, "or other causes", could include such things as the construction of the Rocky Point project. He asked if compensation to the District could occur if such a thing happened. Dick Bratton replied that the Bureau of Reclamation would probably not require the District to pay for refill water if it was not available but that Mr. Clark is talking about compensation in addition. Lee Spann asked if the District should state in the water management agreement that if Rocky Point is built then the agreement will be renegotiated. Mr. Bratton replied that referring to Rocky Point specifically might not be a good idea.

Butch Clark asked if compensation to the District for intentional causes of the loss of water by the Bureau can be included in the water management agreement.

Ramon Reed asked if the Bureau of Reclamation would be liable for loss of water for events not listed in paragraph(7), page 9. Lee Spann said that it would be naive to think that there will not be additional demands on the water in Taylor Park Reservoir.

Butch Clark said that the State Engineer is currently reviewing dam safety. He said that this review might necessitate facility corrections at Taylor Park Reservoir. Lee Spann said that the spillway problem has been mentioned previously.

Butch Clark and Dick Bratton said that paragraph(8), page 10 is inconsistent with paragraph(5b) on pages 8 & 9 and should be revised. The District should not hold the United States harmless. Ramon Reed said that the District is not doing all the things itemized in paragraph(8) on page 10. Tyler Martineau replied that the District may be doing these things to the extent that there is an augmentation plan and delivery of water to irrigators' headgates.

Dick Bratton said that the language in paragraph(8) needs to clarify who has control for what functions.

Dennis Steckel said that paragraph(8) essentially means that the District cannot use the liability umbrella of the United States government.

Dick Bratton said that the words "by the Gunnison District" in paragraph(8) may address these concerns.

Butch Clark said that paragraph(9), page 10 refers to Reclamation Reform Act law and there should also be mention of Reclamation Reform Act policies. Dick Bratton said that he would prefer not broaching that subject. Mr. Clark said that it may need to state that it doesn't apply. Mr. Bratton said that if it applies, simply stating that it doesn't apply will not change the legal consequences.

Dennis Steckel observed that the District is a long way from defining all aspects of the water management agreement.

Lee Spann said that the negotiating team has a good idea of what needs to be done.

Butch Clark asked if paragraph(8) on page 10 would necessitate liability insurance for the District board.

Purvis Vickers asked if the Bureau of Reclamation is in a hurry to finalize the water management agreement. Tyler Martineau said that the Grand Junction office is motivated to complete the agreement before there is a change in policy by the new federal level administration.

Butch Clark said that the Reclamation Reform Act applicability needs to be faced. Ramon Reed told Mr. Martineau that if the Reclamation Reform Act doesn't apply, as Mr. Martineau has indicated, then put that language in the agreement.

Dick Bratton pointed out a typographical error in the second line of page 11. The word, "part", should be party.

President Trampe asked if May 1 had been the suggested date for the annual meeting in paragraph(11), page 11. Ramon Reed said that the negotiating team could decide on a date.

Butch Clark said that page 12 brings up the requirement of EEO compliance. Bob Arnold said that the irrigators would also be required to comply if they take the water under this agreement.

Tyler Martineau said that there was an additional policy matter which the board needed to discuss. He asked if the District intended that water procured under this agreement be used to irrigate new lands or only to supplement current lands. Mr. Martineau said that if new lands are irrigated that compliance with NEPA and Section 7 of the Endangered Species Act would be necessary.

Ramon Reed asked why the draft agreement doesn't address this matter.

Dennis Steckel said that the addition of new land is not practical.

Bill Trampe outlined a possible scenario for new land irrigation. He said that with the uncertain use of public land, ranchers may expand to currently unused private land for grazing.

Ramon Reed asked if the District specifies no new land now can that position be modified later.

President Trampe suggested that it state that there not be a net increase in irrigated lands and then new lands could be added if irrigation on other lands was reduced. Tyler Martineau said that approach could be tried.

Butch Clark said that the 1988-89 policies of the Bureau of Reclamation speak to the transfer of water.

Purvis Vickers said that he did not see anything in the draft water management agreement that says you can't use new lands for irrigation. Tyler Martineau said that the agreement will need to state this information. Butch Clark said that the process would not be that much more complicated with the addition of new lands and that the negotiating team may want to put that option in the discussion.

Lee Spann mentioned that, in the future, ranchers may sell their land, and purchase feed for their cattle for less money than by irrigating and buying the water.

Dick Bratton said that the suggestion of no net increase in irrigation depletions should address this matter. Tyler Martineau said that the option of no net increase in irrigated acreage will be explored with the Bureau of Reclamation.

Tyler Martineau asked if the board supported a letter to the Bureau of Reclamation with a list of these concerns prior to the first negotiating session. The board supported this approach.

### **3. MISCELLANEOUS MATTERS**

Tyler Martineau reported that there will be a meeting with the cooperating agencies on the Black Canyon contract and the EIS in Grand Junction, on June 3, 1993, at 10:00 a.m.

Tyler Martineau reported that a chain of communication had been developed on the operation of Taylor Park Reservoir if flooding occurs.

Tyler Martineau asked if the board preferred to meet at 1:00 p.m. or 7:00 p.m. on June 21, 1993 for the annual meeting. Butch Clark proposed 1:00 p.m. and the other board members agreed.

#### **4. ADJOURNMENT**

President Trampe adjourned the meeting at approximately 9:46 p.m.

Respectfully submitted,

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

**APPROVED:**

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



# 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: May 4, 1993

SUBJECT: Agenda Item 8, May 10, 1993, Board Meeting --  
Taylor Park Water Management Agreement.

Attached is the new draft of the water management agreement for the refill in Taylor Park Reservoir which we received today from the Bureau of Reclamation. Attached also is the formal request from the Bureau for the UGRWCD to designate a negotiating team and to select a date to begin negotiations on the agreement. My understanding is that the Bureau would like to begin the negotiations within the next month.

The new draft of the agreement contains a number of significant changes from earlier drafts. A principle change is that water stored under the fishery and recreation portion of the refill would not be charged for. Water which is stored in the reservoir under the multiple-use portion of the refill decree (for irrigation, fishery, and recreation purposes) would be charged for annually.



## United States Department of the Interior

BUREAU OF RECLAMATION  
UPPER COLORADO REGION  
GRAND JUNCTION PROJECTS OFFICE  
P.O. BOX 60940  
2764 COMPASS DRIVE  
GRAND JUNCTION, COLORADO 81506

MAY - 4 1993

GJ-430  
RES-3.10

Mr. William S. Trampe  
President, Upper Gunnison River  
Water Conservancy District  
275 South Spruce Street  
Gunnison CO 81230

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

Dear Mr. Trampe:

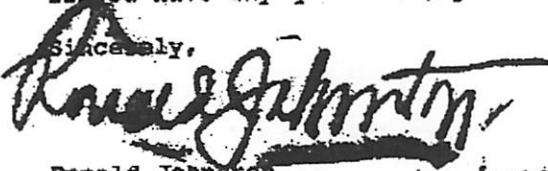
We would like to begin negotiations for the subject agreement. Negotiating team members from the Bureau of Reclamation include Glade Barney from our Salt Lake City office, and Brent Uilenberg and Ed Warner from our Grand Junction office. Please provide us with the names of the negotiating team members from your organization. We recommend three or four people from the Upper Gunnison River Water Conservancy District be present.

Please provide us with your input for setting the dates and times for the first two negotiating sessions.

Enclosed is a draft copy of the agreement for your information and use.

If you have any questions, please call Ed Warner at (303) 248-0654.

Sincerely,

  
Ronald Johnston  
Projects Manager

Enclosure

cc: Mr. Tyler Martineau  
Superintendent-Manager, Upper Gunnison  
River Water Conservancy District  
275 South Spruce Street  
Gunnison CO 81230

DRAFT 3-01-1993

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

UNCOMPAHGRE PROJECT, COLORADO  
WATER MANAGEMENT AGREEMENT

AMONG  
THE BUREAU OF RECLAMATION,  
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 BUREAU OF RECLAMATION, hereinafter referred to as the United States or as Reclamation, under the provisions of the Act of June 17, 1902 (32 Stat. 388), and Acts amendatory thereof and supplementary thereto, particularly the Acts of April 11, 1956 (70 Stat. 105), March 10, 1934 (48 Stat. 401) as amended, and Section 7 of the Act of July 9, 1965 (79 Stat. 216), the UNCOMPAHGRE VALLEY WATER USERS ASSOCIATION, hereinafter referred to as the Association, a corporation organized and existing under the laws of the State of Colorado, having its principal place of business at Montrose, Colorado, the UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT, hereinafter referred to as the Gunnison District, a conservancy district organized under the laws of the State of Colorado, having its principal place of business at Gunnison, Colorado, and the COLORADO RIVER WATER CONSERVATION DISTRICT, hereinafter referred to as the Colorado District, a quasi-municipal entity organized under the laws of the State of Colorado, having its principal office at Glenwood Springs, Colorado;

*Rec  
Revised*

DRAFT 3-01-1993

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 <sup>all -</sup> 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,

(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 released 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 the absolute

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**DRAFT 3-01-1993**

decreed amount for fishery and recreation purposes may also be used for increased and supplemental irrigation within the Gunnison District; and,

(d) WHEREAS, the United States has constructed, as part of the Colorado River Storage Project (Act of April 11, 1956, 70 Stat. 105), 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 Wayne N. Aspinall Unit, dated February 5, 1959, anticipated and provided for the future upstream depletion 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,

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has  
  
why this  
and not  
others  
  
on a day  
year basis  
any more  
depletion occur  
?*

(f) WHEREAS, the parties hereto entered into Contract No. 6-07-01-00027, dated August 28, 1975, relating to the manner of 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; 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 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

*ke*

*the define concept of subordination here*

**DRAFT 3-01-1993**

use of water by the Gunnison District which would result in a maximum of 40,000 acre-feet of depletions above Blue Mesa Dam as described in the 1959 Economic Justification Report; and,

*Be clear this is 40,000 + depletions in 1959  
Amount is 53,000 + net depletion*

(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.

*Add*

*40,000*

The agreement further provides that Taylor Park Reservoir will be operated in such a manner 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 accommodated; and,

*"time"  
for ever  
or no*

(i) WHEREAS, as stipulated in the agreement dated April 16, 1990, among the parties hereto, 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", which will result in additional surplus 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 Association or the United States; and,

*MD  
inj.  
In agreement  
Cord of  
1975  
operation*

*Will there be a change in ground?*

(j) WHEREAS, the parties hereto desire to enter into a water management agreement whereby storage and releases from Taylor Park Reservoir and the Wayne N. Aspinall Storage Unit are managed in a manner to provide for the beneficial use of water stored under the refill right.

NOW, THEREFORE, it is mutually agreed as follows:

**DEFINITIONS**

1. Where used in this agreement, the term:

**DRAFT 3-01-1993**

- a. "Federal Reclamation Laws" means the Act of June 17, 1902 (32 Stat. 388), and all acts amendatory thereof or supplementary thereto. *Rec Ref*
- 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 and/or the raising of livestock.

**TERM OF AGREEMENT**

2. a. This agreement shall be effective on execution hereof, and shall remain in effect for a period of 5 years.
- b. The agreement may be renewed for an additional \_\_\_ year period following expiration of this agreement and upon written request to Reclamation by all the other signatory parties within two years prior to the expiration of this agreement on terms and conditions satisfactory to the Secretary at that time.

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c. This agreement shall not be construed as amendatory to the said 1975 agreement

*Dec Reform Act  
203 (b)  
accuracy  
limitation  
100 acres*

or the April 16, 1990 agreement but as supplemental thereto. The use of Taylor Park Reservoir by the Gunnison District for recreational, fishery, and supplemental irrigation purposes must at all times, be consistent 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 both the Uncompahgre Project and/or the Wayne N. Aspinall Unit.

d. Any one party may terminate this agreement at any time. Termination as above provided 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.

e. Upon failure of the Gunnison District to perform its obligations under this agreement, the United States will notify the Gunnison District in writing of intent to terminate this agreement. The Notice of Termination shall specify each failure of the district, and shall further provide that the Gunnison District 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 shall review and reasonably accept such corrections and thereby waive the termination notice.

*one party - can cancel*

**RELEASE, EXCHANGE, AND MEASUREMENT OF WATER**

3. a. Water stored under the refill right solely for fishery and recreational purposes shall be released in furtherance of the objectives of the 1975 agreement, subject to Reclamation's final approval of the release schedule. Refill water released solely for fishery and recreation purposes, from the outlet works of Taylor Park Dam to Blue Mesa Reservoir, shall be protected

*87.000  
1974  
no pay*



*(Lawrence Johnson)*

**DRAFT 3-01-1993**

against diversion, by the Colorado State Engineers Office, by intervening appropriators. Refill water stored and released solely for fishery and recreational purposes 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 increased and supplemental 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 stored and released under the refill right will be maintained by Reclamation and such records will be available during regular business hours for inspection by the Association, the Gunnison District, the Colorado District, and the Colorado State Engineers Office.

d. On November 1 of each year any water in storage in Taylor Park Reservoir shall be accounted against the Association's first fill storage right and the Gunnison District shall thereafter have no right, power or authority with respect to all or any part of said water.

e. In the event Reclamation 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, Reclamation and/or the Association shall require said release at a time and rate to be determined solely by Reclamation and/or the Association. Any such releases shall be

*critical flows by J. J. Jan - Feb*

*add 1993 5*

**DRAFT 3-01-1993**

first charged against any water in storage under the refill right.

**RATE AND METHOD OF PAYMENT**

4. a. The Gunnison District agrees to pay to the United States annually an adjustable accounting and management charge for the use of Taylor Park Reservoir <sup>only</sup> to store water under the United States' refill right for increased and supplemental irrigation purposes for the benefit of the Gunnison District. Such charge shall be \$\_\_\_\_\_ per acre-foot times the maximum number of acre-feet stored in Taylor Park Reservoir for these purposes during the preceding November 1 through October 31 period. Such amount shall not exceed <sup>19,200</sup> \_\_\_\_\_ acre feet annually. The first payment shall be made on January 15, \_\_\_\_\_. Subsequent payments shall be made annually by January 15 for the previous contract year. Such payments shall be in addition to operation and maintenance payments due the Association by the Gunnison District and the Colorado District as part of the 1990 agreement.

Add "only" exclusion

Catch 22 use pay or not use abandon have flexible amount.

Payment in addition to for what

**QUANTITY OF WATER AND RELEASE SCHEDULE**

5. a. The parties agree that Reclamation, 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 increased and supplemental irrigation and incidental recreation and and fishery purposes. This water 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.

⊗ This is both clarify

Not minimum determine at yearly spring you meeting

Clarify the determination of depletion amount say 1/4 of amount desired

Do we suffer evaporation against 40,000-

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

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from November 1 through October 31 of each year. If the parties cannot mutually agree to a water release schedule for the upcoming period, Reclamation's 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.

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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.

1993 10:08 FROM GJPO BUREAU OF REC. TO 83036416727 P.12  
**DRAFT 3-01-1993**

CLAIM OF DAMAGE

8. The Gunnison District shall hold the United States and the Association harmless on account of damage or claim of damage of any nature whatsoever, 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 by the Gunnison District.

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.

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**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  
Salt Lake City, Utah 84147
- (2) President, Uncompahgre Valley  
Water Users Association  
P.O. Box 69  
Montrose, Colorado 81401
- (3) President, Upper Gunnison River  
Water Conservancy District  
275 South Spruce Street  
Gunnison, Colorado 81230
- (4) President, Colorado River Water  
Conservation District  
P.O. Box 1120  
Glenwood Springs, Colorado 81602

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

**MEETINGS**

11. The Association, Gunnison District, Colorado District, and Reclamation agree to participate in one (1) meeting each year on 1 May. At this meeting the parties will adopt a water release schedule for the upcoming period of 1 year as required in Article 5.b.

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Additional meetings will be held at the request of any signatory party to coordinate the terms of this agreement.

**STANDARD CONTRACT ARTICLES**

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

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

**DRAFT 3-01-1993**

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

**THE BUREAU OF RECLAMATION**

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

**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**

WE CONCUR:  
ATTEST:

\_\_\_\_\_  
Secretary

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

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**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**

*Steve*  
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:

*as we ready*  
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 contractor 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.

*What does this mean does it apply to water contract?*

**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.

received  
5/24/93

Memorandum

25 May 1993

To: Upper Gunnison River Water Conservancy District Board

From: Ramón Reed

Subject: Taylor Park Water Management Agreement

Before the specific language of the proposed draft agreement is discussed, I believe the Board should look at a few overall concepts in the Taylor Park management. There are two distinct uses of the second fill storage right:

- 1) fishery and recreational uses
- 2) supplemental irrigation.

It is important to realize that ALL 106,000 a.f. of the second fill storage right include fishery/recreational use. The 19,200 a.f. of irrigation use **overlaps** the first, rather than being a separate quantity addition to the first.

It is clear under the 1975 Contract (and all subsequent agreements) that the Upper Gunnison District is entitled to water for the first use, fishery and recreation, without payment beyond the \$6,000 already provided for in the 1990 Contract. The Bureau seems also to accept this concept in the 3-01-93 draft agreement, since there is no inclusion of payment for this water.

