



# UPPER COLORADO RIVER COMMISSION

received  
F11-99

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January 8, 1999

Ms. Kathleen C. Klein  
Manager  
Upper Gunnison River Water  
Conservancy District  
275 South Spruce Street  
Gunnison, Colorado 81230

Post-It™ brand fax transmittal memo 7671		# of pages > 3
To	Pete Klingsmith	
From	Jill Steele	
Co.	UGRWC	
Dept.	Phone # 641 6065	
Fax #	641 1331	Fax # 641 6727

Dear Ms. Klein:

I am writing in response to your letter dated December 3, 1998. You have asked for the Commission's opinion concerning a letter you received from People Opposing Water Export Raids (POWER) regarding water availability in the State of Colorado as affected by requirements of the Colorado River Compact. The POWER letter contains serious misinterpretations of the Colorado River Compact and disregards facts regarding water use in the Colorado River Basin.

POWER's letter fails to recognize the following critical Compact provisions:

The term "Colorado River system" means that portion of the Colorado River and its tributaries within the United States of America (Article II(a), emphasis added). 2

There is hereby apportioned from the Colorado River system in perpetuity to the upper basin and to the lower basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of rights which may now exist (Article III(a), emphasis added). 3

In addition to the apportionment in paragraph (a), the lower basin is hereby given the right to increase its beneficial consumptive use of such waters (i.e. waters of "the Colorado River system") by 1,000,000 acre-feet per annum (Article III(b), emphasis added). 4

The Colorado River system includes the tributaries below Lee Ferry such as the Virgin, Little Colorado and Gila Rivers. These tributaries produce an average of at least two million acre-feet of water per year. 5

If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any 6

waters of the Colorado River system, such waters shall be supplied first from the paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then the burden of such deficiency shall be equally borne by the upper basin and the lower basin, and whenever necessary the States of the upper division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d) (Article III(c), emphasis added).

The States of the upper division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of 10 consecutive years reckoned in continuing progressive series beginning with the 1st day of October next succeeding the ratification of this compact (Article III(d)).

In contrast, POWER's letter argues that (1) "The measurement of the water to be apportioned and divided by the Compact . . . is at Lee Ferry, Arizona . . ." (2) "these waters [from Lower Basin tributaries] may not be counted to make up the amount apportioned to the Lower Basin States under Article III(a) (b) (c) or (d)" and (3) the Lower Basin States may make a "call" on the Upper Basin to provide an additional 1,000,000 acre-feet of water per annum. These arguments, however, are clearly refuted by the plain language of the Compact provisions quoted above.

POWER has also misinterpreted the Upper Basin States' Mexican Treaty obligations. The position of the Upper Colorado River Commission on many of POWER's assertions is stated in the following paragraph of a resolution passed by the Commission at its Adjourned Regular Meeting on July 13, 1994:

[[It is the position of the Upper Colorado River Commission and the Upper Division States that, with the delivery at Lee Ferry of 75 million acre-feet of water in each period of ten consecutive years, the water supply available in the Colorado River System below Lee Ferry may be sufficient to meet the apportionments to the Lower Basin provided for in Article III(a) and (b) of the Colorado River Compact and the entire Mexican Treaty obligations;

The "Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs," authorized by the 1968 Colorado River Basin Project Act, govern operation of Lake Powell and Lake Mead, together with other Federal reservoirs. Pursuant to these Criteria, the objective of the Bureau of Reclamation is to maintain a minimum release of 8,230,000 acre-feet of water from Lake Powell each year, which the Upper Division States believe is more than sufficient to satisfy all downstream demands, including Mexican Treaty obligations.

POWER also misunderstands some fundamental facts regarding historic and present use of the waters of the Colorado River Basin. POWER states that Mexico "has not yet called

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III (a) (b) (c) = 8,500,000

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11) (2) X3

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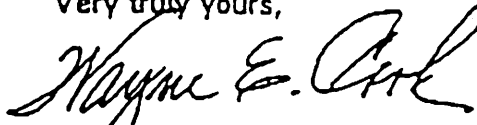
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upon" its treaty entitlement. In reality, at least 1,500,000 acre-feet of water have been delivered to the Republic of Mexico every year since the Treaty was signed. Those deliveries are documented in reports by the International Boundary and Water Commission and since 1969 by the Bureau of Reclamation in its reports entitled "Compilation of Records in Accordance With Article V of the Decree of the Supreme Court of the United States in Arizona v. California Dated March 9, 1964." 12

POWER also implies that the Lower Basin States have suffered shortages. In fact, the Upper Basin States have never delivered less than 75,000,000 acre-feet of water in any period of 10 consecutive years. Furthermore, the Bureau of Reclamation prepares a "Consumptive Uses and Losses Report" that documents all water used in the Colorado River Basin. The "Consumptive Uses and Losses Report" shows that much more than 1,000,000 acre-feet of water has been used from Lower Basin tributaries for many years. According to the Bureau of Reclamation, total consumptive uses in the Lower Basin for the period 1986-1990 averaged more than 10,400,000 acre-feet. 13

To summarize, the group's interpretation of the Colorado River Compact is seriously flawed, and the letter ignores documented facts about Colorado River system water use in the Lower Basin States. If you have any questions regarding this letter, please call me. 14

Very truly yours,



Wayne E. Cook  
Executive Director

*No comment re the Indians*