

UPPER COLORADO REGION

**NEWS RELEASE**

Western Colorado Area Office-Northern Division  
Grand Junction, Colorado  
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November 17, 1999

received  
11-18-99

*for  
Pete  
Dunich*

### **Draft Environmental Assessment Available on Administration of Aspinall Unit Water Rights in the Upper Gunnison River Basin**

The Bureau of Reclamation has released a draft environmental assessment (EA) on an agreement concerning administration of the Aspinall Unit water rights in the Upper Gunnison River Basin. The agreement formalizes past commitments when the United States agreed to subordinate Aspinall Unit water rights to allow up to 60,000 acre-feet of depletions within the natural basin of the Gunnison River. These depletions would occur upstream from the Aspinall Unit reservoirs--Blue Mesa, Morrow Point, and Crystal. The agreement provides a plan to manage, track, record, and account for these water depletions.

To obtain a copy of the EA, contact Jone Wright at Reclamation's Grand Junction office or call her at 970-248-0636. Comments on the EA are requested by December 20, and should be sent to the Bureau of Reclamation, 2764 Compass Drive, Grand Junction, CO 81506.

# # #

**DRAFT  
ENVIRONMENTAL ASSESSMENT**

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**Signing of an Agreement Concerning  
the Administration of Water Pursuant to the  
Subordination of Wayne N. Aspinall Unit Water  
Rights Within the Upper Gunnison River Basin**

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United States Department of the Interior  
Bureau of Reclamation

Upper Colorado Region  
Western Colorado Area Office  
Grand Junction, CO

November 1999

## INTRODUCTION AND PURPOSE AND NEED

### Background

The Bureau of Reclamation constructed the Wayne N. Aspinall Unit (Unit) in the 1960's and 1970's on the Gunnison River in west central Colorado under the authority of the Colorado River Storage Project Act of April 11, 1956 (Act). The purposes of the Act included regulating flows of the Colorado River to permit the Upper Colorado River Basin States to more fully utilize their allocation of Colorado River water as set forth in the Upper Colorado River Basin Compact.

The Unit is located in Gunnison and Montrose Counties, Colorado, along a 40-mile reach of the Gunnison River. It consists of a series of three dams and reservoirs-Blue Mesa, Morrow Point, and Crystal. The Unit is operated by Reclamation, while the land and water areas of the reservoirs are managed under contract by the National Park Service as the Curecanti National Recreation Area. Figure 1 shows the location of Unit features within the Gunnison River Basin.

