

NEW MEXICO INTERSTATE STREAM COMMISSION

*Upper Colorado
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COMMISSION MEMBERS

RICHARD P. CHENEY, Chairman, Farmington
THOMAS C. TURNEY, PE, Secretary, Santa Fe
PALEMON A. MARTINEZ, Valdez
HOYT PATTISON, Clovis
JOHN S. BULSTERBAUM, Deming
PHILIP R. GRANT, Albuquerque
HAROLD HOUGHTALING, Jr., Lake Arthur
NARENDRA N. GUNAJI, Las Cruces



BATAAN MEMORIAL BUILDING, ROOM 101
STATE CAPITOL
POST OFFICE BOX 25102
SANTA FE, NEW MEXICO 87504-5102
(505)827-6160
FAX:(505)827-6188

June 6, 2001

Wayne Cook, Executive Director
Upper Colorado River Commission
355 South 400 East
Salt Lake City, Utah 84111

Dear Wayne:

Please be advised that D.L. Sanders, Interim Chief Counsel for this office, is designated as the Legal Adviser to the Commissioner for New Mexico, Upper Colorado River Commission. Mr. Sanders' address is the same as this office and his telephone number is (505) 827-3844. Both Ted Apodaca and Tammy Zokan have left this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip B. Mutz".

Philip B. Mutz
Commissioner for New Mexico

cc: D.L. Sanders

j/colorado/waynecook.f01

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UC Compact Admin.

AGREEMENT TO ESTABLISH TIME AND PLACE

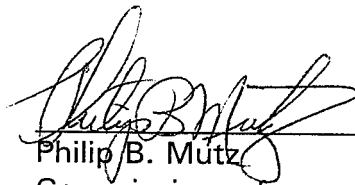
of a

MEETING

of the

UPPER COLORADO RIVER COMMISSION

Pursuant to Article IV, paragraph 4 of the By-Laws of the Upper Colorado River Commission, I agree that a meeting of the Upper Colorado River Commission be held on Wednesday, June 13, 2001 at the Department of Natural Resources building (Commissioner Anderson's office) at 1594 West North Temple in Salt Lake City, Utah . The meeting will begin at 1:30 p.m. and will conclude at approximately 4:00 p.m.



Philip B. Mutz
Commissioner for
the State of New Mexico

Date: 5-21-01



UPPER COLORADO RIVER COMMISSION

355 South 400 East • Salt Lake City • Utah 84111 • 801-531-1150 • FAX 801-531-9705

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May 2, 2001

Mr. Philip B. Mutz
Upper Colorado River Commissioner
Room 101, Bataan Memorial Building
Post Office Box 25102
Santa Fe, New Mexico 87504-5102

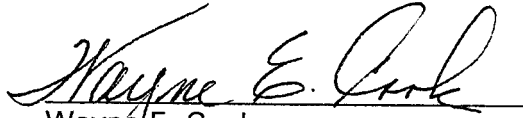
Dear Mr. Mutz:

Enclosed is a copy of the budget for Fiscal Year 2002 (July 1, 2001 through June 30, 2002) that was approved by the Commission at its meeting held on December 13, 2000 in Las Vegas, Nevada

The total budget for Fiscal Year 2002 amounts to \$331,500. Of this amount, \$32,900 will be funded from surplus funds. The total assessments for the Fiscal Year 2002 are \$298,600.

The amount due from the State of New Mexico for Fiscal Year 2002 is 11.25 percent of the total assessment, or \$35,590.

I certify that the above is correct and just and that payment therefore has not been received.


