

# ***NEWS RELEASE***

FOR IMMEDIATE RELEASE  
April 2, 2003

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## **HISTORIC SETTLEMENT AGREEMENT REACHED ON BLACK CANYON OF THE GUNNISON WATER RIGHTS**

DENVER – The State of Colorado announced today a historic agreement with the U.S. Department of Interior to settle what is believed to be the most controversial water court case in Colorado history. Greg Walcher, Executive Director of the Colorado Department of Natural Resources, signed the agreement on behalf of the state, along with Commissioner John Keys of the Bureau of Reclamation, Randy Jones of the National Park Service, and Colorado Attorney General Ken Salazar.

“This settlement brings an end to a generation-old dispute and ushers in a new era of cooperation with the federal government that results in real environmental benefits,” said Walcher. “Spending millions on litigation is not the way to protect water rights and the environment, and we commend Secretary Gale Norton and the U.S. Department of Interior for working with us on this innovative approach.”

Over 383 parties – including the State of Colorado – had gone to court to oppose a National Park Service (NPS) reserved water right claim to the Black Canyon of the Gunnison. The filing was to quantify a reserved water right awarded to the NPS in water court more than twenty years ago (but never quantified). After Colorado’s repeated requests to work with the State on the issue were denied, the NPS filed for quantification on the last day of the Clinton Administration. The filing was structured in a way that could have created drought-like conditions in the Gunnison during some times, and devastating floods at others. *34/1*

Thousands of West Slope water rights (3,500 water rights upstream of the reservoirs and 3,350 water rights downstream and below the reservoirs), gold medal trout water, power production, irrigation, and recreation could have been seriously impacted. The quantification even raised dam safety issues and the potential of flooding downstream in the Town of Delta. *will send*

Under the terms of the settlement, the NPS will receive a 300 cubic-feet-per-second (cfs) reserved

water right with a priority date of 1933 (when the park was created). But instead of new federal rights, the Colorado Water Conservation Board (CWCB) will file for instream flow rights to peaking flows when there is sufficient water in the basin, in accordance with Colorado water law. These flows will occur an estimated one of every three years and will accomplish a myriad of environmental benefits.

They will be released with the cooperation of the NPS, the U.S. Bureau of Reclamation, the U.S. Fish and Wildlife Service, the CWCB and water providers in the basin. More detail on how the flows will be administered and protected in collaboration with the Department of Interior will be worked out within the next 120 days.

"This is precedent setting agreement and it demonstrates what we can do when we work together in a collaborative manner," said Interior Secretary Gale Norton. "The Interior Department places a high premium on acknowledging and respecting the role of states in helping us to properly manage and protect the nation's natural resources."

The historic agreement is thought to be the first time that water rights to satisfy federal objectives are to be filed and protected by state governments, under state water law. In exchange for that agreement by the federal agencies to work through state law, Colorado agreed to a provision guaranteeing that the law will be enforced, giving the National Park Service the certainty it needed.

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*Michael B. ...*

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req - something? and has been a slave  
to thousands*

Agreement  
Black Canyon of the Gunnison National Park

The undersigned parties, representing the Department of the Interior and the Colorado Water Conservation Board (CWCB), a division of the Colorado Department of Natural Resources, hereby agree to the following:

1. The National Park Service shall hold and benefit from a water right for the Black Canyon of the Gunnison National Park, located on the Gunnison River in Colorado. The water right shall be quantified for the Gunnison River from below the Gunnison Diversion Dam through the Black Canyon to the confluence with the North Fork of the Gunnison River, in two parts, as follows:
  - a. A federal reserved water right of 300 cfs or natural flow, whichever is less, with a 1933 priority date. Such federal water right will satisfy the CWCB's existing instream flow decree.
  - b. An instream flow water right under Colorado law with a 2003 priority date. Beginning with each year's April 1 forecast from the Colorado River-River Forecast Center, if Blue Mesa Reservoir is projected to fill and spill by July 31, water beyond that which satisfies present and future obligations of the authorized purposes of the Aspinall Unit, as specified in the Colorado River Storage Project Act, 43 U.S.C. § 620 *et seq.*, as amended through the date of this agreement, shall be held by the CWCB for decreed instream flow purposes with a 2003 priority date.
    - i. As reflected in the chart below, the Bureau of Reclamation anticipates that, based on current operations of the Aspinall Unit pursuant to the authorized purposes (after the subordination of the Aspinall Unit to 60,000 acre-feet of depletion upstream of the Unit for in-basin water use), the peak flow amounts reflected in the chart can be reasonably expected, based on historical averages of the last twenty-six years, to pass through the Aspinall Unit system by the Bureau of Reclamation through its operations, to be exercised by CWCB for the instream flow right with a 2003 priority date. There is no guarantee that these same amounts will be available in the future, however, because the ultimate amount of water that will be available in the future is dependent upon many factors, including where the water is removed from the system, the hydrology and the timing of the hydrology, future project demand, and reservoir elevation at the beginning of the run-off season. In light of these considerations, on an annual basis and prior to the spring run-off, the Bureau of Reclamation shall consult with the National Park Service, the Western Area Power Administration, the United States Fish and Wildlife Service, the CWCB, the Colorado Water River Water Conservation District, the Uncompahgre Valley Water Users Association, the