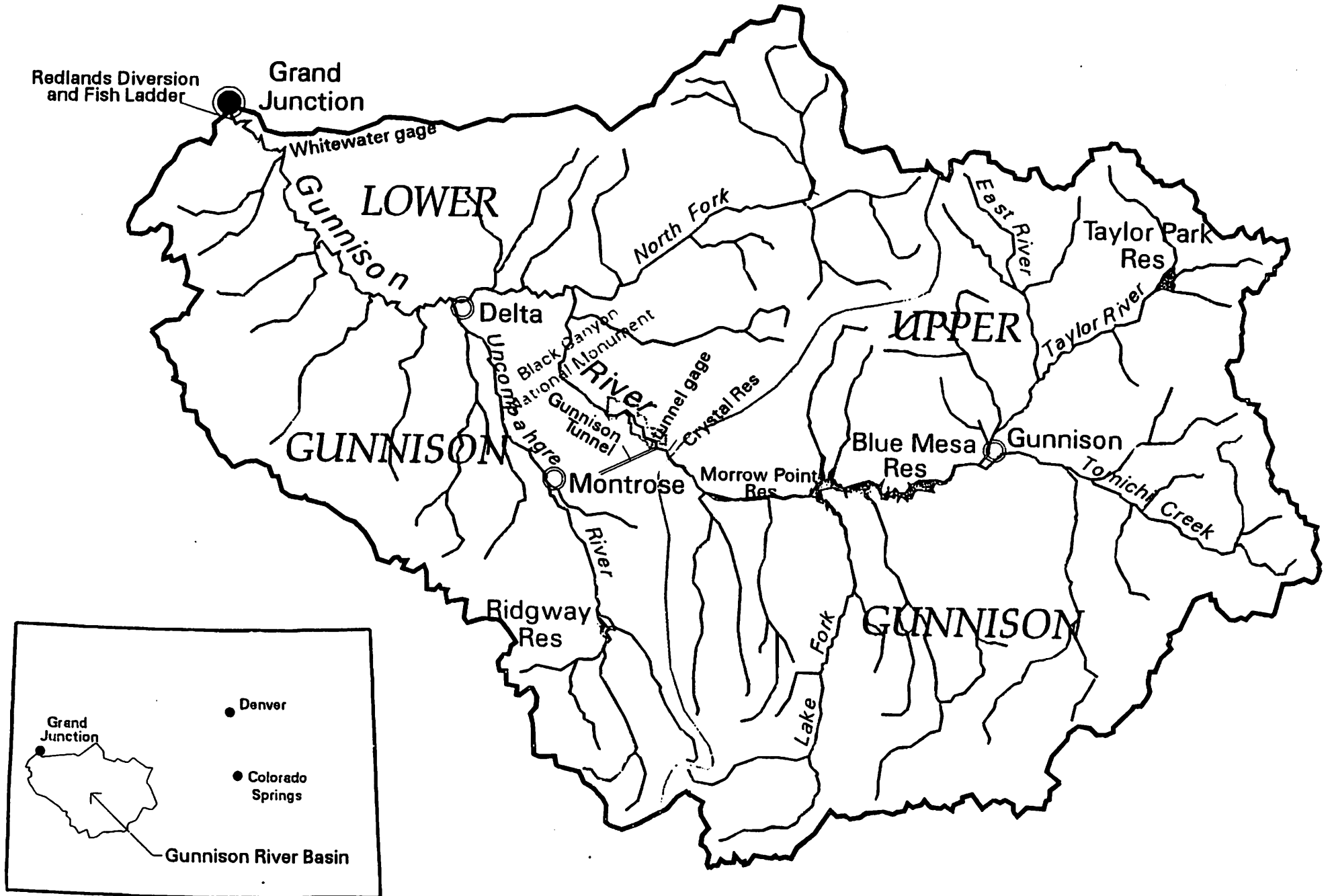
The Unit's primary storage facility is Blue Mesa Reservoir which has a water storage right for 940,755 acre-feet with an appropriation date of November 13, 1957, and a refill water right of 122,702 acre-feet. During the planning for the Unit, there were concerns in Colorado that a storage right of this magnitude would preclude future upstream water developments and uses in the Gunnison Basin. Under Colorado Water Law, the 1957 right could "call out" junior rights (later than 1957), and in effect make these junior water rights ineffective in supplying dependable water.<sup>1</sup>

To address these concerns, Reclamation's policy since the early 1960's has been to allow junior water users within the natural basin of the Gunnison River to develop up to 60,000 acre-feet without interference from the Aspinall Unit. The 60,000 acre-feet is a cumulative figure: 40,000 acre-feet of depletions are allowed above Blue Mesa Dam, and another 10,000 acre-feet (each) of depletion are allowed between Blue Mesa Dam and Morrow Point Dam, and between Morrow Point Dam and Crystal Dam.

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<sup>1</sup>In the Gunnison River Basin as elsewhere in Colorado, senior water right holders can place a "call" on the river—a request to the State Engineer to force water users with junior decrees to cease or diminish their storage or diversions and pass the called amount of water to the downstream senior water right in order to make the senior's water supply "whole."

# Gunnison River Basin



Location Map (State of Colorado)

Figure 1. Gunnison River Basin

Because of the small nature of most of the junior water rights, this policy has usually been carried out by Reclamation's practice of simply not placing a "call" on the river when it might otherwise have been entitled to do so, thus allowing junior in-basin users to continue using water.

### Purpose, Need and Authority

A written agreement is needed to formalize the long-standing commitment implementing the depletion allowance that was made by the United States prior to construction of the Unit. Purposes of the Agreement include providing a method of accounting for depletions in the upper Gunnison Basin and protecting Unit water rights and purposes. This environmental assessment (EA) is prepared in compliance with the National Environmental Policy Act (NEPA) of 1969 and related Department of the Interior policies and regulations.