**SUGGESTED BOARD POSITION: THE UPPER GUNNISON BOARD SHOULD AFFIRM THE FREE FISHERY/RECREATIONAL USE AS A PRIMARY POSITION IN OUR NEGOTIATIONS.**

The second use of refill water, supplemental irrigation, is more complicated. While I am willing to accept the Bureau's assertion that they have the right to charge for this water, there are some questions which the Board should consider:

1. Who should pay for this water?
2. How much water is to be purchased?
3. How much per acre foot will the water cost?
4. Will the amount stored, released, and **diverted**, be counted against the Aspinall Subordination **depletion**?

1. Since there is no public entity currently using agricultural irrigation water, all supplemental irrigation water will be for private users. I believe our position should be that this water should be paid for by the users, not with tax dollars.
2. The major area of the draft agreement that I have a contention with is Section 5, specifying that a "minimum" amount of water is to be stored and released **every** year. Why should water be purchased for supplemental irrigation if there is no need? There should be **NO** minimum quantity specified in the contract. Can the Bureau can

really justify this position, which boils down simply to making a profit!  
Our justification for this position is simple if we consider the overall refill uses in both wet and dry years:

In a very wet year, such as 1993, it may be possible to meet the entire 106,000 a.f. refill. However, because there will then be an abundance of water throughout the basin, there will also be no need for supplemental irrigation as well as fishery/recreational use. Therefore, all of the refill releases must be used and justified for fishery and recreation purposes. This is what we will have to do this year, and if we cannot, then we really have no justification for the total refill.

However, in a dry year, when the refill might only amount to a few thousand a.f., there is more likely to be the need for supplemental irrigation, and that is when the dual purpose of the releases must be maximized. The argument made last fall that we should pay for this water to "protect" ourselves from diversion simply doesn't hold up, since it is only in an abundant year, **when all of the second fill water should be "free"**, that we need to justify the entire refill.

3. The price per acre foot negotiated with the Bureau should take into account the true "market value" of the water, with the clear understanding that there is only **one possible** market for this water under the 75 agreement: Upper Gunnison Basin irrigators. We set up an enterprise fund for this purpose, with the Upper Gunnison District acting to administer and collect payment for the water, charging private irrigators who desire supplemental water from this source. Our charge to them should include the cost negotiated with the Bureau as well as our costs for administration.

**SUGGESTED BOARD POSITION: THE 1993 AGREEMENT SHOULD CONTAIN NO MINIMUM QUANTITY OF WATER TO BE PURCHASED FOR SUPPLEMENTAL IRRIGATION. INSTEAD, THE AGREEMENT CAN INCLUDE A SPECIFIC TIME FRAME IN WHICH THE UPPER GUNNISON DISTRICT WILL NOTIFY THE BUREAU EACH YEAR OF THE QUANTITY OF WATER WE WISH TO BE STORED FOR THIS PURPOSE.**

4. The draft agreement is ambiguous about the accounting of the water in regards to diversion versus depletion quantities. Of the amount released from Taylor for "supplemental irrigation" purposes, much more must be diverted than will be consumed, with the rest flowing on down to Blue Mesa. Only the calculated **depletion** amount should count against the "upstream depletion of 40,000 acre-feet above Blue Mesa Dam."

**SUGGESTED BOARD POSITION: ONLY ACTUAL DEPLETION QUANTITIES SHOULD COUNT AGAINST THE ASPINALL SUBORDINATION, AND THE AGREEMENT LANGUAGE SHOULD BE COMPLETELY UNAMBIGUOUS ON THIS POINT.**

5/24/93

TO: UGRWCD Board of Directors

FROM: Steve Glazer

RE: Taylor Water Management Contract

The Bureau of Reclamation has had an enormous impact on the upper Gunnison basin over the years and continues to play an important role of influencing the planning of the future of the basin. On the whole, they have made many positive contributions toward our prosperity. But there have been some inconsistencies in their dealings with us that can be resolved during the negotiations of this contract.

Before Blue Mesa was built, the Taylor River below the Taylor Dam was more like an irrigation ditch than a river. The Aspinall Unit has added a lot of flexibility and with the cooperation of the DOW and Bureau of Rec., the lower Taylor River has blossomed into a flourishing, healthy watershed. This contract is critical to ensure and enhance these fruitful efforts. It is important to be deliberate and careful especially because so many other issues are being discussed that require integration with all segments of the Colorado River Basin.

No decisions should be made in haste or without full public-involved deliberations with the entire board. This is the most important point I want to make right now.

There are some issues that the current draft omits which need to be addressed. These issues go back as far as the mid 60's and this is the perfect time to address them. The following are just some of the subjects that need to be added to the contract:

- The Bureau should commit to maintaining and improving water quality as they have with the Aspinall Unit. (Page 2 of the scoping report for the Gunnison River Contract notes that the historic operation of the Aspinall Unit included improving water quality.)
- The taxpayers of Upper Gunnison River District should not have to pay for the Bureau's stewardship of our water right. (See, the "Economic Justification Report" of 1957. This could also be helpful to store some of our instream flows in Blue Mesa as "call" insurance at minimal expense.)
- A commitment to a specific minimum instream flow as a baseline for yearly negotiations.
- To protect this contract from upstream degradation from withdrawals and transmountain diversion.
- To protect this contract, the Gunnison River Contract, and all other contracts and compacts from interference by FERC.
- To recognize the worth of the second-filling conveyance and using it as a credit for uncompensated market and non-market values that were saved by winning the second-filling case.

Agenda Item #7  
May 10, 1993



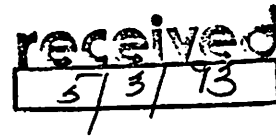
# United States Department of the Interior

BUREAU OF RECLAMATION  
UPPER COLORADO REGION  
GRAND JUNCTION PROJECTS OFFICE  
P.O. BOX 60340  
2764 COMPASS DRIVE  
GRAND JUNCTION, COLORADO 81506



GJ-150  
PRJ-13.00

APR 30 1993



Mr. Jim Hokit  
Uncompahgre Valley Water  
Users Association  
P.O. Box 69  
Montrose CO 81402

Subject: Results of April 22, 1993, Taylor Park Operations Meeting (Reservoir Operation)

A meeting was conducted on April 22, 1993, in the Uncompahgre Valley Water Users Association Office, Montrose, Colorado, to discuss and agree upon the operation of Taylor Park Reservoir for the upcoming runoff season based on the April 1, 1993, projected runoff forecast. The attendance list is enclosed.

Based upon the meeting discussion it was agreed the following operational release pattern and operating criteria for Taylor Park Reservoir would be implemented by the Uncompahgre Valley Water Users Association. Also enclosed is a tabular hydrograph and information from the Upper Gunnison River Water Conservancy District dated April 2, 1993.

- Second Half of April - Releases will be increased from 250 cubic feet per second (cfs) to 300 cfs on April 22, 1993, and maintained through April 30, 1993, resulting in an end-of-period content (EOPC) of approximately 46,000 acre-feet (af), and average release rate of 280 cfs over the period. The increase in releases at this time will assist the movement of Kokanee salmon fry to Blue Mesa Reservoir. Winter flows were adequate to protect the river fishery.
- First Half of May - Releases will be maintained at 300 cfs from May 1, 1993, through May 15, 1993, unless the computed inflow into Taylor Park Reservoir reaches 550 cfs. If this occurs the operations described for the second half of May will be implemented. Assuming a 300 cfs release over the period, an EOPC of approximately 51,000 af is projected.
- Second Half of May - Releases will be maintained at 300 cfs until the computed inflow into Taylor Park Reservoir equals 550 cfs. At this time releases will be increased to 500 cfs following a 50 cfs per day ramping rate. The 500 cfs release will be maintained for a 13-day period.

However, release of the full 500 cfs is dependent upon downstream flooding conditions on the Taylor and Gunnison Rivers. An EOPC of approximately 60,000 af is expected, assuming implementation of the 500 cfs release at the beginning of the period.

- First Half of June - Following completion of the 13-day 500 cfs release, outlet works releases will be decreased to 400 cfs following a ramping rate of 50 cfs per day. An EOPC of approximately 80,000 af is expected, assuming implementation of the 400 cfs release at the beginning of the period. However, if projected runoff volumes significantly decline from the April 1, 1993 forecast, flows will be reduced to as low as 300 cfs in order to fill the reservoir (without spilling) in July. It is important Taylor Park Reservoir not spill to avoid carrying Mysis shrimp downstream to Blue Mesa Reservoir. The Mysis could compete significantly with rainbow trout in Blue Mesa.
- Second Half of June - Releases will be maintained at 400 cfs from June 16, 1993, through June 30, 1993, assuming similar runoff conditions exist as were forecast on April 1, 1993. An EOPC of approximately 95,000 af is expected.
- First Half of July - Releases will be maintained at 400 cfs from July 1, 1993, through July 15, 1993, assuming similar runoff conditions exist as were forecast on April 1, 1993. An EOPC of approximately 101,000 af is expected.
- Second Half of July - Releases will be maintained at 400 cfs from July 16, 1993, through July 31, 1993, assuming similar runoff conditions exist as were forecast on April 1, 1993. An EOPC of approximately 97,000 af is expected.
- First Half of August - Releases will be decreased to 320 cfs following a ramping rate of 50 cfs per day beginning on August 1, 1993, and maintained through August 15, 1993, assuming similar runoff conditions exist as were forecast on April 1, 1993. An EOPC of approximately 93,000 af is expected.
- Second Half of August - Releases will be maintained at 320 cfs from August 16, 1993, through August 31, 1993, assuming similar runoff conditions exist as were forecast on April 1, 1993. An EOPC of approximately 88,000 af is expected.
- First Half of September - Releases will be decreased to 300 cfs on September 1, 1993, and maintained through September 15, 1993, assuming similar runoff conditions exist as were forecast on April 1, 1993. An EOPC of approximately 82,000 af is expected.

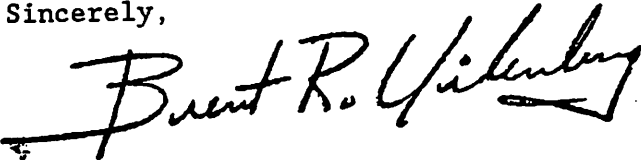
-Second Half of September - Releases will be maintained at 300 cfs from September 16, 1993, through September 30, 1993, assuming similar runoff conditions exist as were forecast on April 1, 1993. An EOPC of approximately 76,000 af is expected.

-First Half of October - Releases will be maintained at 300 cfs from October 1, 1993, through October 15, 1993, assuming similar runoff conditions exist as were forecast on April 1, 1993. An EOPC of approximately 70,000 af is expected.

-Second Half of October - Releases will be decreased to 100 cfs following a ramping rate of 50 cfs beginning on October 16, 1993, and maintained through October 30, 1993. An EOPC of approximately 72,000 af is expected. The mid-October release reduction to winter levels will protect brown trout eggs in the river.

The above described release pattern and operating criteria will be followed subject to significant changes in projected inflow, downstream flooding conditions, avoidance of spills, and other emergency conditions requiring draw down of the reservoir. Significant tributary inflows downstream from Taylor Park Dam are expected, so flows at Almont will be significantly increased over releases. Mr. Coll Stanton should be contacted at (303) 248-0660 if you have questions or require additional information concerning Taylor Park Reservoir operations.

Sincerely,



FOR Ronald Johnston  
Projects Manager

Enclosures

cc: Mr. Eric Kuhn  
Colorado River Water  
Conservation District  
P.O. Box 1120  
Glenwood Springs CO 80225

Mr. L. Richard Bratton  
Upper Gunnison River Water  
Conservancy District  
275 South Spruce Street  
Gunnison CO 81230

Mr. Sherman Hebein  
Colorado Division of Wildlife  
2300 South Townsend Avenue  
Montrose CO 81401

Mr. Tyler Martineau  
Upper Gunnison River Water  
Conservancy District  
275 South Spruce Street  
Gunnison CO 81230

Mr. Charles White  
Attorney at Law  
Twenty-second Floor  
410 Seventeenth Street  
Denver CO 80202

Mr. Frank Vader  
1690 County Road 742  
Almont CO 81210  
(ea w/encl)



*from January*

# 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: December 14, 1992

SUBJECT: Board Member Correspondence

Today I received two letters addressed to the board of directors:

A letter from the Gunnison County Stockgrowers which urges the board:

- 1) To "move promptly toward assignment" of the refill rights to the United States, and
- 2) To "move forward expeditiously in the development" of the proposed Water Management Agreement with the Bureau of Reclamation.

A letter from Steve Glazer which asks the board:

- 1) To seek an explanation from the Bureau of Reclamation as to why the assignment of the Taylor Park refill right is necessary under the terms of Principle 2 of the "Department of Interior Water Transfer Policy".
- 2) To consider the fee structure of the proposed water management agreement in the light of Principle 6 of the Water Transfer Policy.
- 3) To determine whether the basis exists for a lawsuit brought against NECO by the District because NECO has contacted the USBR but not the other parties to the 1975 agreement.
- 4) To consider mapping of wetlands in the East River Valley.

My understanding is that copies of the letter were mailed directly from the stockgrowers and Steve Glazer to each of the board members. If any board member did not receive the letters please let me know.

# **GUNNISON COUNTY STOCKGROWERS ASSN.**

INCORPORATED

received  
12/14/92

P.O. BOX 566

ALMONT, COLORADO

81210

December 8, 1992

Board of Directors  
Upper Gunnison River Water Conservancy District  
275 South Spruce  
Gunnison, CO 81230

Dear Board Member:

As you are aware, members of our Association's Board of Directors have attended with considerable interest both your recent work session of November 30, 1992 and your regular meeting of December 7, 1992. We have been pleased to monitor your efforts to bring about further protection for all water users in the basin of the Upper Gunnison River. Be assured, that on behalf of our over 60 members, our interest in your deliberations is sincere and on-going.

Pursuant to formal action by the Stockgrower's Board of Directors on the evening of December 7, this letter is to urge you to continue to move promptly toward assignment to the Bureau of Reclamation of those rights in Taylor Park Reservoir recently made final under the decree from the Colorado Supreme Court in Case No. 86 CW 203. We believe that such action is mandated by your prior contractual commitment with the BOR and completion of the assignment in a timely manner is essential to maintaining a positive working relationship with the BOR.

Secondly, again pursuant to formal action by our Board of Directors, our Association would urge the District to move forward expeditiously in the development of the proposed Water Management Agreement between the BOR, UVWUA, CRWCD, and the UGRWCD. While we recognize there remain numerous details to be worked out amongst the various parties, the potential benefits of that agreement to both water users and the taxpayers of the basin are many. Our initial review of the proposed draft agreement seems to indicate, finally, the opportunity for long term protection from senior downstream calls on the local stream systems. We were pleased to be able to support the creation by the UGRWCD of reserve funds to, in part, facilitate financial obligations that may be created under the agreement. That was a positive step in the overall strategy of protecting the water

resources of the basin and will create opportunities for closer links between the water users of the basin and the District.

These two agreements are viewed as critically important matters by our membership. Accordingly, we remain available to assist the District in the resolution or implementation of them as may be appropriate. Thank you for the opportunity to provide this information to you.

Very truly yours,

THE GUNNISON COUNTY STOCKGROWER'S ASSOCIATION  
BY THE BOARD OF DIRECTORS.

Carl Miller  
Carl Miller, President

Stan Irby  
Stan Irby, Immediate Past Pres.

Ken Spann  
Ken Spann, Vice-President

Palmer Vader  
Palmer Vader, Director  
Lower Tomichi

Greg Peterson  
Greg Peterson, Director  
Upper Tomichi

John Malensek  
John Malensek, Director  
North Gunnison

Pat Youmans  
Pat Youmans, Director  
West Gunnison-Powderhorn

December 10, 1992

received  
12/14/92

**To: The Upper Gunnison River Water Conservancy District  
Board of Directors and Staff**

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There are four important issues that have dominated the agenda of several of your most recent meetings. In an effort to try to gain a better understanding of these issues, I recently discovered the "Department of the Interior Water Transfer Policy" along with Criteria and Guidance which were added to offer further understanding to the original seven stated principles. I urge you all to become familiar with these documents that can offer you a great deal of insight and assistance in grappling with three of the four issues. These issues are crucial because they are all pressing and yet require deliberate and careful actions, because how they are resolved will have a dramatic long-term impact on all land-use and water decisions in the future.

The first two issues are related, so I will discuss them together. They are the conveyance of the 106,000 acre/feet of water rights deeded to UGRWD in the water court ruling on the 2nd filling to the United States as required in the 1990 contract that supplements the 1975 contract between all the parties responsible for the operations of the Taylor Reservoir. Judge Brown in the 202 case stipulated the need for the 1990 contract. Although in reviewing the case, the Supreme Court ruling used the 1975 contract as the basis to affirm the right to the second filling. The second related issue is the Water Management Agreement that the Bureau of Reclamation wishes to consummate with the UGRWCD regarding the use of the Taylor facility to manage the 106,000 A/F decree.