Wayne E. Cook
Executive Director

WEC:hiw

Enclosure

cc: Mr. Lee Pease

BUDGET
UPPER COLORADO RIVER COMMISSION
Fiscal Year Ending - June 30, 2002

	As Approved <u>6/1/2000</u>
<u>PERSONAL SERVICES</u>	
Administrative Salaries	
Executive Director	\$ 98,000
Administrative Secretary	20,700*
Professional Services	
General Counsel	64,150*
Staff Engineer	41,500*
Janitor	1,000
Pension Trust	23,000
Social Security	16,300
Health Insurance	<u>15,350</u>
	\$ 280,000
<u>TRAVEL</u>	\$ 19,500
<u>CURRENT EXPENSES</u>	\$ 26,200
<u>CAPITAL OUTLAY</u>	\$ 800
<u>CONSULTANT FEES</u>	\$ -0-
<u>CONTINGENCIES</u>	<u>\$ 5,000</u>
	<u>\$ 331,500</u>
<u>TOTAL BUDGETED EXPENSES</u>	
To be funded from surplus	\$ 32,900
Total Assessments for FY2002	<u>298,600</u>
	<u>\$ 331,500</u>

Assessments 2002		
Colorado	51.75%	\$154,530
New Mexico	11.25%	35,590
Utah	23.00%	68,680
Wyoming	14.00%	<u>\$ 41,800</u>
		<u>\$298,600</u>

* Modified October 2000.



UPPER COLORADO RIVER COMMISSION

355 South 400 East • Salt Lake City • Utah 84111 • 801-531-1150 • FAX 801-531-9705

May 22, 2001

NOTICE

of the

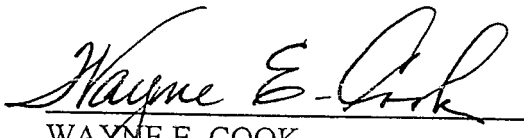
MEETING

of the

UPPER COLORADO RIVER COMMISSION

In accordance with paragraph 3 of Article IV of the By-Laws, notice is hereby given that a Meeting of the Upper Colorado River Commission will be held on Wednesday, June 13, 2001 from 1:30 p.m. to 4:00 p.m. at the Department of Natural Resources (Commissioner Anderson's office) at 1594 West North Temple Street, Salt Lake City, Utah.

In compliance with paragraph 4 of Article IV of the By-Laws, unanimous written consent of the Commissioners has been granted to hold the meeting at the time and place above set forth.


WAYNE E. COOK
Executive Director and Secretary

**AGENDA
UPPER COLORADO RIVER COMMISSION
MEETING**

**Salt Lake City, Utah
June 13, 2001**

1. Call Meeting to order - Chairman Frank E. (Sam) Maynes.
2. Filing documents to conform meeting to By-Laws.
3. Reading and approval of the Minutes of the Meeting of December 13, 2000.
4. Report of Chairman.
5. Report of the Bureau of Reclamation.
6. Report of Western Area Power Administration.
7. Report of Fish and Wildlife Service.
8. Report of Colorado River Salinity Control Program.
9. Report of Treasurer.
10. Report of Budget Committee.
11. Report of Legal and Engineering Committee.
12. Report of Staff
13. Business (unfinished and new).
 - (a) Action on reports.
 - (b) Other.
 - (c) Next Meeting.
14. Adjournment.

MAYNES, BRADFORD, SHIPPS & SHEFTEL, LLP

ATTORNEYS AT LAW

WEST BUILDING - 835 E. SECOND AVENUE, SUITE 123
POST OFFICE BOX 2717
DURANGO, COLORADO 81302-2717

970/247-1755
FAX: 970/247-8827
FAX: 970/247-0727

December 21, 2000

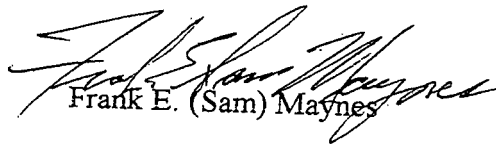
~~President William J. Clinton
The White House
1600 Pennsylvania Avenue
Washington DC 20041~~

Dear Mr. President:

Pursuant to your request, I hereby tender my resignation as United States Commissioner on the Upper Colorado River Commission effective upon appointment of my successor. I was designated United States Commissioner by you pursuant to Public Law 81-37, approved April 6, 1949, granting the consent of Congress to the Upper Colorado River Compact.