The proposed Agreement is authorized pursuant to the Reclamation Act of 1902 (32 Stat. 388) and all amendatory and supplemental acts, especially the Colorado River Storage Project Act (70 Stat. 105), which authorized the Unit. In related litigation, the United States took the position, which the Colorado State Water Court accepted, that Unit water rights were intended to be subordinated to certain upper basin users up to specific amounts. In the Matter of the Application for Water Rights of the Board of County Commissioners of the County of Arapaho, in Gunnison County (C8&CW178) the United States position prevailed that Congress, based on legislative history (including the Economic Justification Report of 1959 on the Unit and its supplement, which were presented to Congress, in order to gain a concession from upstream water users in return for their support of the Unit) anticipated depletions of up to 60,000 acre-feet above the Unit.<sup>2</sup>

Specifically, the Court concluded there was an understanding, in principle, among Reclamation, the Colorado River Water Conservation District (CRWCD), and the Upper Gunnison River Water Conservancy District (District) that Reclamation would allow depletions of 60,000 acre-feet for use within the Gunnison River Basin. Though there is no formal written contract existing among the parties, there is extensive evidence that the parties had the same intent (a meeting of the minds) that Reclamation would subordinate (or allow depletions) its senior water rights in an amount up to 60,000 acre-feet for the benefit of in-basin development and use of water by junior appropriators upstream from the Unit. The Court further concluded that the conduct and understandings of the parties resulted in a contract, implied if not expressed, and the above identified terms are the essential provisions required to create an enforceable obligation requiring Reclamation to honor its commitments.

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<sup>2</sup>Brown, Robert A., Water Judge, Findings of Fact, Conclusions of Law, and Judgment & Decree, Application for Water Rights by the Board of County Commissioners for Arapahoe County for the Union Park Reservoir Project, District Court, Water Division No. 4, Colorado, Case No. 88-CW-178, April 6, 1998.

Furthermore, Section 14 of the Reclamation Project Act of 1939 (43 U.S.C. 389), is the appropriate vehicle to execute the subordination which Congress anticipated would occur. This section authorizes the Secretary of Interior "...for the purposes of orderly and economical construction or operation and maintenance of any project, to enter into such contracts for the exchange or replacement of water, water rights, or electric energy, or for the adjustment of water rights, as in his judgement are necessary and in the interests of the United States and the project."

## PROPOSED ACTION AND ALTERNATIVES

The proposed action is for the United States to execute the Agreement concerning the Administration of Water Pursuant to the Subordination of Wayne N. Aspinall Unit Water Rights within the Upper Gunnison River Basin (Agreement). A copy of this Agreement is attached. The Agreement is not a water supply contract or sale; it does not provide water to anyone; it formalizes past commitments and provides a plan on how to manage, track, record and account for water depletions.

The alternative to the proposed action is the No Action alternative, which simply is not signing the Agreement. Under the No Action alternative, Reclamation would have to develop some type of system to track depletions to assure the 60,000 acre-foot allowance was not exceeded. This system could involve individual contracts with water users.

The proposed Agreement provides for the following:

- the depletion allowance (up to 60,000 acre-feet) for the Unit shall be implemented only pursuant to the Agreement;
- the United States agrees to subordinate the Unit's water rights up to 60,000 acre-feet; by subordinating to the junior water rights in the basin upstream, the United States agrees that such in-basin water users may continue to divert when the United States places a call on the Gunnison River under the Unit's water rights;
- the depletions against which the United States foregoes its right to call under this Agreement, shall be charged by the Colorado State Engineer against the annual fills of Unit reservoirs, and/or the exercise of the related direct flow hydropower rights (depending on which of the Unit rights are then being exercised);
- the CRWCD and the District shall monitor and quantify depletions under this Agreement;
- the Unit reservoirs cannot be used in exchange or replacement of water or for any other purpose, without the additional approval of the United States; and
- the utilization of water by the water users represented by the CRWCD and the District shall be subject to the laws of the State of Colorado regarding water use.

## DESCRIPTION OF THE ENVIRONMENT AND ENVIRONMENTAL CONSEQUENCES

The Gunnison River Basin above the Unit reservoirs includes approximately 4,000 square miles. In addition to the Gunnison River, major streams include the Cimarron River, Taylor River, East River, Tomichi Creek, and the Lake Fork of the Gunnison River.

The Gunnison River originates where the East and Taylor Rivers join at Almont, Colorado in Gunnison County. From that point, the Gunnison flows 25 miles to Blue Mesa Reservoir, the largest and most upstream of the three reservoirs comprising the Unit. Blue Mesa Reservoir releases water into Morrow Point Reservoir which discharges into Crystal Reservoir. From Crystal Reservoir, the Gunnison flows approximately 2 miles to the Gunnison Tunnel (irrigation diversion for the Uncompahgre Project), located just upstream from the Black Canyon of the Gunnison National Park. From the Gunnison Tunnel through the Park and the Gunnison Gorge, the river flows for 29 miles to the confluence with the North Fork of the Gunnison River. It then travels 75 river miles to its confluence with the Colorado River at Grand Junction.