It is widely accepted that agreeing to the terms of the 1990 contract that reversed the Bureau's opposition to the 202 case was the turning point in that case that led to our victory. The questions that still need to be answered before the conveyance of those water rights is why was the Bureau opposing your applying for the 2nd filling when the 1975 contract implied your intent to do so. The reason the Bureau used to ask for that water is a contradiction to Principle 2 of their Water Transfer Policy. The guidance offered in Principle 2 specifically allows for the use of federal storage facilities for non-federally supplied water so long as there was a contract in place that governed the management of said water. An explanation of this contradiction should be requested from the Bureau immediately to ascertain whether in fact the conveyance is still necessary on their part in the light of Principle 2. If the Bureau maintains its rights provided in the 1990 contract, then you should execute the conveyance and the issue can be resolved with the Water Management Agreement.

The Water Transfer Policy also offers insight on the actual need for and/or terms negotiated in a new Water Management Agreement. Principle 6 specifically prohibits the Bureau from adding any burdensome costs beyond actual real expenses of management of the releases from the Taylor Reservoir. Since the Bureau has already, historically, been managing all of the water collected in the Taylor Reservoir, the confirmation of who actually owns that water should not require a per acre/foot charge to continue to manage all the water. The only change in management required is a more detailed accounting of whose water is being released and when. This would suggest that the only additional costs related to a new Water Management Agreement should be a minimal fee based only on the expenses of more detailed accounting.

The third issue is the NECO case. Again, the DOI Policies offer numerous insights in dealing with the nuisance that continues to divert your resources and attention from other important issues. As long as your Board remains committed to your determination that Rocky Point can not happen without unmitigatable diminution of water quality and services provided by the Taylor Reservoir then Principles 2, 3, 5, and possibly even 4, should be invoked by the Bureau to put this threat to rest. Principle 2 specifically identifies avoidance as an acceptable response. NECO has already contacted the Bureau without, at the same time, contacting the other parties to the 1975 contract. If NECO does not withdraw the entire Rocky Point Project as soon as they realize that the Bureau can not and will not agree to any proposal within the 90 days that FERC allowed for such purpose, then the UGRWCD should instruct council to investigate and prepare to seek legal recourse by suing NECO for injunctive relief and damages based on their continued wrongful, tortious, interferences with contractual relations. I suggested this action plan over a year ago. Within the next sixty days, the time will arise for you to consider taking this advice.

The fourth issue is the "Due Diligence" case. The discussion at your last meeting indicated the possibility that if conceded a 11,400 A/F storage right in the upper East River, the spring run off in the entire East River basin could be exposed to consumptive diversion. Even the possibility of this scenario is an outrage to me. The need of the entire run off to recharge the water table and the extensive wetlands throughout the basin is essential to prevent horrendous environment catastrophe. I am aware that "due diligence" is very complicated and the East River is only one part of the entire case, but the possibility of Arapahoe County obtaining any conditional rights to water from the East River would be disastrous. If this does happen, it should trigger a NEPA EIS by at least four or five federal agencies, as well as cause great concern to both Colorado River and State Water Conservation Boards and the DOW and CDH.



# Upper Gunnison River Water Conservancy District

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

*Calculations*

TO: Board Members,  
Upper Gunnison River Water Conservancy District

FROM: Tyler Martineau *TM*

DATE: April 22, 1993 *and 6c*

SUBJECT: Agenda Item 7, May 10, 1993, Board Meeting --  
1993 Taylor Park Reservoir Operations.

On April 22 the parties to the 1975 agreement met to discuss the operation of Taylor Park Reservoir for 1993. The Colorado Division of Wildlife and Barney White (representing Ernest Cockrell) also participated in the meeting.

After the UGRWCD board meeting on April 12 I received the USBR's April 1 water supply forecast which indicates an 8000 acre foot increase in runoff over that forecasted in the March 1 forecast. The additional 8000 acre-feet will provide enough water to allow the District to reach the optimum flow in the Taylor River of 500 cfs for fishery and recreation purposes this year. A copy of the UGRWCD proposed reservoir operation and written UGRWCD operating principles presented at the meeting on April 22 is attached.

At the meeting on April 22 it was agreed by the parties to the 1975 agreement to provide a two week period of 500 cfs releases in the last part of May. This will be done to draw the reservoir down to give the Bureau of Reclamation more of a margin of safety to avoid an uncontrolled spill of the reservoir, and to accommodate Barney White who indicated he would like to call with the 445 cfs private instream flow water right as soon as possible after the first fill of the reservoir is completed in May. Providing 500 cfs in the river at the time when Barney's demand is 445 cfs will insulate Taylor Park Reservoir from the effects, if any, of a call by the private instream right. Attached is a copy of the operation of Taylor Park Reservoir which was approved for 1993 by the consensus of those present at the meeting. It was agreed by the parties present that the 500 cfs release in May would not be on exactly the schedule shown but would begin at such time as the inflow to Taylor Park Reservoir has risen to somewhat above 500 cfs, and then be maintained for two weeks.

Additional topics discussed at the meeting included:

- \* The Upper Gunnison District continues to want to perfect as much of the refill water right in 1993 as possible. The Bureau of Reclamation indicated that historically they have counted water physically stored in Taylor Park Reservoir towards the refill but not counted water bypassed through reservoir towards the refill. Instead they have credited the bypasses (up to 445 cfs) to the demand of the private instream flow water right even though Cockrell has not placed a call in the past. Under this form of accounting a refill of roughly 60,000 acre feet will occur in 1993. In order for all of the refill to be perfected Ernest Cockrell would have to notify the division engineer that he was taking his instream flow demand off the river. Barney White indicated that Ernest Cockrell could not do this at the present time.
- \* Barney White is concerned that as much water as possible be credited to the private instream water right in order to show maximum use of that right. He would like releases of first fill and refill water from storage in Taylor Park Reservoir as well as bypasses through the reservoir to count as being beneficially used for his instream purposes. At present, I think this request can be accommodated without any adverse effect on the UGRWCD.
- \* Barney White said that Ernest Cockrell will not disrupt the operation of Taylor Park Reservoir this year. I assume this means he will not call with the private instream right for more than what is being released from Taylor Park Reservoir (i.e., he will not try to limit the amount of physical storage that we wish to accomplish in Taylor Park Reservoir under the refill).

There was no discussion of whether Cockrell's instream flow water right is senior or junior to the refill right or whether it can legally exercise a call against the refill right. The question is currently being reviewed by the Bureau of Reclamation and others, and no final opinions have been expressed.

*Can  
Cockrell  
operate  
Instream flow*



1993 TAYLOR PARK RESERVOIR OPERATION - PROPOSED UGRWCD OPERATION  
 BASED UPON THE APR 1, 1993 WATER SUPPLY FORECAST

4/20/93

May 1 Content: 44000 af

*Head*

*per  
4/22/93*

Month	Inflow 1000 af	Inflow cfs	Release 1000 af	Release cfs	Ending Content 1000 af
1May	19.0	6337	9.0	300	54.0
2May	19.0	6335	9.0	300	64.0
1June	30.0	10002	9.0	300	85.0
2June	29.0	9673	12.0	400	102.0
1July	13.0	433	15.0	500	100.0
2July	13.0	433	12.0	400	101.0
1August	6.0	200	9.8	325	97.3
2August	5.0	167	9.8	325	92.5
1September	3.0	100	9.0	300	86.5
2September	3.0	100	9.0	300	80.5
1October	3.0	100	9.0	300	74.5
2October	3.0	100	3.0	100	74.5
<b>Total</b>	<b>146.0</b>		<b>115.5</b>		

Note: Flows are shown for the first half and the second half of each month.

# Upper Gunnison River Water Conservancy District

April 21, 1993

## 1993 TAYLOR PARK RESERVOIR OPERATING OBJECTIVES

Objectives developed for the 1993 operation of Taylor Park Reservoir by the Upper Gunnison River Water Conservancy District include:

1. To operate Taylor Park Reservoir to achieve fishery benefits in the reservoir and downstream between November 1 and March 31 by maintaining a stable release pattern in the Taylor River below Taylor Park Dam. In 1993 the recommended target flow is 100 cfs.
2. To operate Taylor Park Reservoir for early season irrigation purposes so as to provide adequate flow support and protection for the Gunnison River and to provide fishery benefits in the reservoir and downstream by maintaining a target flow in the Taylor River at Taylor Park Dam between April 1 and June 15. Adjustments in reservoir releases will be made on an as-needed basis depending on spring runoff conditions to avoid downstream flooding and to avoid reservoir spills. The recommended target flow in 1993 is 300 cfs.
3. To operate Taylor Park Reservoir for irrigation, and for fishery and boating purposes downstream by maintaining a target flow in the Taylor River at Taylor Park Dam between June 16 and July 31. In 1993 the recommended target flow is 400 cfs between June 16 and July 15, and 400 cfs between July 16 and July 30.
4. To operate Taylor Park Reservoir for fishery and boating purposes downstream by maintaining a target flow in the Taylor River at Taylor Park Dam between August 1 and August 31. In 1993 the recommended target flow is 325 cfs.
5. To operate Taylor Park Reservoir for fishery and boating purposes in the reservoir by maintaining the reservoir water surface elevation at or above 9322 feet between June 15 and August 31, while recognizing the need to preserve flexibility to achieve lower reservoir water surface elevations when needed for flood control purposes, to avoid reservoir spills, or to meet downstream water supply needs.

6. To operate Taylor Park Reservoir for irrigation purposes and for fishery benefits in the reservoir and downstream by maintaining a target flow in the Taylor River as measured in the Taylor River at Taylor Park Dam between September 1 and October 15. In 1993 the recommended target flow is 300 cfs.
7. To operate Taylor Park Reservoir so as to reach the target flow to be maintained throughout the winter in the Taylor River at Taylor Park Dam by October 16 for stream fishery purposes. Flows from the dam would be ramped down at 50 cfs or less per day so that the wintertime target is reached by October 16.
8. To operate Taylor Park Reservoir to achieve fishery benefits in the reservoir and downstream between October 16 and October 31 by maintaining a stable release pattern in the Taylor River below Taylor Park Dam. In 1993 the recommended target flow is 100 cfs.
9. To operate Taylor Park Reservoir to avoiding rapid fluctuations in the release pattern from the reservoir and resultant fluctuations in the water surface elevation of Taylor Park Reservoir to protect reservoir ice for winter recreation, to protect the reservoir fishery, and to protect fishing and boating activities year-round.

1993 TAYLOR PARK RESERVOIR OPERATION - CONSENSUS OF PARTIES TO THE 75 AGREEMENT 4/22/93  
 BASED UPON THE APR 1, 1993 WATER SUPPLY FORECAST

May 1 Content: 46400 af

Month	Inflow 1000 af	Inflow cfs	Release 1000 af	Release cfs	Ending Content 1000 af
1May	13.2	440	9.0	300	50.6
2May	24.8	827	15.0	500	60.4
1June	31.5	1050	12.0	400	79.9
2June	27.5	917	12.0	400	95.4
1July	17.4	580	12.0	400	100.8
2July	8.6	287	12.0	400	97.4
1August	6.1	203	9.8	325	93.7
2August	4.9	163	9.8	325	88.9
1September	3.0	100	9.0	300	82.9
2September	3.0	100	9.0	300	76.9
1October	3.0	100	9.0	300	70.9
2October	3.0	100	3.0	100	70.9
Total	146.0		121.5		

Note: Flows are shown for the first half and the second half of each month.

# 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: April 19, 1993

SUBJECT: Agenda Item 9, May 10, 1993, Board Meeting --  
1993 Aspinall Unit Operations and Water Rights  
Administration.

On April 15 I attended the quarterly Aspinall operations meeting conducted by the Bureau of Reclamation. The attached meeting summary and graphs describe anticipated Aspinall operations based upon the April 1, 1993 water supply forecast. Of importance is the fact that the Bureau of Reclamation will operate through August so as to insure that downstream water rights are fully satisfied. Therefore, downstream senior calls should not be anticipated to affect the Upper Gunnison Basin this summer. The Bureau also did not issue its six month notice of when it will seek administration of the Aspinall or other downstream senior decrees.

The U. S. Fish & Wildlife Service indicated they are pleased with the flows that the endangered fish will receive this year. The peak mean daily flow on the Gunnison River at Whitewater is anticipated to be approximately 16,000 c.f.s. This will satisfy one of the high flow years in the Service's five year test flow program.

The next Aspinall operations meeting will be held in Grand Junction at 1 p.m. on August 19, 1993.

*Aspinall  
4/4*

*see →*

Aspinall Unit Operations Meeting  
April 15, 1993

The subject meeting was held in Grand Junction, Colorado. An attendance list is enclosed. The purpose of the meeting was to establish operation plans for the Aspinall Unit for the January-April 1993 period with input from all affected parties.

Review of January through March 1993 Operations

At the beginning of the meeting, the January-March 1993 operations were reviewed and a data table provided. Releases have increased since January due to increased forecasted inflow. At the present time, snowpack is estimated at 153 percent of average and inflow to Blue Mesa at 136 percent. In January the inflow had been estimated at 86 percent.

1993 Runoff Forecast/Anticipated Aspinall Unit Operations

The most probable runoff to the Aspinall Unit is estimated at 950,000 acre-feet for April through July. Proposed operations were presented; these plans provide for spring peaks in mid to late May. A peak of approximately 16,000 cubic feet per second (cfs) is expected to be reached at the Gunnison River gauge at Whitewater. Peak flows through the Black Canyon of the Gunnison National Monument depend somewhat on type of runoff from Cimarron Creek, but peaks should be between 3,000 and 4,000 cfs.

In summary, releases will be increased to 4,000 cfs around May 1, and are expected to remain at that level through May and into June. This is being done in order to keep storage in Blue Mesa low enough to accommodate the expected high runoff and to provide test flows. After completion of the 4,000 cfs releases sometime in June, releases will be reduced to approximately 2,000 cfs and will remain at that level through September. This will result in flows of around 1,000 cfs through the Monument and Gunnison Gorge during most of the summer. It is probable that Blue Mesa Reservoir will fill, and it is also probable that spills will occur at Crystal due to side inflow.

*B. Canyon flows  
is 1/4th  
of whitewater*

All agencies and organizations at the meeting supported the operation.

Computation of Delivery to the Monument and Operation Plan Development

Anticipated deliveries to the Black Canyon of the Gunnison National Monument for April through July, were computed based on the equation described in the preliminary working draft of a water service contract for the Monument. Handouts covering this material were provided at the meeting. The computed delivery to the Monument of 408,000 acre-feet exceeds the 126,000 acre-feet needed to meet a minimum release of 300 cfs for the April through July period.

There were several questions on the accounting of releases between January and March. Meeting attendees were requested to keep track of these type questions so that when the preliminary working draft of the water service contract is updated, corrections can be made.

### Coordination Needs

Timing of the peak flow release from Crystal was discussed. Ramping of flows after high releases and after spills at Crystal is very important to the downstream fishery and associated recreation and related economy. Recommendations are to ramp up at 500 cfs per day (when beginning flows are around 2,000 cfs), and to ramp down at 250 cfs per day. It was agreed that during the high flow period this spring (around 3,000 cfs), daily fluctuations of around 200 cfs for power production would be all right.

Research flows of 600 cfs were confirmed by the Colorado Division of Wildlife (CDOW) for fish population surveys on the following dates in 1993: September 27-30; October 12-15; and October 18-22.

Agencies discussed their plans for monitoring the anticipated high spring flows. The National Park Service (NPS) will obtain water surface elevations in the Monument to supplement existing low and medium flow elevations. NPS will also look at riparian vegetation and hyporheic communities following high flows. NPS in cooperation with CDOW will also have a creel census underway at Blue Mesa. The Fish and Wildlife (FWS) will continue planned biological monitoring, including tracking of radio-tagged Colorado squawfish; obtain videography at peak flows; and field check backwaters to determine whether flooding occurs. It was agreed it would be important to determine at what flow level key backwaters are flooded. The Bureau of Reclamation (Reclamation) and FWS will determine if people can be made available for this work. Reclamation will work on flushing flow study downstream from Delta and are working with NPS on fishery study at Blue Mesa. CDOW will do a fry estimate in June, July, and September in the Gunnison Gorge in addition to their annual population study. Western is working to have videography from last year analyzed (5 flights at different flows).