Sincerely,

MAYNES, BRADFORD, SHIPPS AND SHEFTEL, LLP


Frank E. (Sam) Maynes

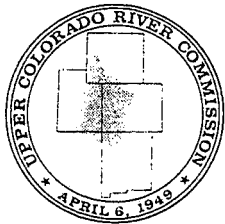
FEM:sps

cc: Rick Gold, Acting Regional Director, Upper Colorado River Region
Wayne Cook, Executive Director, Upper Colorado River Commission

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Upper Colo-3
Compact Admin

FRANK E. (SAM) MAYNES
THOMAS H. SHIPPS
JANICE C. SHEFTEL
PATRICIA A. HALL†
SAM W. MAYNES
JOHN BARLOW SPEAR
GEOFFREY M. CRAIG

BYRON V. BRADFORD (1907 - 1985)
†ALSO ADMITTED IN ARIZONA



UPPER COLORADO RIVER COMMISSION

355 South 400 East • Salt Lake City • Utah 84111 • 801-531-1150 • FAX 801-531-9705

ABM
12/21/00 - 3
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MEMORANDUM

TO: Upper Colorado River Commissioners

FROM: Assistant to the Executive Director and General Counsel

DATE: December 21, 2000

SUBJECT: Need for Public Official Bonds for Treasurer and Assistant Treasurer.

Last week, I discussed the issue Commissioner Balcomb raised at the December 13, 2000 meeting of the Commission regarding public official bonds with Mr. Robert Nixon, the Commission's Assistant Treasurer. Specifically, I gave Mr. Nixon a draft letter to the Commission (copy enclosed) certifying that the bond purchased by Mr. Nixon's employer would cover him as he performed his duties for the Commission and asked Mr. Nixon to finalize it or a similar letter for transmission to the Commission.

Mr. Nixon acted surprised that I would suggest that the bank's bond would protect the Commission. I reminded him that Mr. Cook and I proposed amending the Commission's By-Laws to waive the requirement to purchase bonds for him and the Commission's Treasurer, Mr. Ronald Schulthies, specifically because Mr. Nixon said such bonds were an unnecessary duplication of coverage. Mr. Nixon's response was, "Oh, I guess I didn't think about it carefully enough." Mr. Nixon said he would have to check with someone "higher up" and let me know if the bank's bond would cover his duties for the Commission.

When I spoke with Mr. Nixon on Monday of this week, he told me that the bonds purchased by his employer for himself and Mr. Schulthies would not cover their duties as Assistant Treasurer and Treasurer of the Commission, respectively. In other words, if Mr. Nixon and/or Mr. Schulthies were to improperly perform their duties as Assistant Treasurer and Treasurer, resulting in a financial loss to the Commission, Wells Fargo's bond would not reimburse the Commission for its losses. Mr. Nixon recommended that the Commission continue to purchase public official bonds, as it has in the past.

Mr. Schulthies is currently covered by a bond purchased by the Commission. After my conversation with Mr. Nixon on Monday, we mailed an application to purchase a public official bond for Mr. Nixon.

I recommend that the Commission have no further discussions of the amendment to the By-Laws proposed at the December 13, 2000 meeting in Las Vegas. If you have any questions or comments, please call me or Mr. Cook.

Jane Bird

DRAFT

December 15, 2000

Upper Colorado River Commissioners
355 South 400 East
Salt Lake City, Utah 84111

Dear Upper Colorado River Commissioners:

Mr. Ronald L. Schulthies, the Commission's Treasurer, and I are officers of Wells Fargo Bank. Wells Fargo has purchased performance bonds that protect the bank as Mr. Schulthies and I perform our assigned duties.

I hereby certify that the performance bonds purchased by Wells Fargo would also cover Mr. Schulthies and me in the performance of our duties as officers of the Upper Colorado River Commission. Thus, the Upper Colorado River Commission could collect on such bonds if we were to improperly perform our duties, resulting in a financial loss to the Commission. I see no need for the Commission to purchase separate, duplicative performance bonds for me and Mr. Schulthies.