Gunnison River water use began in the 19<sup>th</sup> century with establishment of numerous irrigation water rights by individuals, organizations, and government agencies. There are more than 5,000 direct diversion decrees that have been perfected and are presently in use on the Gunnison River and its tributaries above Delta, Colorado. Significant senior diversions downstream from the Unit, established in the early 1900's, include the Gunnison Tunnel of the Uncompahgre Project and the Redlands Diversion, which have a combined diversion capability of approximately 2,000 cubic-feet-per second (cfs).

In addition to water rights for direct diversions, storage rights have been established. These are rights to store available water in a reservoir for later use. The largest single perfected storage decree on the Gunnison River is the decree for Blue Mesa Reservoir. Other water storage facilities, in addition to those of the Unit, include numerous smaller reservoirs and several larger Reclamation project reservoirs on Gunnison River tributaries—Taylor Park Reservoir on the Taylor River, Silver Jack Reservoir on Cimarron Creek, Crawford Reservoir fed by the Smith Fork, Paonia Reservoir on Muddy Creek, and Ridgway Reservoir on the Uncompahgre River.

As indicated previously in this EA, Reclamation's practice has been to allow junior water users within the natural basin of the Gunnison River to develop up to 60,000 acre-feet without interference from the Aspinall Unit. Under the proposed Agreement, calls could be placed but in-basin junior uses would be protected up to the depletion amount. In addition the amount of depletion would be measured and tracked so that the 60,000 acre-feet would not be exceeded.

Under the No Action alternative--not signing the Agreement--this practice would continue; however the practice would not be formalized or monitored. Reclamation has the discretion of signing or not signing the Agreement; but it does not have discretion in allowing the depletion based on the 1998 Court decision.

In terms of environmental consequences, there would be no change in water use or diversion in the Upper Gunnison River Basin as a result of the agreement. Existing uses would continue and junior rights (up to 60,000 acre-feet) would not be subject to Unit calls. Other senior rights, such as the large Gunnison Tunnel and Redlands Diversion rights, could continue to place calls on the entire Gunnison River including both the Unit and the Gunnison River Basin juniors protected from Unit calls.

Thus the administrative action of executing the Agreement would have no effect on water uses and related environmental resources. Based on this premise, Reclamation also concludes that there is no effect on listed threatened or endangered species that occur in the basin area or downstream. Other resources such as Indian Trust Assets, wetlands, cultural resources, fish and wildlife resources, and others would not be affected. This is not to say that future water use and related development would not have environmental effects; it simply means that these would occur under the existing state water appropriation system independently of execution of the Agreement.

## CONSULTATION AND COORDINATION

The Agreement itself has been developed in cooperation with the Colorado State Engineer, CRWCD, and the District. The signing of the Agreement has been discussed with the Fish and Wildlife Service in regard to the Endangered Species Act. Reclamation has informed the Service of the no effect determination on threatened and endangered species and has agreed with the Service that 1) the 60,000 acre-foot depletion be included in upcoming Endangered Species Act consultation on the Unit, and 2) in the interim, all new Federal actions that deplete water will be consulted on.

The Agreement culminates over 40 years of practices, commitments, and legal decisions. This consultation and coordination has led to the decision that the depletion discussed in the EA will continue with or without an Agreement; however, an Agreement is needed to formalize the practices and facilitate record keeping.

This environmental assessment has been provided to the following groups who have expressed an interest in the Agreement. A news release has also been mailed indicating the availability of the EA.



Mailing List:

U.S. Fish and Wildlife Service, Grand Junction, CO  
U.S. Forest Service, Delta, CO  
U.S. National Park Service, Gunnison CO  
U.S. Western Area Power Administration, Salt Lake City, UT  
Colorado Water Conservation Board, Denver, CO  
Colorado State Engineer, Montrose, CO  
Colorado Division of Wildlife, Gunnison and Montrose, CO  
Colorado River Water Conservation District, Glenwood Springs, CO  
Arapahoe County, CO  
Environmental Defense Fund, Boulder, CO  
Gunnison County Commissioners, Gunnison, CO  
Redlands Water and Power, Grand Junction, CO  
Uncompahgre Valley Water Users Association, Montrose, CO  
Upper Gunnison River Water Conservancy District, Gunnison, CO  
Mr. Bruce Driver, Boulder, CO

Comments received will help finalize the EA. Reclamation is considering preparing a Finding of No Significant Impact on the proposed action.