### Conclusions

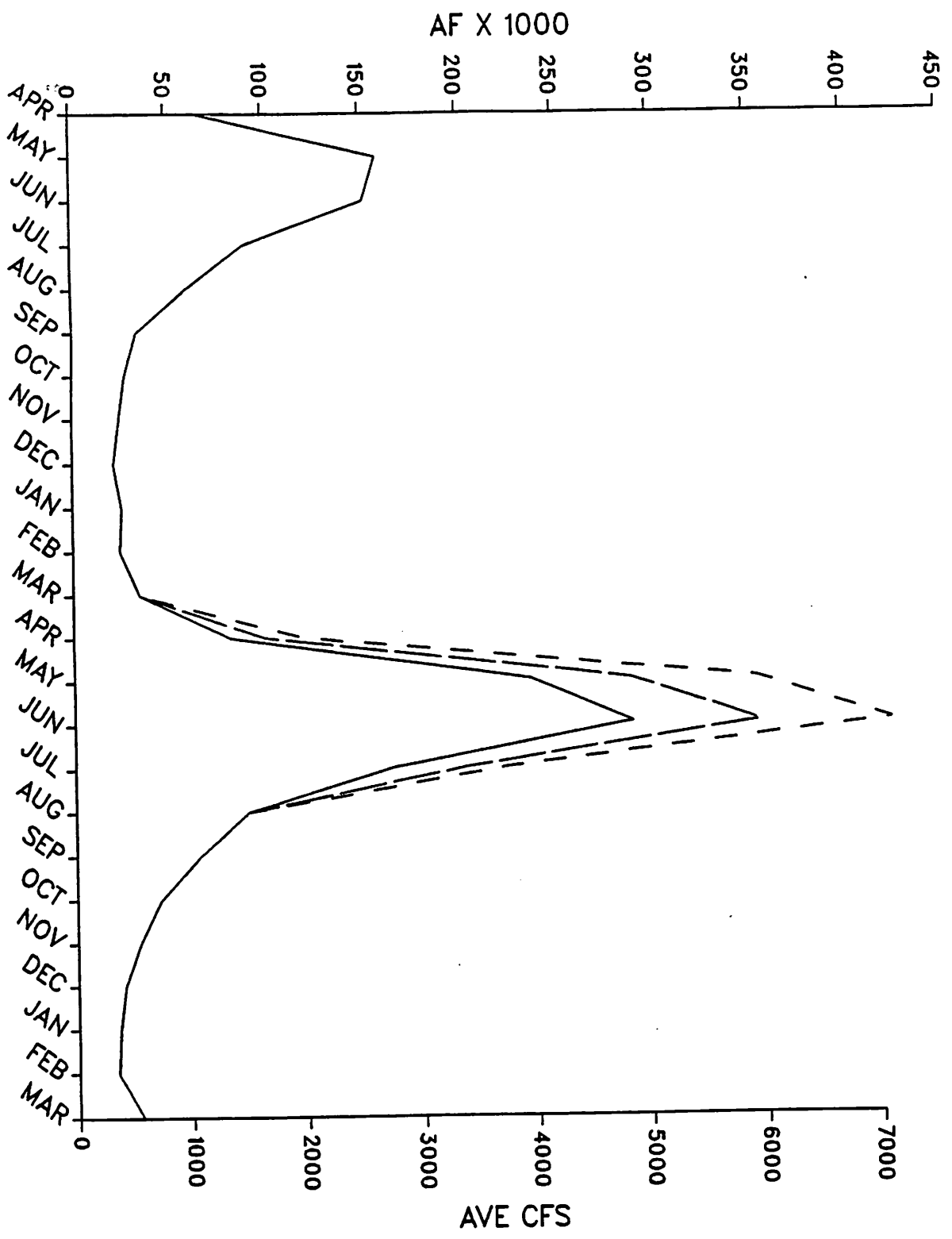
-The Grand Junction Projects Office will be responsible for informing interested parties of flow changes and plans.

-Measurement of flows continues to be a problem. The Grand Junction Projects Office will report on this problem at the August meeting.

-The draft contract delivery water for the January-July, 1993, period is now estimated at 408,000 acre-feet.

The next meeting on operations will be held in Grand Junction at 1 p.m. on August 19, 1993.

# EXPECTED 1993 ASPINALL OPERATIONS BLUE MESA INFLOW



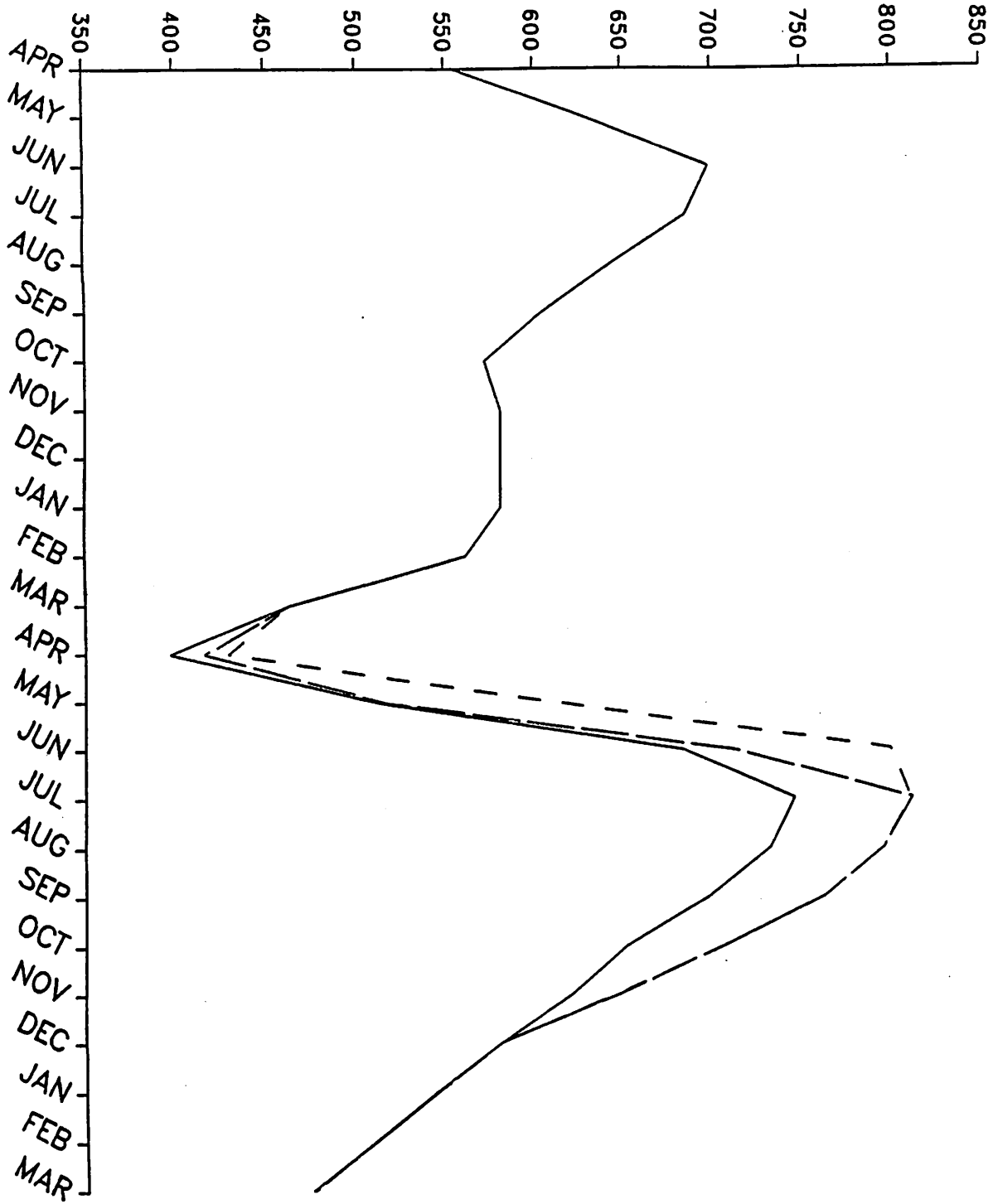
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 min prob  
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Apr 1992 - Mar 1994



# EXPECTED 1993 ASPINALL OPERATIONS BLUE MESA CONTENTS

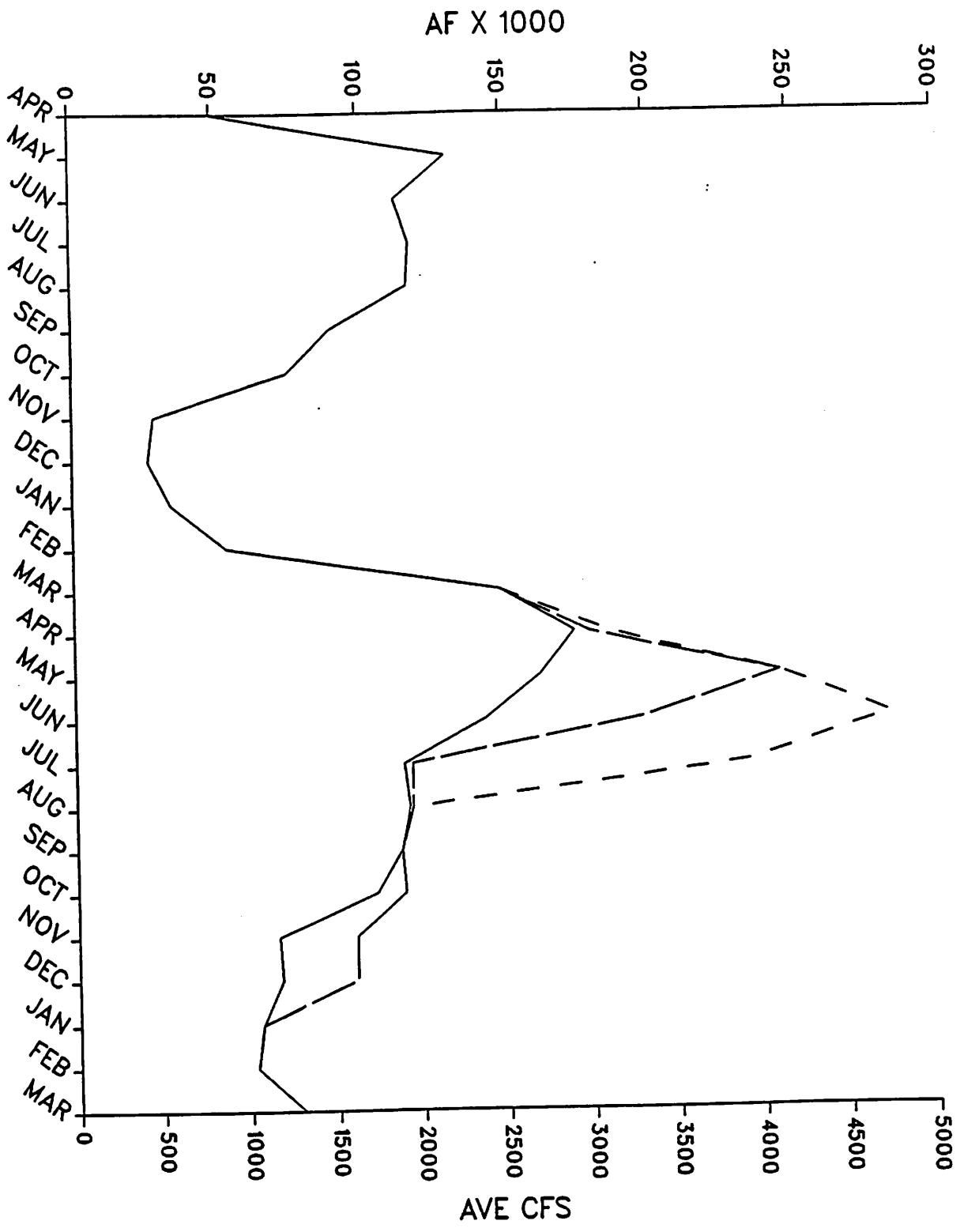
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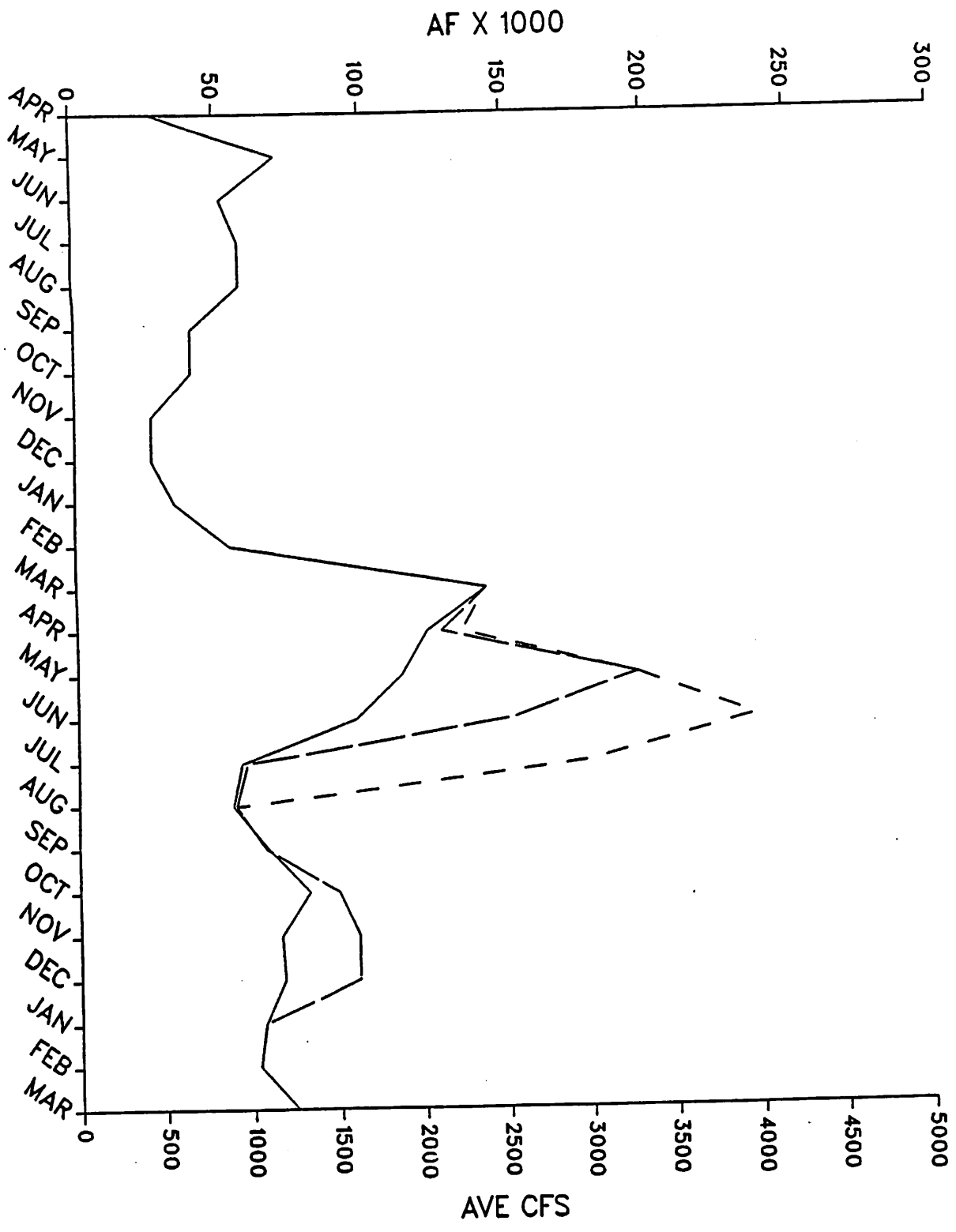
Apr 1992 - Mar 1994

# EXPECTED 1993 ASPINALL OPERATIONS CRYSTAL RELEASES



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# EXPECTED 1993 ASPINNALL OPERATIONS FLOW BELOW GUNN. TUNNEL



**Legend**  
 min prob  
 most prob  
 max prob

Apr 1992 - Mar 1994

April 1993

COMPUTATION OF THE DELIVERY TO THE NPS

	Incremental Acre-Feet	Accumul- ative Acre-Feet
1. Actual live storage in Blue Mesa Reservoir on March 31, 1992:		462,800
2. Plus the forecasted inflow for the April-July 1993 period:	1,148,000	1,610,800
3. Minus the 300,000 acre-foot supply committed to the State of Colorado:	300,000	1,310,800
4. Plus the accumulated releases to date and anticipated releases during the April - July period for the State of Colorado:	143,500	1,454,300
5. Minus the actual UWWUA credits in Blue Mesa Reservoir on March 31, 1992, per the 1975 Taylor Park Exchange Agreement:	37,000	1,417,300
6. Minus the estimated releases for Downstream senior rights:	197,000	1,220,300
7. Minus the target storage in Blue Mesa Reservoir on July 31, 1992:	829,500	390,800
TOTAL CONTRACT DELIVERY DURING THE APRIL-JULY 1993 PERIOD =		390,800

Note: The total contract delivery during the April-July shall not be less than 73,200 acre-feet which equates minimum release of 300 cfs during the entire period.