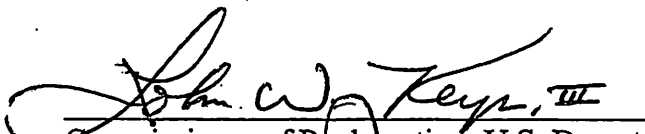
Upper Gunnison Water Conservancy District, the City and County of Delta, and Redlands Water and Power Company, on Aspinall Unit project operations for the upcoming season regarding the delivery of the CWCB right.<sup>1</sup> Nothing in the consultation process will divest the Bureau of Reclamation of its obligation to operate the Aspinall Unit in furtherance of its authorized purposes and obligations, and the Bureau of Reclamation shall operate the Aspinall Unit consistently with the terms of this agreement.

Base Flow	300 cfs	26 out of 26 years
Shoulder Flow	300 - 1000 cfs	22 out of 26 years
Low Peak Flow	2000 - 5000 cfs	8 out of 26 years
Medium Peak Flow	5000 - 10000 cfs	6 out of 26 years
High Peak Flow	10,000 + cfs.	3 out of 26 years

- ii. The National Park Service has determined that the reserved water right of 300 cfs, as described in Paragraph 1(a), and the instream flow right under Colorado law, as described in Paragraph 1(b), and the enforcement right described in Paragraph 1(c) below, shall provide adequate and permanent protection of the Black Canyon of the Gunnison National Park. The Bureau of Reclamation will deliver the flows of the Gunnison River in accordance with the CWCB instream flow right with the 2003 priority date described in Paragraph 1(b), to the extent that such flows have not been appropriated by senior water rights holders under Colorado law, to the extent that such flows are not subject to appropriation by the Aspinall Unit under the authorized purposes, and to the extent that such flows do not impair the structural integrity of the Aspinall Unit.
- c. A binding Memorandum of Agreement (MOA) shall be established among the National Park Service, the Bureau of Reclamation and the State of Colorado within 120 days of the date of the last signature on this agreement regarding enforcement and protection of the instream flow right referred to in Paragraph 1(b). The National Park Service shall have authority to enforce and protect the instream flows consistent with state law should the CWCB fail to do so. The implementation of this enforcement authority shall be spelled out in the MOA.

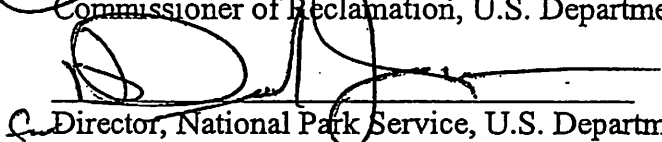
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<sup>1</sup>This consultation may be in addition to the current public meetings Reclamation holds on the Aspinall Unit three times each year (usually January, April and August) or, if the parties agree, can occur simultaneously to the public meeting held in April.



Commissioner of Reclamation, U.S. Department of the Interior

DATE: 4/02/03



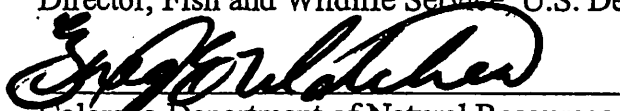
Director, National Park Service, U.S. Department of the Interior

DATE: 4/2/03



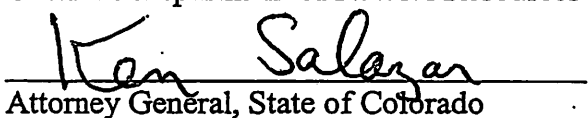
Director, Fish and Wildlife Service, U.S. Department of the Interior

DATE: 4/1/03



Colorado Department of Natural Resources

DATE: 4-2-03



Attorney General, State of Colorado

DATE: 4-2-03