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

ASPINALL UNIT  
COLORADO RIVER STORAGE PROJECT

AGREEMENT AMONG THE UNITED STATES OF AMERICA,

THE COLORADO STATE ENGINEER,

THE COLORADO RIVER WATER CONSERVATION DISTRICT,

AND

THE UPPER GUNNISON RIVER WATER CONSERVANCY DISTRICT.

FOR THE ADMINISTRATION OF WATER PURSUANT TO THE SUBORDINATION  
OF WAYNE N. ASPINALL UNIT WATER RIGHTS WITHIN THE  
UPPER GUNNISON RIVER BASIN

THIS AGREEMENT is made this 21st day of December, 1998, between the United States of America (the United States), acting through the Secretary of the Interior, pursuant to The Reclamation Act of 1902 (Act of June 17, 1902, 32 Stat.388) and all acts amendatory and supplementary thereto, including the Colorado River Storage Project Act of April 11, 1956 (70 Stat. 105), the Colorado State Engineer, the Colorado River Water Conservation District (River District), organized and existing pursuant to the laws of the State of Colorado, with its office and principal place of business at Glenwood Springs, Colorado; and the Upper Gunnison River Water Conservancy District (Upper Gunnison District), organized and existing pursuant to the laws of the State of Colorado with its office and principal place of business at Gunnison, Colorado;

WITNESSETH, THAT:

WHEREAS, the United States constructed the Curecanti Unit, now known as the Wayne N. Aspinall Unit (Aspinall Unit), of the Colorado River Storage Project, including the Blue Mesa, Morrow Point and Crystal Dams and Reservoirs, for the purpose, among other things, of regulating the flows of the Colorado River to permit the Upper Colorado River Basin States to more fully utilize their allocation of Colorado River waters, as set forth in the Upper Colorado River Basin Compact; and

WHEREAS, the United States, by that certain Assignment of Water Rights from the River District dated January 26, 1962, is the owner of the following water rights recorded in former Colorado Water Districts 62 and 59 and Water Division 4 in Montrose, Colorado, which were made absolute November 13, 1980 in Case No. 80CW156, Water Division 4:

**DISTRICT 62  
1960 DECREE**

|                          | <u>Amount</u> | <u>Priority No.</u> |
|--------------------------|---------------|---------------------|
| Crystal Reservoir        | 160,867 af    | 445                 |
| Crystal Power Plant      | 3,000 cfs     | 446                 |
| Blue Mesa Reservoir      | 939,204 af    | 447                 |
| Blue Mesa Power Plant    | 2,500 cfs     | 448                 |
| Morrow Point Reservoir   | 114,706 af    | 449                 |
| Morrow Point Power Plant | 2,500 cfs     | 450                 |

**DISTRICT 59  
1961 DECREE**

|                          | <u>Amount</u> | <u>Priority No.</u> | <u>Diversion Structure No.</u> |
|--------------------------|---------------|---------------------|--------------------------------|
| Blue Mesa Reservoir      | 939,204 af    | 565                 | 38                             |
| Blue Mesa Reservoir      | 2500 cfs      | 566                 | 39                             |
| Morrow Point Reservoir   | 114,706 af    | 567                 | 40                             |
| Morrow Point Power Plant | 2,500 cfs     | 568                 | 41                             |

appropriation date November 13, 1957 (Aspinall Unit Rights); and,

WHEREAS, the Upper Gunnison District, by two certain Assignments of Water Rights from the River District dated January 26, 1962, is the owner of the following water rights recorded in former Colorado Water Districts 28 and 59 and Water Division 4 in Montrose, Colorado, which are conditional water rights as of the date of this Agreement:

**THE TOMICHI UNIT**

|                      | <u>Amount</u> | <u>Priority No.</u> | <u>Diversion Structure No.</u> |
|----------------------|---------------|---------------------|--------------------------------|
| Monarch Reservoir    | 29,200.7 af   | 402                 | 312                            |
| South Crookton Canal | 277 cfs       | 404                 | 314                            |