Very truly yours,

Robert B. Nixon, Jr.
Assistant Treasurer

*Upper Colo
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**MINUTES
OF THE
UPPER COLORADO RIVER COMMISSION
MEETING**

**Las Vegas, Nevada
December 13, 2000**

The meeting of the Upper Colorado River Commission was called to order by Chairman Frank E. (Sam) Maynes at 1:30 p.m. on Wednesday, December 13, 2000 at Caesars Palace Hotel in Las Vegas, Nevada.

ATTENDANCE

Frank E. (Sam) Maynes, Chairman, Commissioner, United States of America
Scott M. Balcomb, Commissioner, State of Colorado
Philip B. Mutz, Commissioner, State of New Mexico
D. Larry Anderson, Commissioner, State of Utah
Thomas J. Davidson, Commissioner, State of Wyoming

Wayne E. Cook, Executive Director and Secretary
Jane Bird, Assistant to the Executive Director and General Counsel
Diane Pratt, Court Reporter

ADVISORS PRESENT

State of Colorado

Jennifer Gimbel, Chairman, Legal Committee
D. Randolph Seaholm, Engineering Advisor
Eric Kuhn, Engineering Advisor
David Merritt, Engineering Advisor

State of New Mexico

Jay C. Groseclose, Engineering Advisor

State of Utah

Robert King, Engineering Advisor
David Rasmussen, General Advisor

State of Wyoming

Dan S. Budd, Alternate Commissioner
John W. Shields, Chairman, Engineering Committee

OTHERS PRESENT

Arizona

Thomas Carr, Department of Water Resources

California

Tom Maddock, Boyle Engineering

Colorado

Rod Kuharich, Director, Colorado Water Conservation Board
Eric Wilkinson, Northern Colorado Water Conservation Board
Stan Cazier, Middle Park Water Conservancy District
Christopher Treese, Colorado River Water Conservation District
Mark Pifher, Trout and Raley

New Mexico

Tammy Zokan, Attorney, New Mexico Interstate Stream Commission
John Whipple, New Mexico Interstate Stream Commission
Tom Turney, New Mexico State Engineer

Utah

Barbara Hjelle, Washington County Water Conservancy District
Hugh Thompson, Utah Division of Water Resources
Norm Johnson, Assistant Attorney General, State of Utah

U.S. Bureau of Reclamation

Charles A. Calhoun, Special Assistant to the Commissioner
Rick Gold, Acting Regional Director, Upper Colorado Region
Randall V. Peterson, Water Resources Group, Upper Colorado Region
Roland Springer

U.S. Fish and Wildlife

Reed Harris, Field Supervisor, Salt Lake City, Utah
Henry Maddux, Salt Lake City, Utah
George Smith, Denver, Colorado

Western Area Power Administration

Dave Sabo, Salt Lake City Service Area Manager

Colorado River Energy Distribution Association (CREDA)

Clifford I. Barrett

Colorado River Endangered Fishes Recovery Program

Tom Czapla

Colorado River Basin Salinity Control Forum

Jack Barnett, Executive Director

Colorado River Basin Coordinating Council

Ann Strand, Rock Springs, Wyoming

Sierra Club

Steve Glazer, Colorado River Task Force

REPORTS

- A. Chairman Maynes noted that the Commission had received a letter from the Governor of Wyoming announcing his appointment of Thomas J. Davidson as Upper Colorado River Commissioner, replacing Gordon W. (Jeff) Fassett.