BLUE MESA RESERVOIR

MONTH AND YEAR	UNREG INFLOW (1000 AC-FT)	REG INFLOW (1000 AC-FT)	EVAP LOSSES (1000 AC-FT)	RELEASE ***** POWER OTHER (1000 AC-FT)		DIVERSION ***** (1000 AC-FT)		END OF MONTH ***** SURFACE ST BANK ST ELEV (1000 AC-FT) (FT)		
APR 1992	66	68	1	28	0	0	0	555	0	7486.60
MAY 1992	159	146	1	71	0	0	0	629	0	7496.01
JUN 1992	152	144	1	72	0	0	0	699	0	7504.52
JUL 1992	90	87	1	99	0	0	0	686	0	7502.94
AUG 1992	60	62	1	103	0	0	0	644	0	7497.84
SEP 1992	34	42	1	80	0	0	0	604	0	7492.95
Y 1992 TOTAL	698	705	8	792	6	0	0			
OCT 1992	28	13	1	68	0	0	0	572	0	7488.77
NOV 1992	25	29	0	19	0	0	0	581	0	7489.97
DEC 1992	22	24	0	24	0	0	0	581	0	7489.98
JAN 1993	26	27	0	27	0	0	0	581	0	7489.93
FEB 1993	25	27	0	47	0	0	0	561	0	7487.32
MAR 1993	35	36	0	133	0	0	0	463	0	7473.99
APR 1993	100	106	1	152	0	0	0	416	0	7467.15
MAY 1993	290	274	1	173	0	0	0	516	0	7481.46
JUN 1993	357	320	1	124	0	0	0	711	0	7505.98
JUL 1993	203	198	2	96	0	0	0	812	0	7517.44
AUG 1993	90	95	1	109	0	0	0	796	0	7515.75
SEP 1993	65	74	1	107	0	0	0	762	0	7511.92
Y 1993 TOTAL	1266	1223	8	1079	0	0	0			
OCT 1993	44	52	1	108	0	0	0	706	0	7505.35
NOV 1993	33	34	0	92	0	0	0	648	0	7498.34
DEC 1993	25	27	0	93	0	0	0	581	0	7490.03
JAN 1994	22	24	0	60	0	0	0	545	0	7485.32
FEB 1994	21	23	0	58	0	0	0	510	0	7480.59
MAR 1994	34	36	0	70	0	0	0	476	0	7475.80
APR 1994	87	93	1	91	0	0	0	477	0	7475.99
MAY 1994	241	233	1	87	0	0	0	622	0	7495.17
JUN 1994	304	278	1	123	0	0	0	775	0	7513.41
JUL 1994	142	139	2	102	0	0	0	811	0	7517.36
AUG 1994	81	89	1	109	0	0	0	790	0	7515.00
SEP 1994	58	67	1	107	0	0	0	749	0	7510.35
Y 1994 TOTAL	1092	1095	8	1100	0	0	0			
OCT 1994	44	46	1	108	0	0	0	686	0	7503.01
NOV 1994	33	34	0	83	0	0	0	637	0	7497.02
DEC 1994	25	27	0	83	0	0	0	581	0	7489.95
JAN 1995	22	24	0	60	0	0	0	544	0	7485.23
FEB 1995	21	23	0	58	0	0	0	509	0	7480.49
MAR 1995	34	36	0	70	0	0	0	475	0	7475.70

CRYSTAL RESERVOIR

MONTH AND YEAR	RELEASE FROM MORROW PT (1000 AC-FT)	SIDE INFLOW	EVAP LOSSES (1000 AC-FT)	RELEASE ***** POWER OTHER (1000 AC-FT)		DIVERSION ***** (1000 AC-FT)		END OF MONTH ***** SURFACE ST BANK ST ELEV (1000 AC-FT) (FT)		
APR 1992	38	12	0	50	0	0	0	16	0	6750.21
MAY 1992	99	32	0	106	25	0	0	16	0	6749.92
JUN 1992	88	26	0	113	0	0	0	17	0	6751.79
JUL 1992	106	13	0	104	14	0	0	17	0	6753.33
AUG 1992	106	10	0	112	5	0	0	16	0	6750.97
SEP 1992	84	6	0	90	0	0	0	16	0	6750.69
1992 TOTAL	870	135	0	956	50	0	0			
OCT 1992	70	4	0	75	0	0	0	16	0	6749.35
NOV 1992	21	7	0	20	9	0	0	15	0	6746.41
DEC 1992	23	4	0	27	0	0	0	15	0	6747.82
JAN 1993	29	5	0	26	9	0	0	15	0	6744.40
FEB 1993	51	2	0	54	0	0	0	14	0	6741.63
MAR 1993	138	12	0	125	23	0	0	17	0	6751.59
APR 1993	163	16	0	113	66	0	0	17	0	6753.04
MAY 1993	205	41	0	117	129	0	0	17	0	6753.04
JUN 1993	152	46	0	113	85	0	0	17	0	6753.04
JUL 1993	101	16	0	117	0	0	0	17	0	6753.04
AUG 1993	112	5	0	117	0	0	0	17	0	6753.04
SEP 1993	109	4	0	113	0	0	0	17	0	6753.04
1993 TOTAL	1174	162	0	1017	321	0	0			
OCT 1993	110	4	0	106	8	0	0	17	0	6753.04
NOV 1993	93	4	0	97	0	0	0	17	0	6753.04
DEC 1993	94	3	0	97	0	0	0	17	0	6753.04
JAN 1994	61	3	0	64	0	0	0	17	0	6753.04
FEB 1994	59	3	0	62	0	0	0	17	0	6753.04
MAR 1994	71	7	0	78	0	0	0	17	0	6753.04
APR 1994	102	12	0	113	1	0	0	17	0	6753.04
MAY 1994	111	30	0	117	24	0	0	17	0	6753.04
JUN 1994	143	34	0	113	64	0	0	17	0	6753.04
JUL 1994	106	12	0	117	1	0	0	17	0	6753.04
AUG 1994	112	4	0	116	0	0	0	17	0	6753.04
SEP 1994	109	4	0	113	0	0	0	17	0	6753.04
1994 TOTAL	1171	120	0	1193	98	0	0			
OCT 1994	110	4	0	106	8	0	0	17	0	6753.04
NOV 1994	84	4	0	88	0	0	0	17	0	6753.04
DEC 1994	84	3	0	87	0	0	0	17	0	6753.04
JAN 1995	61	3	0	64	0	0	0	17	0	6753.04
FEB 1995	59	3	0	62	0	0	0	17	0	6753.04
MAR 1995	71	7	0	78	0	0	0	17	0	6753.04

*Ag May 10, 93*

*To*

*Appeal Ops*

# Upper Gunnison River Water Conservancy District

*also see  
U.P. file.*

## MEMORANDUM

TO: Board Members,  
Upper Gunnison River Water Conservancy District

FROM: Tyler Martineau *Tm*

DATE: January 28, 1993

SUBJECT: Arapahoe County Request to the Colorado Water  
Conservation Board (CWCB). *May 10, 93*

On January 20 Arapahoe County requested the CWCB to support Arapahoe in its appeal of the Union Park water availability case in the Colorado Supreme Court. It appears that Arapahoe will argue in the Supreme Court that the United States made certain assertions in the water availability trial in the summer of 1991 that do not comply with Federal and State law. Arapahoe maintains that the United States' assertions conflict with the responsibilities of the CWCB to secure the greatest utilization of the waters of the state and to protect the interests and rights of the State of Colorado with respect to waters of interstate streams.

Attached is a copy of the argument presented to the CWCB on January 20. The CWCB discussed the matter in executive session and decided not to take any action on the request at this time. I believe the CWCB will treat Arapahoe's arguments as a request for the CWCB to make significant policy changes, which the CWCB will not act on prior to public discussion. The District will need to carefully monitor and participate in these matters over the next few months.

**SOURCES OF U.S. ASSERTIONS**  
**IN**  
**ARAPAHOE COUNTY COMMENTS TO CWCB**

**January 20, 1993**

**INTRODUCTION**

In its presentation to the CWCB Board on January 20, 1993, Arapahoe County ("Arapahoe") intends to set forth a number of assertions by the U.S. which would preclude use of Colorado River Compact entitlements in the Gunnison River Basin. It is Arapahoe's belief that these assertions are in direct contravention of Federal and State law. Arapahoe believes that these assertions are of statewide concern, and it will request that CWCB support Arapahoe in its arguments against the U.S. in the appeal pending in Case No. 92SA68.

The U.S. assertions specified by Arapahoe can be documented in many places. However, in order to corroborate Arapahoe's allegations, the following is a partial outline of where and when these assertions have unequivocally been set forth. Arapahoe can provide additional information as requested.

**ASPINALL UNIT:**

**ASSERTION #1: HYDROPOWER PRECLUDES COLORADO USES.**

The U.S. Bureau of Reclamation ("BUREC") now claims that it can call out all junior water rights with its hydropower Decrees for the Aspinall Unit despite specific language in the Colorado River Project Storage Act ("CRSPA") which provides to the contrary. 43 U.S.C. § 620f provides as follows:

Subject to the provisions of the Colorado River Compact, neither the impounding nor the use of water for the generation of power and energy at the plants of the Colorado River Storage Project shall preclude and impair the appropriation of water for domestic or agricultural purposes pursuant to applicable State law.

*See  
J. Brown*

Representatives for BUREC initially testified that BUREC would not place calls for its hydropower direct flow Decrees because that would be in contravention of the entire purpose of CRSPA. This position was given by Mr. Wayne Cook, as the Regional Supervisor of the Water and Land Resources Division, Bureau of Reclamation, who was designated as the representative



by BUREC to provide information under oath at a deposition held on February 21 and 22, 1990. He testified as follows:

Q: Would the Bureau also exercise its direct flow rights for that [use] [sic]?

A: No we would not.

Q: And why not?

A: We believe that is inconsistent with the intent of § 7, Public Law 485.

Q: And how is it inconsistent?

A: Because 485 says that we will not use our power rights to block development for a number of purposes, basically to allow upstream development to take place. That's the purpose of the whole Act to start with, is to regulate the river while upstream development takes place.

If we exercised our power rights at any structure, we could take the position that we got them to produce money, and every acre foot has got to flow through the entire system. And that's not consistent with the Act, not consistent with their intent. . . .

Q: And what have you done to confirm that that policy is consistent with the intent and purpose of the Act?

A: Discussion among ourselves and legal counsel.

Q: And discussion amongst yourselves included which persons?

A: Regional Director, other staff, other project offices.

At the Trial in this case, Mr. Ronald Johnston (BUREC'S designated witness) testified that the BUREC has reversed its position. He asserted that BUREC can and will call out all junior water rights with the hydropower Decrees at the Aspinall Unit despite the explicit language of 43 U.S.C. § 620f.

The transcript for the Trial in Case Nos. 86CW226 and 88CW178 has not been completed. However, Mr. Johnston's direct testimony is reflected in the Final Order in Case Nos. 86CW226 and 88CW178 in ¶ 67(b) which provides as follows:

The Bureau construes 43 U.S.C. § 620f as not impeding a call of the river for the direct flow and storage power rights of the Aspinall Unit. No call has been made on the Gunnison River for the Aspinall Unit in prior years, because the authorized purposes of the Unit were never in jeopardy. The Bureau now takes the position that power generation is not an incidental purpose but rather it is equal to other primary purposes. In the future, the Bureau intends to make calls on the river for its direct flow rights and its storage rights.

ASSERTION #2: BUREC CAN RELEASE AND FILL FULL CAPACITY EACH YEAR FOR ANY PURPOSE.

BUREC asserted throughout the Trial that it can release and fill the full capacity of the Aspinall Unit annually without Compact calls from the Lower Basin States, contracts for consumptive use or any water needs for the primary purposes of the Aspinall Unit. BUREC now claims that it has appropriated the entire Upper Gunnison Basin, and any new water users need to purchase water from it. These assertions were made throughout the Trial in Case Nos. 86CW226 and 88CW178, and are summarized in the transcript of the Closing Argument by BUREC on July 24, 1991. It succinctly sets forth BUREC's new position, as stated by BUREC's attorney, Mr. Michael Gheleta:

The Court: Well, okay. I'm getting a little beyond what your main point is right now, I guess. But there is a body of water stored in Blue Mesa that is for sale, basically. Is that the only source that upstream people can rely on now for water in this basin, above Aspinall?

Mr. Gheleta: To the extent that that water is sought to be used would be within the U.S.'s decreed rights, yes, that would be the case. The U.S. has decrees for that water, the Court itself ruled that the U.S. has a decreed right to call the

entire river for industrial and municipal purposes. To the extent a party would seek to use water in an amount which is within the decreed rights of the Aspinall Unit, yes, it would have to purchase it from the U.S.

ASSERTION #3: NO CONTRACTS OR COMPACT CALLS ARE REQUIRED TO MAKE RELEASES.

*Example of Assignments*

See the source for Assertion #2 above. In addition, BUREC claims it can call out the entire Upper Gunnison Basin despite the fact that it has contracts for only 78 acre feet from the Aspinall Unit, and there has never been a call for Compact purposes from the Lower Basin States for which it has released water from the Aspinall Unit.

The Court recognized in ¶ 52 of its Final Order in Case Nos. 86CW226 and 88CW178 that the Aspinall Unit currently has contracts for only 78 acre feet of water.

As to Compact releases, the Aspinall Unit has never been used to make releases for Compact purposes under BUREC's operating criteria. Rather, it is currently operated to release water based primarily on forecasted runoff and target storage levels. BUREC was unable to present any evidence of need for the water from the Aspinall Unit for Compact purposes at the Trial in Case Nos. 86CW226 and 88CW178. In addition, Mr. Wayne Cook testified unequivocally in his deposition on behalf of BUREC that the Aspinall Unit does not currently, nor will it in the foreseeable future, make releases for Compact purposes:

Q: What is 602a storage?

A: 602a storage is a level of storage that's determined to be necessary, that we have available in the system to meet our downstream obligations during the dry cycle. . . .

Q: I see. Is the Aspinall Unit, in particular, used to meet Compact requirements?

A: Could be.

Q: And how would that happen?

A: If we had insufficient storage available at Lake Powell and any of the other facilities, it may well be that some of

ASSERTION #1: CURRENT RELEASES REQUIRED FOR DALLAS CREEK AND DOLORES PROJECTS IS APPROXIMATELY 148,200 ACRE FEET.

The source for this assertion and the amount of water is taken directly from "Instream Flow Determinations for the Nature Conservancy Donation of a Conditional Water Right in the Gunnison River Basin," September 30, 1991 Draft, prepared by the CWCB. The quantity of water was also recognized in ¶ 210 of the Final Order in Case Nos. 86CW226 and 88CW178.

204.  
c/s  
average  
amount

ASSERTION #2: WILL LIKELY NEED MUCH MORE IN THE FUTURE.

BUREC joined other Opposers in Case Nos. 86CW226 and 88CW178 to assert that the Endangered Species Act will preclude any further depletions in the Gunnison Basin. They were unsuccessful in those assertions, as the Water Court ruled in ¶ 211 in that case, that such matters would be considered in the NEPA process and would not be prejudged in Court. BUREC will likely raise these issues on appeal in Case No. 92SA68.



# Upper Gunnison River Water Conservancy District

*what all over  
assignment  
p4*

## 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 4, 1993

SUBJECT: Agenda Item 13, June 21, 1993, Board Meeting --  
Gunnison River (Black Canyon) Contract.

On June 3 I attended the first meeting of the joint-lead agencies and the cooperating agencies for the National Environmental Policy Act (NEPA) compliance for the Gunnison River Contract. The Gunnison River Contract is the new name for what was previously referred to as the Proposed Contract to Deliver Water from the Wayne N. Aspinall Unit to the Black Canyon of the Gunnison National Monument. The name change reflects the expansion of the scope of the contract to include the recovery of endangered fish in the lower Gunnison River, protection of Aspinall Unit authorized purposes, and protection of the compact entitlement of the State of Colorado, among other things. NEPA compliance refers to the sequence of steps that will lead to the preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) for the contract. The joint-lead agencies include the Bureau of Reclamation (USBR) and National Park Service (NPS).

The discussion covered a number of subject areas:

1. The joint-lead agencies are responsible for developing a Purpose and Need Statement which will guide the NEPA process. A copy of the Purpose and Need Statement is attached. The underlined sections were added at the meeting on June 3 to the USBR/NPS proposed language as a result of suggestions made by state and local water user groups in attendance at the meeting. Additional comments regarding the Purpose and Need Statement are due to the USBR by July 26, 1993.
2. A draft of the agreement between the joint-lead agencies will be available for review about July 1. Comments will be due to the USBR by July 26, 1993.

3. A Task Directive will be developed which will spell out the responsibilities of the joint-lead agencies and the cooperating agencies. A draft of the Task Directive will be available shortly. Comments will be due to the USBR by July 26, 1993.
4. A draft of an agreement between the joint-lead agencies and the cooperating agencies is attached. All of the cooperating agencies are identified in the agreement. Comments are due to the USBR by July 26, 1993.
5. A preliminary working draft of the contract was distributed widely by the USBR on January 15, 1992. The USBR has indicated that they would like to modify the preliminary draft of the contract by October of this year. Modifications to the contract may include changes to the formula used for allocating stored water in the Aspinall Unit between different uses and adding the U. S. Fish and Wildlife Service as a signatory. Comments concerning the modification are due by August 1.
6. The USBR and NPS are in the process of identifying studies that need to be undertaken in order to answer questions raised during the scoping process for the contract. Over the next several months the Upper Gunnison District will be asked to suggest what additional studies are needed. A list of the current studies that are underway is attached.

The next meeting of the cooperating and joint-lead agencies will take place on August 19, 1993 at 9:00 am in Grand Junction.

It will obviously take time to address all the items identified above. At the June 21 board meeting I recommend that the board consider whether it wishes to comment on the Purpose and Need Statement or on the proposed agreement between the joint-lead agencies and the cooperating agencies. I would suggest that the other items be scheduled for discussion at the July 12 board meeting assuming that the necessary information has been provided by the USBR.

COOPERATING AGENCIES  
CHANGES TO GUNNISON RIVER CONTRACT  
PURPOSE AND NEED STATEMENT

*underlined part  
added at meeting  
with the cooperatives*

6/3/93

Identification of the Purpose and Need for the water delivery contract study is an important early consideration and will help determine the scope of the study and the alternative.

**Need:** A long-term water service contract is needed that will assist in defining the apportionment and delivery of water from the Wayne N. Aspinall Unit Reservoirs within the Gunnison River Basin.