**THE COCHETOPA UNIT**

|                                     |             |     |     |
|-------------------------------------|-------------|-----|-----|
| Banana Ranch Reservoir              | 21,733 af   | 405 | 315 |
| Flying M. Reservoir                 | 15,457 af   | 406 | 316 |
| Upper Cochetopa Reservoir           | 12,693.2 af | 407 | 317 |
| Cochetopa Meadows Ditch Enlargement | 11 cfs      | 408 | 318 |
| Cochetopa Canal                     | 240 cfs     | 409 | 319 |
| Pass Creek Canal                    | 45 cfs      | 410 | 320 |
| Los Pinos Canal                     | 51 cfs      | 411 | 321 |
| Stubbs Gulch Canal                  | 277 cfs     | 412 | 322 |

**OHIO CREEK UNIT**

|                     |          |     |     |
|---------------------|----------|-----|-----|
| Castleton Reservoir | 9,000 af | 572 | 43  |
| Ohio Creek Canal    | 302 cfs  | 573 | 350 |
| Taylor River Canal  | 302 cfs  | 574 | 351 |
| East River Canal    | 82 cfs   | 575 | 352 |

appropriation date November 13, 1957 (Upper Gunnison District Rights); and,

WHEREAS, the February, 1959 *Supplemental Report and Certification of Economic Justification on the Curecanti Storage Unit of the Colorado River Storage Project in Colorado, Pursuant to the Act of April 11, 1956 (70 Stat. 105)* recognized the possibility that up to 60,000 acre-feet (af) of in-basin depletions would occur upstream of the Aspinall Unit without affecting the feasibility of the Aspinall Unit; and

WHEREAS, the United States decided that the Aspinall Unit Rights would be utilized in such a manner, and pursuant to such operating criteria, so as to permit future upstream water depletions by projects constructed for use of water within the Gunnison River Basin, in an aggregate amount to be determined by the United States, even though such projects divert under priorities equal or junior to the priorities of the Aspinall Unit Rights, thereby creating a Depletion Allowance for the Aspinall Unit; and

WHEREAS, the Depletion Allowance reflects a commitment that was made by the United States prior to the construction of the Aspinall Unit and which has been recognized by the United States prior to this Agreement both in correspondence and in four Agreements executed in 1964 and 1965 with water users and reaffirmed in August 1996 in correspondence from the U. S. Department of Justice to the Colorado Attorney General and from the United States Department of the Interior to the Colorado Water Conservation Board; and

WHEREAS, the River District enters into this Agreement in order to represent various individuals and entities who divert water upstream from either Crystal Dam and Reservoir or Morrow Point Dam and Reservoir and use that water downstream from Blue Mesa Dam within the Gunnison River Basin in order to implement the Depletion Allowance; and

WHEREAS, the Upper Gunnison District enters into this Agreement in order to represent various individuals and entities who divert and use water in the Gunnison River Basin upstream from Blue Mesa Dam in order to implement the Depletion Allowance;

THEREFORE, it is agreed as follows:

1. From the date of this Agreement, the Depletion Allowance for the Aspinall Unit shall be implemented only pursuant to this Agreement and not through subsequent agreements with water users.
2. The United States agrees to subordinate the Aspinall Unit Rights to up to 10,000 af of annual water depletions in the Gunnison River Basin drainage between Crystal Dam and Morrow Point Dam, and 10,000 af of such depletions in the drainage between Blue Mesa Dam and Morrow Point Dam to the water users represented by the River District, and to subordinate the Aspinall Unit Rights to up to 40,000 af of annual water depletions in the drainage above Blue Mesa Dam to the water users represented by the Upper Gunnison District and to the Upper Gunnison District Rights under the conditions described in paragraph 5. By subordinating to the rights of such water users, the United States agrees that such water users may continue to divert when a call is placed on the Gunnison River by the United States under the Aspinall Rights, subject to the limits of the stated subordination in the separate drainages.
3. As consideration for the United States' agreement to subordinate the Aspinall Unit Rights to water users in the Gunnison River Basin to implement the Depletion

Allowance, the River District agrees to represent the various individuals and entities who divert water upstream of either Crystal Dam or Morrow Point Dam and use water downstream of Blue Mesa Dam by exercising in-basin rights upstream and junior to the Aspinall Unit Rights.