- B. Rick Gold, Acting Regional Director, Upper Colorado Region, U. S. Bureau of Reclamation (USBR) in Salt Lake City, Utah distributed copies of a written report and orally discussed the following topics:
 - 1. Hydrology update - snowpack and water supply forecast
 - 2. Glen Canyon Dam low, steady flows experiment
 - 3. Endangered Species Act activities in the Rio Grande Basin
 - 4. Major staff turnovers at USBR
 - 5. Modest upturn in USBR's 2001 appropriations
 - 6. Negotiations for lease of power privilege at Jordanelle Reservoir
 - 7. Legislative Update
 - 1. Funding for the Upper Colorado River Basin endangered fishes recovery program
 - 2. Animas-La Plata Project
 - 3. Colorado River Basin Salinity Control Program

In response to questions from Commissioner Anderson, Mr. Gold discussed the status of the Annual Operating Plan for water year 2001 and the time frame for the Flaming Gorge Environmental Impact Statement (EIS). Mr. Gold discussed the lease of San Juan-Chama Project water to help resolve endangered species issues in the Rio Grande Basin in response to questions from Chairman Maynes and Commissioner Balcomb. In response to a question from Ms. Gimbel, Mr. Gold discussed the status of the EIS on the interim surplus criteria.

Commissioner Mutz discussed a recent Federal District Court decision in a case filed by the State of New Mexico against the Fish and Wildlife Service, alleging that the Service failed to prepare an EIS prior to a declaration of critical habitat for the endangered species in the Rio Grande. Commissioner Mutz also clarified that the parts of the Rio Grande Basin in New Mexico served by San Juan-Chama Project water are part of the Colorado River Basin by definition.

- C. Dave Sabo, Manager, CRSP Management Center, Western Area Power Administration (WAPA), Salt Lake City, Utah distributed a background sheet and gave an oral report addressing the following topics:
 - 1. Power impacts of the low steady flow test at Glen Canyon Dam
 - 2. Power shortages and high prices for electricity
 - 3. Revenues in the Upper Colorado River Basin Fund
 - 4. Public process for instituting a rate adder
 - 5. The 2004 marketing allocation plan—complying with a Department of Energy requirement that Indian Tribes meet 65 percent of their load with CRSP power
 - 6. Start of the formal process to implement a firm power rate increase

In response to a question from Mr. Budd, Mr. Sabo stated that there have been no bypass flows from Glen Canyon Dam this year. Responding to a question from Mr. Cook, Mr. Sabo discussed how power has been provided from CRSP facilities in response to emergency situations in California, including WAPA's efforts to make sure CRSP power is provided only in the case of a real emergency.

- D. Reed Harris, Henry Maddux and Tom Czapla, Fish and Wildlife Service (FWS), gave oral reports on the following subjects:
1. Mr. Harris is retiring, and Mr. Maddux will replace him in Salt Lake City as the Utah Field Supervisor
 2. Listing of endangered species
 - a. Twelve-month status review for Bonneville cutthroat trout
 - b. Plant species in Washington County, Utah
 - c. Lawsuit filed against FWS for failure to list the Colorado cutthroat trout
 3. Critical habitat designation for the Muddy River
 4. Freedom of Information Act (FOIA) requests from the Southern Utah Wilderness Alliance
 - a. FWS' failure to consult with USBR on the transfer of water rights from Flaming Gorge to the State of Utah
 - b. Communication between FWS and the Washington County Water Conservancy District with regard to water rights associated with the proposed Lake Powell Pipeline
 5. Thirty-four FOIA requests from the Center for Biological Diversity regarding spine dace on the Virgin River
 6. Sixty-day notice from six county governments for FWS' failure to adequately consult on a timber sale in the Manti National Forest
 7. Request for reinitiation of consultation with the Nuclear Regulatory Commission regarding the Atlas Mill tailings pile
 8. Flaming Gorge EIS and biological opinion
 9. Virgin River Resource Management Recovery Program
 10. Shivwits Water Rights Settlement
 11. Recovery program for the June sucker in the Utah Lake drainage
 12. Long-term funding legislation for the Colorado River Endangered Fishes Recovery Program
 13. Flaming Gorge flow recommendations report
 14. Endangered fishes recovery goals
 15. Search for a new director of the Recovery Program
 16. Appointment of Mr. Maddux to the management committee for the San Juan Recovery Program

In response to a question from Commissioner Mutz, Mr. Maddux explained that the States participating in the Colorado River recovery program might provide all their funding for a two-year equalization period in the first year and allow WAPA to provide all its funding for the same period in the second year to help WAPA solve its financial problems.