**Purpose:** The purposes of the contract are given equal priority and are to use Aspinall Unit water:

*equal priority*

- \* to protect Aspinall Unit authorized purposes;
- \* to protect purposes and resources of the Black Canyon of the Gunnison National Monument, Curecanti National Recreation Area; and the Gunnison Gorge Special Recreation Management Area;
- \* to satisfy the Black Canyon Reserved Water Right;
- \* to assist in recovering downstream endangered fish species;
- \* to assist the State of Colorado in the protection and use of its compact entitlement; and
- \* to minimize the impacts to Colorado water users of reserved right quantification and endangered species releases and meet as many needs as possible with the same water releases.

*WAPA  
Power*

\* *Separate this* ↑

*OK*



MEMORANDUM OF AGREEMENT  
AMONG LEAD AND COOPERATING AGENCIES  
for  
GUNNISON RIVER CONTRACT  
NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE

I. INTRODUCTION

The Bureau of Reclamation (BOR) and National Park Service (NPS), and other agencies are proposing a contract (Gunnison River Contract) to deliver water to the Black Canyon of the Gunnison National Monument from reservoirs of the Wayne N. Aspinall Unit (Aspinall Unit) of the Colorado River Storage Project in western Colorado. BOR and NPS are the lead agencies in complying with analysis and documentation requirements of the National Environmental Policy Act (NEPA) for the contracting action, and are both referred to as joint-lead agencies. The following are cooperating agencies in NEPA compliance for the Gunnison River Contract, and are collectively referred to as cooperating agencies:

Bureau of Land Management  
Fish and Wildlife Service  
Western Area Power Administration  
State of Colorado  
Colorado River Water Conservation District  
Uncompahgre Valley Water Users Association  
Upper Gunnison River Water Conservancy District

## II. PURPOSE

The purpose of this Memorandum of Agreement (Agreement) is to establish a formal understanding of the roles and responsibilities of the cooperating agencies with respect to the joint-lead agencies in the completion of NEPA compliance activities for the Gunnison River Contract.

## III. AUTHORITY AND BACKGROUND MATERIAL

A. Public Law 91-190, National Environmental Policy Act (NEPA) of 1969, as amended (Public Law 91-910, 42 USC 4321-4327).

B. Council on Environmental Quality (CEQ), Regulations for Implementing the Procedural Provisions of the NEPA (40 CFR Parts 1500-1508).

C. Council on Environmental Quality, 40 Questions and Answers about the NEPA Regulations (46 Federal Register 18026 - March 23, 1981).

*check this out as to date*

## IV. DEFINITIONS

A. Environmental Impact Statement (EIS) - A detailed written statement required by Section 102(2)(C) of NEPA for any major Federal action determined to have a significant impact on the environment.

B. Lead and/or and joint-lead agency - The agency or agencies preparing or having taken responsibility for preparing an EIS.

C. Cooperating agency - an agency which has agreed to cooperate with a lead agency in the preparation of a NEPA compliance document by developing information and preparing environmental analyses for which the agency has jurisdiction by law and/or special expertise.

CP from  
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V. PROVISIONS OF UNDERSTANDING

A. For purposes of this Agreement, it is assumed that an EIS will be prepared to comply with NEPA for the Gunnison River Contract. However, any time prior to release of a draft EIS, BOR and NPS may mutually determine that 1) no significant impact will result from the action, or 2) that no further action leading to development of the Gunnison River Contract should be pursued. Either decision would 1) be documented by cancellation of the notice of intent to prepare an EIS, as published in the May 6, 1992, Federal Register (FR 92-10472), and 2) result in either modification of this Agreement to provide for release of a draft environmental assessment and finding of no significant impact, or termination of this Agreement.

B. Decisions regarding EIS content and processing of the Record of Decision for approval by the Secretary of the Interior are the ultimate responsibility of the joint-lead agencies.

C. To achieve the comprehensive evaluation needed in the EIS, it is agreed that the cooperating agencies will actively participate in all phases of EIS development and review under the regulations of the CEQ.

D. Each cooperating agency will designate one Principal Coordinator to coordinate preparation of assigned portions of the

EIS and to provide technical information, advice, and review on topics, resources and environmental impacts including, but not limited to, those areas in which the agency has jurisdiction by law or expertise.

E. As lead agencies, BOR and NPS will prepare a Task Directive, schedules, public involvement plans, and other administrative documents. Cooperating agencies will provide review comments and assistance. All agencies share responsibility to meet schedules and provide work quality that is acceptable.

F. The joint-lead agencies will provide cooperating agencies advance notice of critical review points and time periods for review, and will further provide adequate opportunities to review all EIS-related products, including but not limited to preliminary drafts, reports, graphics, original data, analysis of alternatives and associated preferred alternative, draft and final EIS's, and the draft Record of Decision prior to publication and public distribution.

G. Each cooperating agency will actively participate with the joint-lead agencies in public briefings, hearings, and any other public events related to the draft and final Gunnison River Contract EIS.

H. The joint-lead agencies will afford cooperating agencies with adequate opportunity to review and incorporate, as appropriate, cooperating agency comments on the draft and final EIS prior to publication, filing and distribution of these documents.

I. The joint-lead agencies will be responsible for preparation of responses to comments on draft and final EIS's, but will seek assistance from cooperating agencies in responding to comments on issues in which the agencies have jurisdiction by law or expertise.

J. Each agency will fund their respective agency's participation under this agreement.

#### VI. OTHER RESPONSIBILITIES

Nothing in this Agreement will be construed to amend or abridge the authority of the agencies to further comment and carry out their responsibilities under the provisions of the NEPA, CEQ regulations and guidance, or other specific mandates and legal responsibilities.

#### VIII. IMPLEMENTATION AND TERMINATION

A. This Agreement is effective on the last signature date and shall be valid for a period of 5 years. At the end of this 5-year period, this Agreement will be reviewed and if necessary reaffirmed by all signatories.

B. This Agreement may be modified by letter of agreement from the joint-lead agencies with the concurrence of each cooperating agency. Any modification made to this Agreement shall be confirmed in writing prior to performance of the change.

C. Any signatory may terminate their participation in this Agreement by providing written notice to all other parties, effective 60 days following the date of delivery of such notice.

DRAFT 5/28/93

D. This Agreement will be reviewed on approval of a finding of no significant impact or a Record of Decision by the Secretary of the Interior. At that time, it may be terminated by mutual agreement or adjusted to reflect follow-up NEPA work or other coordination needs that may result from the ROD.

XI. EXECUTION ON BEHALF OF COOPERATING AND JOINT-LEAD AGENCIES

BUREAU OF LAND MANAGEMENT

\_\_\_\_\_  
Regional Director

\_\_\_\_\_  
Date

FISH AND WILDLIFE SERVICE

\_\_\_\_\_  
Regional Director

\_\_\_\_\_  
Date

WESTERN AREA POWER ADMINISTRATION

\_\_\_\_\_  
Area Manager

\_\_\_\_\_  
Date

STATE OF COLORADO

\_\_\_\_\_  
Director, Department of Natural Resources

\_\_\_\_\_  
Date

DRAFT 5/28/93

COLORADO RIVER WATER CONSERVATION DISTRICT

\_\_\_\_\_  
President

\_\_\_\_\_  
Date

UNCOMPAHGRE VALLEY WATER USERS ASSOCIATION

\_\_\_\_\_  
President

\_\_\_\_\_  
Date

UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT

\_\_\_\_\_  
President

\_\_\_\_\_  
Date

NATIONAL PARK SERVICE:

\_\_\_\_\_  
Regional Director, Rocky Mountain Region

\_\_\_\_\_  
Date

BUREAU OF RECLAMATION:

\_\_\_\_\_  
Regional Director, Upper Colorado Region

\_\_\_\_\_  
Date

5/26/93

DRAFT 4/9/93

*check Resource  
Texts.*

GUNNISON RIVER CONTRACT

Ongoing Projects/Related Studies

1. Native fish of Gunnison River Basin (NPS/Behnke)  
- assessment/recovery study of Dr. Behnke
2. Creel survey at Blue Mesa Reservoir (NPS)
3. Curecanti water quality monitoring (NPS)
4. Limnology of Blue Mesa Reservoir (BOR)
5. Gunnison Basin Spreadsheet and Planning Model development (BOR)  
- water rights administration and water allocation
6. Downstream endangered fish studies (FWS)
7. Flushing flows study on lower Gunnison River (BOR)
8. Gunnison Gorge sediment transport study (BLM/USGS)
9. Gunnison Gorge trout population/reproduction survey (CDOW)
10. Gunnison Gorge trout fry survey (CDOW/FWS)
11. High water 93 report (BOR)
12. Literature Search

*Climate Change  
\* Run 7/ patterns*

*\* Recreation  
Reg.ing.*

*\* - flushing  
in  
Canyon -*



# 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 11, 1993

SUBJECT: Agenda Item 14, June 21, 1993, Board Meeting --  
East River Study.

Lynn Cudlip has completed her search for previous water quality studies for the East River Study. I am very pleased with the results of her work during which she obtained and summarized twenty-five previous sampling programs conducted over the past 20 years. Her work is presented in a 74-page report. If any board member is interested in receiving a copy of the report please let me know.

*yes*

Gunnison County's 201 wastewater facilities study for the East River basin is now underway. The county retained the firm of Rothberg, Tamburini, & Winsor of Denver as consulting engineers. A meeting was held on June 3 with the county's local advisors committee at which the following issues were discussed:

- 1) The committee reached agreement that the study area for the 201 plan will exclude most of the East River Drainage below the confluence of the East River with Cement Creek.
- 2) Over the next month local municipalities and water providers will make their best estimates of future growth projections for the areas under their influence.

*Why was scope reduced?  
was to be almost?*

Bill Trampe attended the meeting on behalf of the District and can answer additional questions if needed.

# 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 11, 1993

SUBJECT: Agenda Item 15, June 21, 1993, Board Meeting --  
Miscellaneous Matters - Colorado Water Workshop.

Attached is an invitation from Lucy High of the Colorado Water Workshop for board members to attend this year's program which will be held on July 28-30. Board members should have received a copy of the program for the workshop directly in the mail. If not, please let me know. As you know the district budgeted \$1200.00 for the workshop in 1993. As a result the district will receive two free registrations which include all meals. In addition, all other board members are welcomed to attend at no charge except for the cost of meals.

I recommend that the board approve at the June 21, 1993 board meeting the payment of \$1200.00 to be donated to the Colorado Water Workshop for 1993, and designate the two persons to be formally registered for the workshop.



# Colorado Water Workshop

Received  
6/7/93

Western State College

Gunnison, Colorado 81231

(303) 943-7156

June 4, 1993

Bill Trampe  
Chairman  
Upper Gunnison River Water Conservancy District  
275 S. Spruce Street  
Gunnison, Colorado 81230

Dear Bill and Members of the Board:

Thank you for the Upper Gunnison River Water Conservancy District's contribution to the Eighteenth Annual Colorado Water Workshop, scheduled for July 28-30. The sponsorship and support of organizations like yours are essential for the success of the Workshop. Sponsors' contributions keep the conference fee reasonable, contribute to scholarships for deserving applicants, and help cover the expenses for out-of-state speakers. The Upper Gunnison District is listed as a sponsor on the five thousand brochures that are being mailed this week.

This year's program, "**The Big Squeeze**," will examine how limited resources, both financial and natural, are encouraging communities, agencies and businesses to seek cooperative solutions to water quality challenges. What integrated approaches are achieving results and saving money? How are point and nonpoint-pollution control being coordinated? How are water rights and supplies involved in these approaches? Panelists will also discuss watershed-based approaches that may be incorporated into the Clean Water Act.

Speakers will include Watershed Protection Director Geoff Grubbs of the U.S. Environmental Protection Agency, Colorado State Engineer Hal Simpson, and James Richards, former Inspector General of the U.S. Department of Interior. Speakers from Nevada and Oregon will share their perspectives and experiences as well.

Sponsors receive one complimentary registration for every \$600 contributed to the Water Workshop. This year the Upper Gunnison District donated \$1200 to the Water Workshop, so you are entitled to 2 complimentary registrations. Please send a registration form for each free registrant so that we can reserve places for them. (We are expecting another sell-out crowd this year!) As in past years, all Upper Gunnison board members are welcomed to attend as many sessions as they can, at no charge, unless the session includes a meal. If a member would like to join us for a meal, he or she should reserve a space via phone and then pay for the meal at the conference registration desk.

I always welcome your suggestions. Please give me a call at (303) 943-7156 if you have comments or questions. Thank you for your support of the Colorado Water Workshop.

Sincerely,

Lucy High  
Program Director

# 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 11, 1993

SUBJECT: Agenda Item 15, June 21, 1993, Board Meeting --  
Miscellaneous Matters - City of Gunnison Water  
Education.

The City of Gunnison is proposing to produce a videotape describing how water is used in the Upper Gunnison basin. The video would be intended to be used as an educational aid in our local schools. As the attached letter from Ken Coleman indicates the District is being asked if it would consider sponsoring part of the remaining \$500.00 needed to produce the video.

In general, water conservancy districts around the state have been becoming more sensitive to the need to become involved in water education matters, therefore, I am very supportive of Ken Coleman's request to the board.

Ken Coleman; Director  
City of Gunnison; Public Services  
201 W. Virginia Avenue  
Gunnison, Colorado 81230

Tyler Martineau  
Upper Gunnison River Water Conservancy District  
Gunnison County Multi-purpose Building  
Gunnison, Colorado 81230

June 11, 1993

Tyler:

I have worked in conjunction with KWSC TV14 in applying for an Opportunity Grant from the City of Gunnison for the amount of \$1500.00 and we were awarded \$1000.00. I would like your support to fund a portion of the remaining \$500.00 expense. This funding will assist in the production of a video highlighting the very incredible resource of our watershed and how we utilize and protect this precious element.

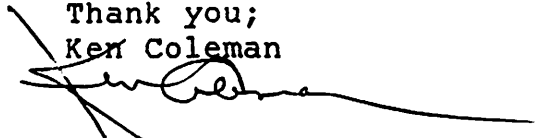
The video will begin with the snowpack and continue with the runoff and the flow of the hydrologic cycle. We will show how we provide drinking water, demonstrate testing for water quality, display how the wastewater treatment process works, and present the many uses of this resource in our valley. The beauty of our environment and our sense of community will be the undercurrent of the production.

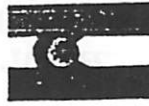
This video will be used primarily as an educational tool. The schools will be offered the video to help alleviate the cuts in field trips by our school district. This training tool could be viewed at the American Water Works Association annual Rocky Mountain Section Meeting. This September the meeting will be held in Albuquerque, N.M. and next year the meeting will be held in Crested Butte, CO. This is a perfect opportunity to give Gunnison a promotional plug while displaying a need to keep our water resource intact as we touch on environmental, social, and economic issues.

KWSC TV14 will provide in-kind in the form of technical support and labor for production. The City of Gunnison will provide the technical expertise and guidance for content and coordination of production phases. The \$1500.00 request will cover materials and laboratory use, as well as equipment usage, and travel expenses. An account of expenditures will be available for all contributors upon completion of the project.

I feel this is a worthy endeavor that will give us much return on our initial investment. The value of the education is not transferred into a bottomline dollar amount, yet has tremendous payback in knowledge for our citizens (especially our youth). The showing in Albuquerque could return substantially more in tax dollars in 1994 than we fund in 1993.

Thank you;  
Ken Coleman





TILMAN M. BISHOP  
State Senator  
President pro tem  
2697 G Road  
Grand Junction, CO  
81506-8367  
Capitol: 866-3077

Senate Chamber  
State of Colorado  
Denver

COMMITTEES:  
Vice-Chairman of:  
Agriculture, Natural Resources  
and Energy  
Member of:  
Appropriations  
Business Affairs and Labor  
Colorado Tourism Board/Chairman 1993  
Legislative Audit  
Legislative Council

May 12, 1993

Senator Tom Norton  
President, Colorado State Senate  
State Capitol  
Denver, CO 80203

received  
6/1/93

Dear Tom:

Colorado is facing a myriad of issues related to the State's most important natural resource — water. In conjunction with a study of water-related issues, a number of questions related to the management of the State's school lands have surfaced within the past few years which also should be examined. As a result, we recommend the Executive Committee of the Legislative Council consider constituting an interim committee on state school lands and water for the purpose of considering the issues outlined on the attachment.

We understand that the Legislative Council will meet on May 24 to consider topics for the interim. We are available to discuss our proposal with you at your convenience.

Very truly yours,

*Tillie*

Senator Tilman Bishop

*Don*

Senator Don Ament

Attachment  
copy: Charlie Brown, Legislative Council

**SUBJECTS FOR INTERIM COMMITTEE  
ON STATE SCHOOL LANDS AND WATER**

1. Seek resolution of the water transfer/transbasin of origin issues.
2. Maintain oversight of the various studies being performed by the Colorado Water Conservation Board.
3. Provide input into the federal effort required by the Western Water Policy Review Act of 1992.
4. Monitor the State's effort in the Colorado River negotiations. S.L.
5. Monitor the Water Quality Forum with special attention to the feasibility of this approach in resolving other water problems and/or issues.
6. Provide the State's input in the Clean Water Act Reauthorization.
7. Provide the State's input in the Safe Drinking Water Act Reauthorization.
8. Provide the State's input in the Endangered Species Act Reauthorization.
9. Determine the State's role in the Endangered Species Critical Habitat issue.
10. Determine the State's role in the Roan Creek proposal. Z
11. Study local government 1041 powers as those powers pertain to water.