4. As consideration for the United States' agreement to subordinate the Aspinall Unit Rights to water users in the Gunnison River Basin to implement the Depletion Allowance, the Upper Gunnison District agrees to represent the various individuals and entities who use water upstream of Blue Mesa Dam by exercising in-basin rights upstream from and equal or junior in priority to the Aspinall Unit Rights.

5. If water is being diverted under the Upper Gunnison District Rights during a time when there exists a shortage of supply such that the Division Engineer is required, because of identical priority dates, to apportion the water available for diversion between the Aspinall Unit Rights and the Upper Gunnison District Rights, the United States agrees to subordinate the Aspinall Unit Rights to the Upper Gunnison District Rights in an amount sufficient to provide for a diversion of the full decreed amount of the Upper Gunnison District Rights under which diversions are being made. Proportional depletions attributable to diversions having equal priority to the Aspinall Unit Rights which would otherwise be called out by Aspinall Unit Rights but are made by the Upper Gunnison District Rights pursuant to this paragraph are included within, and not in addition to, subordination of the Aspinall Unit Rights to up to 40,000 af of annual water depletions in the drainage above Blue Mesa Dam.

6. The depletions against which the United States foregoes its right to call under this Agreement shall be charged by the Colorado State Engineer against the annual fills of Crystal Reservoir, Morrow Point Reservoir and/or Blue Mesa Reservoir (including the second filling of Blue Mesa Reservoir), and/or the exercise of the related direct flow hydropower rights (depending on which of the Aspinall Unit Rights are then being exercised) in the amounts specified in paragraph 2.

7. Water consumptively used under privately held water rights benefitting from this Agreement and used within the Gunnison River Basin through evapotranspiration, reservoir evaporation, irrigation, industrial, domestic and other beneficial uses shall be appropriate uses of the Depletion Allowance. Water which is diverted and ultimately returns to the stream and then is available for use pursuant to the Aspinall Unit Rights shall not be considered a depletion and, therefore, not a use of the Depletion Allowance.

8. Within one year after the date of this Agreement the River District and the Upper Gunnison District shall provide to the Bureau of Reclamation in Grand Junction, Colorado, or any other location designated by the United States, and to the Colorado State Engineer and Division 4 Engineer, an initial Report listing the names of the diversion or storage structures and priority or administration numbers of the diversions in the areas represented by them which qualify for subordination of Aspinall Unit Rights under the Depletion Allowance described in this Agreement, together with an estimate of the total

amount of annual diversions (in af) and an estimate of the total amount of related annual depletions (in af) by the listed structures. The estimates of diversions and depletions contained in the Report shall be derived from information compiled by the Division 4 Engineer in the ordinary course of his duties.

9. Following delivery of the initial Report described in paragraph 8, on or before April 1 of each year, the River District and the Upper Gunnison District shall provide to the Bureau of Reclamation in Grand Junction, Colorado, or any other location designated by the United States, and to the Colorado State Engineer and Division 4 Engineer, an Annual Report. The Annual Report shall include an updated listing of the names of the diversion or storage structures and priority or administration numbers of the diversions in the areas represented by the Districts which qualify for subordination of Aspinall Unit Rights under the Depletion Allowance described in this Agreement, which separately identifies the structures and diversions which have been added to or removed from the listing since the initial Report or previous Annual Report. Each Annual Report shall also include an estimate of the total amount of diversions (in af) and an estimate of the total amount of related depletions (in af) by the listed structures made during the previous water year (November 1 through October 31). The estimates of diversions and depletions contained in the Annual Report shall be derived by the Districts from information compiled by the Division 4 Engineer in the ordinary course of his duties.

10. Both Districts agree that the Reports described in paragraphs 8 and 9 shall include diversions and related depletions which occur pursuant to the four existing agreements between the United States and individual water users for use of a portion of the Depletion Allowance, and that said depletions are included within the total annual water depletions described in paragraph 2 of this Agreement.

11. The Upper Gunnison District agrees that the Reports described in paragraphs 8 and 9 shall include diversions and related depletions resulting from the consumptive uses decreed to the second filling of Taylor Park Reservoir in case number 86CW203, District Court, Water Division 4, Colorado, and that said depletions are included within the total annual water depletions described in paragraph 2 of this Agreement.

12. The United States will complete such work as may be required under the National Environmental Policy Act in order to effect and implement this Agreement.