In response to a question from Mr. Davidson, Mr. Czapla discussed the de-listing and down-listing criteria in the draft recovery goals. Mr. Czapla discussed the magnitude of fish populations in response to a question from Mr. Cook.

Mr. Shields, speaking as chairman of the Upper Colorado River Endangered Fishes Recovery Program, discussed the parties, including representatives of the States of Colorado, Utah and Wyoming, who have participated in developing the recovery goals for the endangered fishes. He also discussed the fact that de-listing could occur in the Upper Basin independent of other portions of the Colorado River Basin.

In response to a question from Mr. Cook, Mr. Harris explained that, after consultation with USBR and WAPA, FWS usually agrees that WAPA can depart from a prescribed pattern of releases for the endangered fish to provide power in emergency situations. However, Mr. Harris explained that FWS, like WAPA, wants to make sure there is a real power emergency before the power is provided.

- E. Mr. Jack Barnett, Executive Director of the Colorado River Basin Salinity Control Forum, gave an oral report discussing the following activities of the Forum:
 1. Efforts to match activities of USBR under its basin-wide program for salinity control with the Department of Agriculture's on-farm activities under the EQIP program
 2. Securing passage of legislation to appropriate an additional \$100 million for the USBR salinity control program
 3. Working to decide what kind of Department of Agriculture on-farm program is needed and how the Forum can get the program adequately funded
 4. Efforts to make USBR's river model usable for the salinity control program

In response to a question from Mr. Rasmussen, Mr. Barnett stated that he does not believe the new administration will hinder efforts under the USBR salinity program. Mr. Barnett explained that the Forum must work with Congress, rather than the President, to get adequate funding for the on-farm program.

- F. Ms. Bird discussed a proposed amendment to the Commission's By-Laws providing that the Commission would not purchase a separate performance bond for its Treasurer and Assistant Treasurer if one or both of those officers were already bonded by their full-time employer. Commissioner Balcomb expressed doubts that a bond purchased by another entity would cover losses of the Commission, and the proposed amendment was tabled for further research by Commission Staff.
- G. Commissioner Mutz briefed the Commission on a letter dated November 22, 2000 from the Navajo Nation and the City of Gallup, New Mexico to USBR requesting a 50-year water supply contract for the proposed Navajo Gallup Project. Commissioner Mutz explained that the project would deliver water for domestic use from the San Juan River to Navajo Nation communities along the San Juan River as well as deliver water out of the Upper Basin to the City of Gallup, the Navajo Indian communities in the Gallup area and in the Window Rock area in Arizona. Commissioner Mutz stated that the proposal would require an extension of the 1988 hydrologic determination of water supply availability in the Upper Basin as well as in Navajo Reservoir if the determination goes forward. The project would involve the

export of Upper Basin water into the Lower Basin portion of the State of New Mexico.

Commissioner Mutz stated that the proposal might raise some questions with regard to the use of Colorado River Compact water. Mr. Cook stated that Commission Staff and the Commission's Legal and Engineering Committees would assist in fleshing out the Upper Division States' response to those issues as they come forward.