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**STATE LAND ISSUES**

12. Review constitutional mandates on school lands and disposition of proceeds generated from the permanent school fund.
13. Determine the impact of proposal for the State Board of Land Commissioners to lease public lands for recreational purposes versus agricultural uses.
14. Determine the impact of selling recreational lands or agricultural lands rather than leasing them for recreational or agricultural purposes if selling such lands would produce the same amount or greater amount of income.
15. Determine the wisdom of requiring the State Board of Land Commissioners to sell up to twenty-five percent of state school lands over an eight-year period.
16. Determine the benefits of the State Board of Land Commissioners replacing low-income generating state lands with lands which have the potential for higher income.
17. Review how proceeds and interest earnings from the sale of state school lands should be used.
18. Study state land banking in Colorado as it pertains to state school lands.

**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

June 14, 1993

Board Members of the  
Upper Gunnison River Water  
Conservancy District

Dear Susan and Gentlemen:

I am enclosing an article out of the May\June edition of *Western Water*, which is published by the Water Education Foundation of California. The article is an interview with Bruce Babbitt; I thought you would be interested in it.

Very truly yours,



L. Richard Bratton

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## Fungus Holds Hope Of Replacing Yews As Source of Taxol

9 April 1993, p. B8  
A WALL STREET JOURNAL News Roundup

Researchers have found a fungus that produces small amounts of paclitaxel, an anti-cancer drug that is extracted from the rare Pacific yew tree and sold under the name Taxol.

If the fungus can be modified to produce more of the drug, it might someday allow Taxol to be produced inexpensively in mass quantities, like penicillin, the researchers said. Manufacturing Taxol from the Pacific yew tree is extremely difficult and costly, according to New York-based Bristol-Myers Squibb Co., which makes and markets the drug. Moreover, Taxol production has upset environmentalists because the rare trees are killed to extract the drug.

The fungus is named *Taxomyces andreaeanae* after its discoverer, Andrea Stierle, a research professor at Montana State University. It was found on just one yew tree in a protected forest area in northern Montana. That shows the importance of protecting natural habitats because they may harbor "things that are extremely important to the health and well-being of people," said Gary Strobel, professor of plant pathology at Montana State and one of the researchers.

The fungus, described in a report in *Science* today, may have developed paclitaxel-making capabilities by absorbing the genetic information of the yew tree, Dr. Strobel theorized. If true, other fungi possibly exist that can produce other medicines derived from plants, he said.

The fungus in its original form produces only trace amounts of paclitaxel, but researchers are working on ways to boost production, Dr. Strobel said.

The researchers have had discussions with Bristol-Myers and other companies to license the fungus.

## Apple Computer Cuts PowerBook Duo Line

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# Upper Gunnison River Water Conservancy District

## SPECIAL MEETING

Monday, May 24, 1993  
7:00 p.m.

Multi-Purpose Building - County Fairgrounds  
Gunnison, Colorado

## A G E N D A

1. Call to order.
2. Discussion of Proposed Taylor Park Reservoir Water Management Agreement.
3. Miscellaneous Matters.
3. Adjournment.

# 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: May 14, 1993

SUBJECT: Agenda Item 2, May 24, 1993, Board Meeting --  
Taylor Park Reservoir Water Management Agreement.

The Bureau of Reclamation has asked that we start the negotiations for the Taylor Park Reservoir Water Management Agreement in the next month. Dates presently selected for the first two negotiations are June 10 and June 24, 1993 at 10:00 a.m. at the multipurpose building at the Rodeogrounds in Gunnison. At the first negotiating session specific provisions in the proposed water management agreement will be discussed. Therefore, a special meeting of the Upper Gunnison River Water Conservancy District has been scheduled for May 24 at 7:00 p.m. in order for the board to go through the draft agreement in detail and provide direction to the UGRWCD negotiating team.

# 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 17, 1993

SUBJECT: Agenda Item 15, June 21, 1993, Board Meeting --  
Miscellaneous Matters - Proposed Newsletter

This is an update on the board's proposed newsletter. I suggest that the board consider the following:

1. That the newsletter be directed at casually interested persons, those who know that someone is trying to export the basin's water.
2. That the life span of the newsletter be about six months.
3. That the newsletter be short. Four 8-1/2" X 11" pages are suggested.
4. That the newsletter be published in an 8-1/2" X 11" page size on standard bond paper. I believe that standard bond paper will be more effective for a short format.
5. That the newsletter address only the most important of the following issues as space allows (The issues are listed in groups in decreasing order of importance as ranked by the board).
  - a. On-going fights - The status of Rocky Point and Union Park.
  - b. Downstream calls - What are they and what they could mean for our basin.
  - c. What is the district's role in meeting water needs in the East River valley?
  - d. What does the water district do?
  - e. Legal successes - Taylor Park Reservoir refill, and diligence decisions.
  - f. How do downstream water needs for endangered fish and the Black Canyon affect the District?
  - g. What is the district doing to help get water where it is needed?

- h. Why do the district's water rights need to be protected and developed? Possible ideas for doing so.
- i. Why has the district become active and important now?
- j. Where does the district's funding come from?
- k. What is a water right? Why are they important?
- l. What's happening with Taylor Park Reservoir?
- m. Interesting news about streams and lakes in the district.
  
- n. The water district's office - one year after opening.
- o. Who are the board members and a little bit about them?
- p. The Black Canyon contract. Why we need to stay involved.
- q. How will changes at the federal level affect the district.
- r. Graphics and photos showing water use in the basin.

6. That 2000 copies be printed:

- 500 copies - To be distributed to interested parties by mail.
- 1500 copies - To be distributed to the public at pick-up locations.

I believe it would be useful to start developing a mailing list for the district. A starting point would be to obtain mailing lists from other organizations interested in water.

7. The newsletter described above would cost approximately:

	<u>Cost Range</u>
a. Writing.	\$ 100 - 150
b. Design of newsletter masthead.	\$ 50
c. Production. Production includes entry of text into computer, computer graphics, incorporation of photographs, page layout, production of camera ready pages.	\$ 100 - 150
d. Printing.	\$ 200 - 300
e. Folding.	\$ 75
f. Address labels.	\$ 50
g. Postage.	\$ 150
h. Miscellaneous.	\$ 50 - 100
Total Cost	<u>\$ 775 - 1025</u>

I recommend that the board authorize staff to proceed with production of a newsletter as described above. I would also like direction from the board as to how to proceed with obtaining the writing and production services for the newsletter.

# 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: April 29, 1993

SUBJECT: Agenda Item 8, May 10, 1993, Board Meeting --  
Taylor Park Water Management Agreement.

Although I have not received any formal communication from the Bureau of Reclamation as of yet, the Bureau is interested in beginning the negotiation process for the Taylor Park Water Management Agreement soon. The Bureau has requested that the District designate a negotiating team as soon as possible. The team should be composed of approximately three persons who will complement the personnel designated by the Bureau. The Bureau has tentatively designated the following staff persons, Brent Uilenberg (planning) and Ed Warner (operations) from Grand Junction, and Glade Barney (repayment contracts) from Salt Lake City as its representatives on the negotiating team.

I have been told that the Bureau should be providing the District with the new draft of the water management agreement within the next two weeks.

**BRATTON & McCLOW**  
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232 West Tomichi Avenue, Suite 202  
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4/6/93

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Telecopier: (303) 294-9933

L. Richard Bratton  
John H. McCLOW

John R. Hill, Jr.  
Of Counsel

April 6, 1993

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

HAND DELIVERED

RE: Liability Insurance for a "Volunteer"

Dear Tyler:

You previously requested in the Memorandum dated February 17, 1993, that we provide you an opinion regarding possible liability of the Board for acts of a volunteer.

The principles set out on page 1 of the January 20, 1992, letter from our office concerning liability and liability insurance (copy attached) would apply as well to a "volunteer" of the District. As previously noted, the District is a "public entity" within the definition of the Colorado Governmental Immunity Act (Title 24, Article 10, C.R.S.) (the Act). Additionally, the Act defines a "public employee" to include an "authorized volunteer of the public entity." For purposes of the "public employee" definition, "authorized volunteer" means a person who performs an act for the benefit of a public entity at the request of and subject to the control of such public entity. The provisions of the January 20, 1992, letter regarding motor vehicle liability would thus equally apply to an "authorized volunteer" of the District.

Please let me know if you have any questions about this.

Very truly yours,



L. Richard Bratton

LRB:ddc  
Enclosure

BRATTON AND ASSOCIATES  
ATTORNEYS AT LAW  
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January 20, 1992

Board of Directors  
Upper Gunnison River Water Conservancy District

Re: Liability insurance for Manager  
Directors' liability  
Worker's Compensation

#### LIABILITY AND LIABILITY INSURANCE

The Colorado Governmental Immunity Act (Title 24, Article 10, C.R.S.) provides that no public entity shall be liable for actions which lie in tort, except as provided in the Act, and no public employee shall be liable for injuries arising out of an act or omission occurring during the performance of his duties and within the scope of his employment, unless such act or omission was willful and wanton, except as provided in the Act.

The District is a "public entity" within the definition of the Act, and both the Directors and the Manager of the District are "public employees" within the definition of the Act. A tort is any civil wrong, excluding a claim based upon a contract.

The only exception to immunity from tort liability which would apply to the District is an action for injuries resulting from the operation of a motor vehicle, *owned or leased* by the District, by a public employee while in the course of his employment. Reimbursement by the District of a Manager or Director for mileage while using the Manager's or Director's personal vehicle while acting in pursuit of the District's business would not bring either the District or its employees within the scope of this exception.

Willful and wanton acts or omissions by the Manager or Directors are not immune from suit, but one cannot obtain liability insurance to protect against willful and wanton acts.

Neither the Directors nor the Manager can be held liable for insurable acts or omissions and therefore, even if available, liability insurance is unnecessary.



Board of Directors  
Upper Gunnison River Water Conservancy District  
January 20, 1992

### **WORKERS' COMPENSATION**

The Workers' Compensation Act of Colorado requires all employers to provide compensation for all employees by obtaining a workers' compensation insurance policy from the state or a private carrier, or obtain a self-insurance permit from the state.

The manager, secretary and the directors are deemed to be "employees" under the Act. The exemption for officers of the District does not apply to Directors who receive compensation in excess of actual expense reimbursement.

# Upper Gunnison River Water Conservancy District

## SCHEDULED MEETING

Monday, May 10, 1993  
7:00 p.m.

Multi-Purpose Building - County Fairgrounds  
Gunnison, Colorado

### A G E N D A

1. Call to Order.
2. Approval of February 22, March 22, and April 12, 1993 Minutes.
3. Consideration of Operational Expenses Paid.
4. Consideration of Other Expenses Payable.
5. Monthly Budget Report.
6. Legal Matters.
  - a. Legal Opinion Concerning Control of Water within Streams.
  - b. Proposed Agreement with the City of Gunnison.
  - c. Taylor River Private Instream Water Rights.
  - d. Colorado River District Decision Concerning Payment of Legal Fees.
  - e. Other Legal Matters.
7. 1993 Taylor Park Reservoir Operations.
8. Taylor Park Water Management Agreement - Appointment of Negotiating Team Members.
9. 1993 Aspinall Unit Operations and Water Rights Administration.
10. Gunnison Basin Planning Model - Identification of Reservoir Sites to Be Included in the Planning Model.
11. CWCB Agricultural and Multipurpose Water Systems Water Conservation and Water Use Efficiency Grants Program.
12. Miscellaneous Matters. *Colo. Am. Can. Act. Network.*
13. Unscheduled Citizens.
14. Future Meetings.
15. Adjournment.

court made it abundantly clear that during the diligence period ending on March 31, 1999, that the District must significantly narrow the scope of its project to those features which are most feasible for construction and identify and make appropriate transfers of water rights. Furthermore, with respect to those features identified as being most feasible, the District must complete all necessary Phase I feasibility studies and conceptual analyses and, to the extent practicable in a staged development plan perform site-specific work on each feature it intends to pursue.<sup>3</sup> Also, with respect to those features the District assigns the highest priority the court expects "significant progress" toward Phase II feasibility studies and environmental impact analysis.

Clearly, the District's conditional water rights will not survive the next diligence period without very substantial efforts directed to putting the conditionally decreed water to beneficial use. This opinion does not, by any means, address all of the issues and options the District may have. It addresses the potential for utilizing the conditional water rights to establish or enhance stream conditions for fish, wildlife and recreation in some detail and generally discusses other options.

### Questions Presented

1. Whether some or all of the District's conditional rights may be used instream to create or enhance fish and wildlife habitat; if so,
2. Whether such use will satisfy the diligence requirement.

### Discussion

The District could create or enhance fish habitat downstream of the conditionally decreed reservoirs by constructing the reservoirs and operating them to improve or optimize fishery conditions. The District established this proposition in the case involving Taylor Park Reservoir second fill right. The essential element there was river regulation utilizing water stored in the reservoir. Board of County Commissioners of Arapahoe County v. Upper Gunnison River Water Conservancy District, 838 P.2d 840 (Colo. 1992); see also Bratton, "Reservoir Releases for Instream Flow Purposes" (1992). However, this requires construction of one or more reservoirs which is probably not practicable in the near future.

Presently, the Colorado Water Conservation Board has the exclusive authority to appropriate minimum stream flows. C.R.S. § 37-92-102(3). This was not always the case, however. In 1973, the General Assembly enacted Senate Bill No. 97 which provided the authority for the CWCB to appropriate minimum flows between specific points on a stream to "preserve the natural environment to a reasonable degree." Colo. Sess Laws, 1973 ch. 442, p. 1521. The legislature also amended the definition of "appropriation" by eliminating the

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<sup>3</sup>We believe the court is incorrect in this requirement. See C.R.S. § 37-92-301(4)(b)(1990) (work on one feature of an integrated project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system). However, this does not detract from the necessity to make very substantial progress.

*problem of interpretation  
of rule expressed by others  
depends on interpretation*

**DRAFT**

**UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT**

**SCHEDULED BOARD MEETING MINUTES**

May 10, 1993

The Board of Directors of the Upper Gunnison River Water Conservancy District conducted a Scheduled Meeting on May 10, 1993 at 7:00 p.m. in the Multi-Purpose Building at the Rodeo Grounds, Gunnison, Colorado.

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

Others present were:

L. Richard Bratton, Board Attorney  
John McClow, Board Attorney  
Tyler Martineau, Manager  
Patrice Thomas, Office Secretary  
Rita McDermott, Treasurer  
John Hill, Attorney  
Denis Hall, Crested Butte Chronicle/Pilot Reporter  
Diane Lothamer, Mayor, City of Gunnison  
Steve Glazer, POWER and HCAA  
Lynnee Preston, Citizen  
Marsha Julio, Citizen and POWER  
Gary Sprung, HCAA

**1. CALL TO ORDER**

President Trampe called the meeting to order at approximately 7:07 p.m.

## **2. APPROVAL OF FEBRUARY 26, MARCH 22, AND APRIL 12, 1993 MINUTES**

President Trampe stated that the first item on the agenda was approval of February 26, March 22, and April 12, 1993 minutes which had been circulated to the Board by mail.

Butch Clark asked that the April 12, 1993 minutes be clarified on page 17 to show the total cost of the Gunnison Planning model would be \$500,000 if the capability for the user to add additional reservoir sites was included.

Bob Arnold moved that all three sets of minutes be approved as circulated to the board with the clarification to the April 12, 1993 minutes. Purvis Vickers seconded the motion. The motion carried.

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

Bob Arnold moved to approve Operational Expenses Paid, as prepared by the treasurer, for April 1993. Peter Smith seconded the motion. The motion carried.

Butch Clark asked if a memorandum had been prepared regarding liability of the District for volunteers. Mr. Martineau said that Mr. Bratton had provided an internal memorandum to him. Mr. Clark asked for a copy.

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

Bob Arnold moved to approve Other Expenses Payable including the Duane Helton April invoice for \$212.50 except for payment of board of directors' fees and mileage to members not present at this meeting. Butch Clark seconded the motion.

Susan Lohr asked Dick Bratton about the charge for a conference with John Hill. Mr. Bratton replied that he had requested a memorandum on a specific assignment from John Hill. Mr. Bratton said that every effort was made not to double bill the Upper Gunnison River Water Conservancy District when several attorneys from his firm were in consultation.

**The motion carried.**

## **5. MONTHLY BUDGET REPORT**

There were no comments on the Monthly Budget Report for April 1993 prepared by the treasurer.

President Trampe asked that the board consider the treasurer's duties as presented in the April 26, 1993 memorandum from Tyler Martineau.

Butch Clark said that the auditor recommended an internal control plan which segregates financial responsibilities and suggested that this function be included as a part of the treasurer's duties. Mr. Martineau said that he has prepared an internal memorandum on financial controls, and the plan can be duplicated in the treasurer's duties.