13. Nothing in this Agreement shall be construed as an assignment of Aspinall Unit Rights, as an obligation to deliver Aspinall Unit water, or as a limitation on the United States' right to place a call on the Gunnison River pursuant to the Aspinall Unit Rights, other than as explicitly described herein.

14. Nothing herein shall be construed to permit use by the River District or the Upper Gunnison District, or any water user which the River District or the Upper Gunnison District represents, of Aspinall Unit reservoirs in exchange or replacement of water or for any other purpose without the additional approval of the United States, including payment

therefor to the United States..

15. The utilization of water by the water users represented by the Upper Gunnison District or by the Upper Gunnison District, shall be subject to the laws of the State of Colorado relating to water use and administration and ditch and reservoir rights. The River District and the Upper Gunnison District shall be responsible for obtaining appropriate decrees as may be required in order for the Colorado State Engineer to effectively administer this Agreement in accordance with Colorado law. The United States shall cooperate with the Districts in accomplishing such adjudication.

16. Subordination of Aspinall Unit Rights pursuant to this Agreement shall be applicable only to water rights with priorities junior or equal to the Aspinall Unit Rights which are exercised for beneficial use within the Upper Gunnison River Basin, and shall not in any way be construed as affecting the relationship or relative priorities of any of those rights or other water rights within such basin.

17. This Agreement may not be assigned in whole or in part without the written consent of the United States, provided that the River District and the Upper Gunnison District may impose obligations on water users and/or the Water Court may impose decretal obligations on water users in order to facilitate compliance by the River District and Upper Gunnison District with this Agreement and any related water decrees. Obligations imposed by the Districts pursuant to this paragraph shall relate only to matters such as water measurement, accounting, and other administrative matters, and may include, without limitation, recoupment of the Districts' actual costs of administration of the Depletion Allowance.

18. This Agreement and all water diverted pursuant thereto shall be subject to and controlled by the Colorado River Compact dated November 24, 1922, and proclaimed by the President of the United States, June 25, 1929, 46 Stat. 3000; the Boulder Canyon Project Act approved December 21, 1928, 45 Stat. 1057; the Boulder Canyon Project Adjustment Act of July 19, 1940, 54 Stat. 774; the Upper Colorado River Basin Compact dated October 11, 1948 and approved April 16, 1949, 63 Stat. 31; the Mexican Water Treaty of February 3, 1944, 64 Stat. 846; the Colorado River Storage Project Act of April 11, 1956, 70 Stat. 1045; and the Colorado River Basin Project Act of September 30, 1968, 82 Stat. 885, as any of the above may have been amended or supplemented and to related decrees of appropriate courts.

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

20. Any notice, demand, or request authorized or required by this Agreement shall be deemed to have been given, on behalf of the River District or Upper Gunnison District when mailed, postage prepaid, or delivered to the Area Manager, Western Colorado Area Office, Bureau of Reclamation, 2764 Compass Drive, Grand Junction, Colorado 81506; Colorado State Engineer, 1313 Sherman Street, Denver, Colorado



80203; Division 4 Engineer, P. O. Box 456, Montrose, Colorado 81402; and on behalf of the United States, State Engineer and Division 4 Engineer when mailed, postage prepaid, or delivered to the General Manager, Colorado River Water Conservation District, P. O. Box 1120, Glenwood Springs, Colorado 81602, and/or to the Manager, Upper Gunnison River Water Conservancy District, 275 South Spruce Street, Gunnison, Colorado 81230. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Agreement for other notices.

21. This Agreement shall remain in full force and effect until terminated by the mutual consent of the parties.

22. The provisions of this Agreement shall apply to and bind the successors and assigns of the parties hereto, but, except as provided in paragraph 17, assignment or transfer of this Agreement or any right or interest therein shall not be valid until approved in writing by the United States.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

United States of America

Colorado State Engineer

\_\_\_\_\_  
By: Carol DeAngelis, (Date)  
Acting Regional Director

\_\_\_\_\_  
Harold D. (Hal) Simpson (Date)

Colorado River Water  
Conservation District

ATTEST:

\_\_\_\_\_  
By: Wesley E. Signs, (Date)  
President

\_\_\_\_\_  
Richard Eric Kuhn, (Date)  
Secretary

Upper Gunnison River  
Water Conservancy District

By: Mark A. Schumacher,  
President  
(Date)

ATTEST:

Carol Drake, Secretary  
(Date)