- H. Wayne E. Cook, Executive Director/Secretary of the Upper Colorado River Commission, gave a report on the following activities of the Commission staff:
1. Efforts to secure passage of the Upper Colorado River Basin Endangered Fishes Recovery Program funding legislation
 2. Participation in the development of interim surplus criteria that will facilitate the State of California's efforts to live within its basic Colorado River Compact apportionment of 4.4 million acre-feet per year
 3. Involvement in the Annual Operating Plan process
 4. Participation in Adaptive Management Work Group and Technical Work Group activities regarding the monitoring and research of Glen Canyon Dam operations

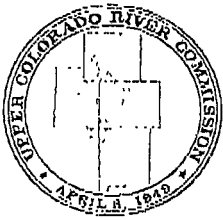
In response to a question from Mr. Kuharich about the proposed duration of the adaptive management program, Mr. Cook responded that the program is in place to ensure that the intent of the Grand Canyon Protection Act (GCPA) is met. Since there are no sunset provisions in the GCPA, Mr. Cook stated he believes the adaptive management program will go on until the GCPA is amended or repealed. In response to a question from Commissioner Mutz, Mr. Cook said he believes that 30 to 40 percent of his time is spent on adaptive management activities.

ACTIONS TAKEN

By motion duly made, seconded and passed, the Commission took the following actions:

1. Approved the Minutes of the Meeting of June 1, 2000. (Movant, Commissioner Mutz; second, Commissioner Balcomb.)
2. Elected Commissioner D. Larry Anderson as Vice Chairman of the Commission.
3. Accepted the Report of the Treasurer. (Movant, Commissioner Mutz; second, Commissioner Balcomb.)
4. Approved the printing of the Report of the Auditor in the Commission's annual report. (Movant, Commissioner Balcomb; second, Commissioner Davidson.)
5. Approval of the Fiscal Year 2002 Budget of the Commission. (Movant, Commissioner Anderson; second, Commissioner Davidson.)

Mr. Cook stated that the next meeting of the Commission would be held in the spring of 2001.



UPPER COLORADO RIVER COMMISSION

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355 South 400 East • Salt Lake City • Utah 84111 • 801-531-1150 • FAX 801-531-9705

FAX TRANSMITTAL FORM

Sender: Wayne Cook

Date: November 28, 2000

Send to: Frank E. (Sam) Maynes

Number of Pages: cover + 1

Scott Balcomb and Phil Mutz

Note:

We received the following letter last Friday announcing that the Governor of
Wyoming has appointed Tom Davidson to serve as Wyoming's Commissioner,
replacing Jeff Fassett. This will necessitate action at our Commission meeting
next month to elect a new Vice Chairman for the Commission.

FAX Numbers:

Send (801) 531-9705

Verify (801) 531-1150



RECEIVED

NOV 24 2000
UPPER COLORADO
RIVER COMMISSION

STATE OF WYOMING
OFFICE OF THE GOVERNOR

JIM GERINGER
GOVERNOR

November 19, 2000

STATE CAPITOL
CHEYENNE, WY 82002

Mr. Wayne Cook
Executive Director
Upper Colorado River Commission
355 South Fourth East Street
Salt Lake City, UT 84111

Dear Mr. Cook:

I have appointed Mr. Thomas J. Davidson to serve as a member of the Upper Colorado River Commission replacing Gordon W. "Jeff" Fassett, former Wyoming State Engineer. This letter shall serve as my appointment of Mr. Davidson to serve as Wyoming's Upper Colorado River Commissioner.

If you have any questions regarding this appointment, Mr. Davidson can be reached at 307-777-3535.

Best regards,

Jim Geringer
Governor

cc: Dick Stockdale, Acting State Engineer
Tom Davidson, Attorney General's Office
Larry Anderson, Utah Division of Water Resources





*file
10/19/00 -
Compact Admin*

STATE OF WYOMING
OFFICE OF THE GOVERNOR

JIM GERINGER
GOVERNOR

November 19, 2000

STATE CAPITOL
CHEYENNE, WY 82002

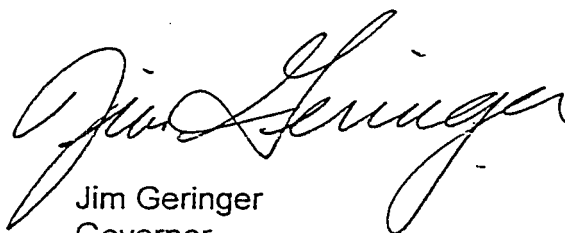
Mr. Wayne Cook
Executive Director
Upper Colorado River Commission
355 South Fourth East Street
Salt Lake City, UT 84111

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If you have any questions regarding this appointment, Mr. Davidson can be reached at 307-777-3535.