**Butch Clark moved that the list of treasurer's responsibilities be approved, with the addition of the internal control plan. Susan Lohr seconded the motion. The motion carried.**

Tyler Martineau said that he and Rita McDermott have been working on preparation of a purchasing and disbursements policy. Mr. Martineau asked the board members to let him know if they would like a copy. Butch Clark said that this document needs to comply with federal guidelines in the Taylor Park Water Management Agreement.

Tyler Martineau reported that he met with the auditor on the 1992 audit. He said that the interview went well but that the auditor pointed out that written policies were needed. He also said that the auditor noted that the manager's contract had expired.

## **6. LEGAL MATTERS**

### **a. Legal Opinion Concerning Control of Water within Streams**

Dick Bratton referred the board to his May 7, 1993 memorandum about non-traditional methods to prove diligence. He said that it will be five years before the District will approach the court on diligence but thorough preparation will be necessary. He pointed out that the memorandum states that he thinks that the judge misinterpreted the 1990 law relating to the Upper Gunnison Project as separate projects rather than an integrated project.

Dick Bratton recognized John Hill who presented an informative analysis of the Ft. Collins case. He explained that two Ft. Collins projects were involved in the case before the courts: Power Dam and Nature Dam. He presented a slide show to illustrate these projects.

Mr. Hill said that there are two types of controls under discussion in this case. One type is a structure or device which removes water away from its natural course and towards another course. The second type controls water within its natural course.

Mr. Hill summarized the conclusions presented in the memorandum:

- \* A project involving a diversion of water from its natural course into another course for instream beneficial use is feasible, and has a high probability of receiving a decree;
- \* A project involving control of the water in its natural course by some structure or device is theoretically feasible. However, he believes it will be difficult to obtain a decree unless the structure or device creates a beneficial use of water which did not exist before or substantially enhances an existing use;
- \* Changing a conditional water right and putting the changed right to beneficial use will avoid the loss of the right for lack of diligence.

He emphatically stated that he did not feel that the proposed Trout Unlimited log jam projects would qualify for diligence. He said that changing the water rights to something that could accomplish a beneficial use would be a positive alternative.

Susan Lohr asked if you need to find currently unused water for a diversion project or if you can use a currently boated stretch of water. Mr. Hill said that you need to change the use of the water.

John Hill further said that the water establishment won't tolerate instream flow claims. A substantial claim is needed. He said that a wildlife refuge by diversion would probably be feasible. Another feasible alternative might be moving a water right to Blue Mesa Reservoir.

Lee Spann asked Mr. Hill to elaborate on his suggestion. Mr. Hill replied that if the Bureau of Reclamation agreed it would be possible to store water in Blue Mesa Reservoir, then use it and claim it. There would be a change of use to storage.

Susan Lohr asked if there was a requirement on the amount of stream flow that could be removed from the stream and then returned. Mr. Hill said that the usual determination is whatever amount of water is needed but waste is not allowed.

Butch Clark asked Mr. Hill to explain to the board what Dave Rosgin does. John Hill said that Dave Rosgin's business is to perpetuate natural channel processes. He described this process as looking at sick streams, fixing them and restoring the channels. He said that Mr. Rosgin is currently doing a project for Pagosa Springs.

Purvis Vickers asked if the U.S. Corps of Engineers would cooperate. Mr. Hill said that a 404 permit would be necessary and that it would depend on what would be proposed for improvement of the stream.

Tyler Martineau asked about the suggestion to transfer the Upper Gunnison decrees to Blue Mesa. He asked if the transfer of these decrees would prevent the United States from exercising their decree to the full amount. Mr. Hill said that he did not know what the response of the United States would be but that there is a potential use for the Upper Gunnison water rights and it would not have to be done every year. Mr. Bratton suggested that perhaps it could be done in a dry year. Mr. Hill stated that the district could not fill up the flood storage space. Mr. Hill also said that his interpretation is that the preamble to the Upper Gunnison decrees is broad and the uses specified in the actual decrees could be changed from one to the other for beneficial use. Mr. Bratton said that it would be important to have experts determine the reasonable amount of water needed for the intended use.

Butch Clark said that the court opinion on the Ft. Collins' project outlines the steps that the district would need to take in order to accomplish some of the suggested alternative approaches. He asked for Mr. Hill's assessment of the project in Boulder in which Boulder conveyed water rights to the Colorado Water Conservation Board to be used for instream flows but retained the use of the water for municipal purposes under certain conditions. Mr. Hill said that there are some downsides to this approach.

Dick Bratton mentioned that if one looks at aerial photos of Tomichi Creek it is now in a different channel from what was in years past. He said that if it were practical a realistic approach for beneficial use might be a transfer to divert water through the Dos Rios golf course.

Butch Clark said that it might be a good idea to look at recharge of wetlands to manage late season flow as a project for the Colorado Water Conservation Board grant application.

#### **6b. Proposed Agreement with the City of Gunnison**

Dick Bratton reported that the agreement with the City of Gunnison should be finalized by the end of this week. He said that in reviewing the O'Fallon Ditch decree it appears that the diligence application may not be required to be filed until August 1994 instead of June 1993. He said that he sent Tim Beaton a motion for extension which Mr. Beaton is to sign and forward to the judge.

#### **6c. Taylor River Private Instream Water Rights**

Dick Bratton referred the board to the letter of May 3, 1993 from Barney White to Keith Kepler, Division Engineer. He said that a response is being drafted that would state



that the district agrees with the release schedule agreed upon at the April 22, 1993 meeting and, therefore, sees no reason for litigation at this time but does not forego the right to litigate this matter. He said that the response is being discussed with the other three parties and that everyone wants to avoid a controversy. He pointed out that a correction needed to be made to the schedule listed on page two of the letter; the words "at least" should be deleted from the May 1 and June 1 items.

Tyler Martineau said in the letter referenced by Mr. Bratton that Barney White asks the division engineer to administer Mr. Cockrell's water right over the refill right. He said that even though the Taylor Park Operations agreement for this year has addressed the immediate situation a response is needed to reiterate that the District does not agree that Mr. Cockrell has a senior right.

Susan Lohr asked if it would be detrimental to put off the resolution of the extent of Mr. Cockrell's call until a dry year. Tyler Martineau said that it could be brought to resolution this year. Dick Bratton said that Mr. Cockrell has indicated that when the district wins in the availability case that he will work with the District and that his goal is the best outcome for the entire basin. Based on this information, Mr. Bratton recommended that the board wait until the availability litigation is over to seek a resolution. In the meantime, Mr. Cockrell can demonstrate that he is using 100 per cent of his water right.

#### **6d. Colorado River District Decision Concerning Payment of Legal Fees**

Lee Spann reported that the Colorado River Water Conservation District has paid Andy Williams' fee as long as we were on the same side of the water availability case but the River District did not enter in the Upper Gunnison River Water Conservancy District's appeal of the 620(f) issue. He explained that the decision to appeal was not made by either board but was made by the attorneys. He advised the board that this procedure should be clarified in the future. He said that the board of the Colorado River Water Conservation District will continue to pay Andy Williams' fee except for work done on the 620(f) issues.

Tyler Martineau asked how much the Colorado River Water Conservation District has paid Mr. Williams. Mr. Spann said that he could find out but did not know at this time. Mr. Martineau and Mr. Bratton said that they knew it was a considerable amount that had been paid to assist the Upper Gunnison River Water Conservancy District.

#### **6e. Other Legal Matters**

In response to a previous discussion, Dick Bratton provided a memorandum to the board on the necessity of a bond for board members. He reported that the requirement for the directors' corporate surety bond is statutory and cannot be abolished by amending the District by-laws.

**Lee Spann moved that Dick Bratton approach the court to investigate the potential to set the amount of the directors' bond at \$0. Susan Lohr seconded the motion.**

Mr. Bratton said that he would also check with other water conservancy districts.

Butch Clark suggested that each board member post a bond of \$1,000.00 cash instead. Mr. Bratton pointed out that the statute specifies "a corporate surety bond".

Susan Lohr said the Western Surety application states that no financial disclosure is necessary for public officials. Mr. Martineau said that it does ask for an individual's net worth.

**The motion carried.**

Mr. Martineau asked the board to discuss any preferred application so that if Mr. Bratton's effort with the court is not successful Mr. Martineau can proceed with an application since the current bonds expire in July, 1993.

Peter Smith said that the net worth blank could be completed by simply saying that net worth is in excess of a certain dollar amount. Dick Bratton said that this approach was possible. Butch Clark said that the signed application also gives permission for the bonding company to investigate an individual.

**Susan Lohr moved that if it is necessary to be bonded that the Western Surety bond be pursued. Dennis Steckel seconded the motion.**

Tyler Martineau said that he would check with the City of Gunnison to see how they bond city officials.

President Trampe asked if Mr. Clark's option had merit. Mr. Bratton said that the statute specifies "a corporate surety bond" and that the judge cannot do away with the bond but could reduce it to \$0.

Lee Spann asked the purpose of the bond for the board members. John McClow said that it covers the expenditure of funds for non-district activities. He also said that the amount of only \$1,000.00 is unrealistic by today's standards and that the request to reduce it to \$0 might trigger an increase in the amount of each bond.

Bob Arnold asked how this type of bond differs from a director's liability policy. John McClow replied that this bond insures the public that the directors will do their duty and the liability policy insures the directors.

Susan Lohr amended her motion to include any alternative similar to Western Surety that doesn't require a financial statement. Dennis Steckel, as second to the motion, agreed with the amendment. The motion carried by a 5-4 vote.

The meeting resumed after a short break called by President Trampe.

## **7. 1993 TAYLOR PARK RESERVOIR OPERATIONS**

Tyler Martineau referred the board to his April 22, 1993 memorandum which summarized the agreement for 1993 Taylor Park Reservoir operations which allows a two week period of 500 cfs releases in May 1993 to accommodate the request of Barney White and Ernest Cockrell. Mr. Martineau had circulated and reviewed the pattern of proposed releases based upon the water supply forecast. He said that the release schedule attempted to accommodate many different purposes as well as the board's direction to satisfy Ernest Cockrell's request to be able to place a call this year. He said that Mr. Cockrell has agreed not to call for more water than listed in the schedule and that this schedule is also close to the operating schedule proposed by the local water user groups. Mr. Martineau pointed out that the list of 1993 Taylor Park Reservoir Operating Objectives was also attached to the memorandum.

Butch Clark asked Tyler Martineau when the 2nd fill would occur on this schedule and asked that Mr. Martineau add that tally to the schedule. Mr. Clark also asked why the schedule does not provide the optimum flow for fishery purposes for the entire rest of the year. Mr. Martineau replied that you would end up with much less water in the reservoir, and that such flows if maintained over the entire summer would be too high for stream fishermen.

Purvis Vickers asked if these releases on the schedule are part of the 2nd fill. Mr. Martineau said that these releases are based on outflows, that is, the measurement of the total amount of water coming out of the bottom of the dam. He said that three types of water are included in the April 22, 1993 memorandum.

Tyler Martineau said he will provide at the next board meeting his best estimate of a refill accounting schedule. He said that the first fill is occurring at this time and is very close to being completed.

## **8. TAYLOR PARK WATER MANAGEMENT AGREEMENT - APPOINTMENT OF NEGOTIATING TEAM MEMBERS**

Tyler Martineau had distributed to the board a new draft water management agreement and a letter regarding designation of a negotiation team which he received from

the U.S. Bureau of Reclamation. He said that the Upper Gunnison River Water Conservancy District, the U.S. Bureau of Reclamation, the Colorado River Water Conservation District, and the Uncompaghre Valley Water Users Association will be participating in the negotiation process.

Lee Spann reported that the Colorado River Water Conservation District had appointed staff members, Mike Gross and Eric Kuhn, to be their representatives on the negotiating team. Mr. Martineau said that the Uncompaghre Valley Water Users Association indicated that they will probably appoint a staff member, an attorney, and a board member.

Tyler Martineau said that it will not be necessary to deal with the new draft water management agreement until the negotiations begin.

Lee Spann moved that the Upper Gunnison River Water Conservancy District appoint Tyler Martineau, Dick Bratton, and Bill Trampe to represent the District on the negotiating team. Bob Arnold seconded the motion.

Butch Clark asked if the negotiating team will ratify the water management agreement or if it would be brought back to the board to ratify. President Trampe said that it would be brought before the board for ratification. Tyler Martineau said that the negotiating sessions are public sessions but that public comment is not allowed during all parts of the meetings.

Mr. Martineau said that the negotiating sessions will be held about once a month so the District team can come back to the board between sessions for discussion and guidance. He said that the board may want to give guidance prior to the first negotiating session. He also mentioned that NEPA compliance will be required but he is not sure at which level.

Butch Clark said that he is concerned about the management charges language in Section 4, Rate and Method of Payment, on page eight. Susan Lohr said that she was also surprised to see that the payment is for total storage when Dick Bratton and Tyler Martineau have referred to depletion in the previous discussions.

Tyler Martineau explained that the only water to be paid for is multiple-use water and the total amount stored will be used to offset depletions. He said that an augmentation plan will also need to be developed.

Mr. Martineau said that, in the future, all water out of Crystal Reservoir will be contracted water. The senior downstream users will call and, as a result, shut off the junior users in the upper basin. The District will need a source of stored water to be provided to the downstream users so that the upstream juniors can continue to divert. The proposed approach in the water management agreement will avoid the Reclamation Reform Act and avoid using more expensive water in Blue Mesa Reservoir.

**Motion carried.**

Butch Clark said that in two places of the draft water management agreement it states that the Reclamation Reform Act will apply. He also noted that it indicates that the EEO requirements will be binding on the District's purchasing policy.

Tyler Martineau said that he had provided the Bureau of Reclamation's point of view as to why the agreement is needed and that the Bureau of Reclamation has said that they believe this approach circumvents the Reclamation Reform Act.

Dick Bratton said that the Bureau of Reclamation believes that they are helping the Upper Gunnison River Water Conservancy District.

Tyler Martineau said that he will find out the Bureau of Reclamation agenda for the first negotiating session and then it can be decided what input the board will need to provide to the negotiating team. President Trampe said that a special meeting will probably be scheduled to discuss the draft water management agreement.

Tyler Martineau asked about suggestions for a convenient time for the first negotiating session. Lee Spann suggested that this decision be left to the appointed negotiating team. Mr. Martineau confirmed that daytime meetings would be okay with the board members. Butch Clark suggested that the sessions begin at 10:00 a.m. to allow for travel.

## **9. 1993 ASPINALL UNIT OPERATIONS AND WATER RIGHTS ADMINISTRATION**

Tyler Martineau referred the board to his April 19 memorandum and the accompanying summary of the April 15 quarterly Aspinall operations meeting. Also included with the summary are graphs and charts showing the anticipated Aspinall operations for 1993 and the water supply outlook.

Bob Arnold asked if Blue Mesa would fill this year. Mr. Martineau said that Blue Mesa will fill. The chart shows Blue Mesa within a few feet of full capacity but it is recorded this way so as to create a margin of safety to avoid a spill.

## **10. GUNNISON BASIN PLANNING MODEL - IDENTIFICATION OF RESERVOIR SITES TO BE INCLUDED IN THE PLANNING MODEL**

Tyler Martineau referred the board to his April 23 memorandum which summarizes reservoir sites identified by the sponsors committee based on the direction of the District board. Also provided was a list of all the reservoir sites in the Gunnison Basin which the

sponsors committee wants included in the model. He said that if the model cannot accommodate all sites only those indicated as high priority will be included in the model.

Mr. Martineau said that he has received several responses to his letter of inquiry about possible additional sites. He said that Mt. Crested Butte Water and Sanitation District identified the North Village site and the Rozman site for possible inclusion in the model.

Butch Clark suggested that the Quartz Creek node be at Ohio City instead of Pitkin. Mr. Martineau said that it could be switched.

Butch Clark also said that there should be a reservoir node at Spring Creek to deal with the East River collection system. He feels that it is a critical node.

Butch Clark mentioned two other possibilities though they are not located in the Upper Gunnison River Water Conservancy District. These sites are Minnesota Creek and the Paonia Reservoir. Mr. Martineau explained that this listing was taken from sites presented in the Upper Gunnison-Uncompaghre Basin Phase 1 Feasibility Study but that Paonia Reservoir should be included. He asked where Minnesota Creek is located. Mr. Clark replied that it is near the Crawford Reservoir.

Mr. Martineau said that he will ask if Spring Creek Reservoir can be added to the model. He said it will be necessary to forecast the inflow figures for the reservoir.

## **11. CWCB AGRICULTURAL AND MULTIPURPOSE WATER SYSTEMS WATER CONSERVATION AND WATER USE EFFICIENCY GRANTS PROGRAM**

Tyler Martineau referred the board to his April 26 memorandum and the information packet he included on the Colorado Water Conservation Board grants to be used for agricultural and multipurpose water systems water conservation and water use efficiency pilot demonstration projects. Mr. Martineau said that the deadline for application is July 31, 1993 and he wanted the board to be aware of this opportunity and to know if the board had suggestions for suitable projects it might pursue.

Butch Clark said that he had two suggestions: (1) A study for storing water in irrigated meadows as related to proving diligence and (2) A wastewater application on meadows.

Purvis Vickers suggested that Crested Butte Mountain Resort be advised of this opportunity in case Edward Callaway would like to apply for this grant.

Tyler Martineau said that this grant program is directed toward conservation and water use efficiency and a storage project would probably not be within the parameters. He