Best regards,



Jim Geringer
Governor

cc: Dick Stockdale, Acting State Engineer
Tom Davidson, Attorney General's Office
Larry Anderson, Utah Division of Water Resources

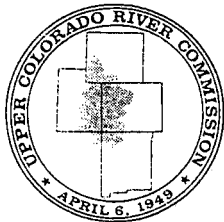
OSE-2940



Mr. Wayne Cook
November 19, 2000
Page 2

cc: Mr. Scott M. Balcomb
Mr. Philip B. Mutz
Mr. D. Larry Anderson
Mr. Rod Kuharich
Mr. Dallin W. Jensen
Mr. Dan S. Budd

1938



UPPER COLORADO RIVER COMMISSION

*File #111
Upper Col 6-3
Compact Admin*

355 South 400 East • Salt Lake City • Utah 84111 • 801-531-1150 • FAX 801-531-9705

November 8, 2000

NOTICE

of a

MEETING

of the

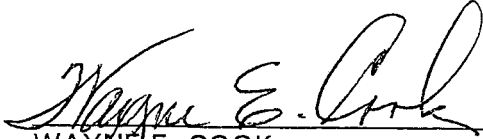
UPPER COLORADO RIVER COMMISSION

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In compliance with paragraph 4 of Article IV of the By-Laws, unanimous written consent of the Commissioners has been granted to hold the meeting at the time and place above set forth.

In compliance with paragraph 1 of Article XI of the By-Laws, notice is also hereby given that the Commission will consider an amendment to its By-Laws at its December 13, 2000 meeting. A copy of the proposed amendment is attached to this notice.

Notated


WAYNE E. COOK
Executive Director and Secretary

NEW MEXICO INTERSTATE STREAM COMMISSION

*Upper Colo
Compact Act*

COMMISSION MEMBERS

RICHARD P. CHENEY, Chairman, Farmington
HAL E. ENGLE, Vice-Chairman, Rociada
THOMAS C. TURNEY, PE., Secretary, Santa Fe
87504-5102
PALEMON A. MARTINEZ, Valdez
HOYT PATTISON, Clovis
JOHN S. BULSTERBAUM, Deming
PHILIP R. GRANT, Albuquerque
HAROLD HOUGHTALING, Jr., Lake Arthur
NARENDRA N. GUNAJI, Las Cruces



BATAAN MEMORIAL BUILDING, ROOM 101
STATE CAPITOL
POST OFFICE BOX 25102
SANTA FE, NEW MEXICO

(505)827-6160
FAX:(505)827-6188

October 26, 2000

Wayne Cook, Executive Director
Upper Colorado River Commission
355 South 400 East
Salt Lake City, Utah 84111

Dear Wayne:

Ted Apodaca reassigned legal adviser responsibilities among his staff and Tammy Zokan is now the Legal Adviser to the Upper Colorado River Commissioner for New Mexico. As such, she also will be on the Commission's Legal Committee.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip B. Mutz".

Philip B. Mutz
Upper Colorado River Commissioner
for New Mexico

PBM:rav

cc: Tammy Zokan

\\colorado\cook2.f00

BUDGET
UPPER COLORADO RIVER COMMISSION
Fiscal Year Ending - June 30, 2002

*File
Upper CRD -3
Compact Adm.*

	As Approved <u>6/1/2000</u>
<u>PERSONAL SERVICES</u>	
Administrative Salaries	
Executive Director	\$ 98,000
Administrative Secretary	20,700*
Professional Services	
General Counsel	64,150*
Staff Engineer	41,500*
Janitor	1,000
Pension Trust	23,000
Social Security	16,300
Health Insurance	15,350
	<u>\$ 280,000</u>
<u>TRAVEL</u>	\$ 19,500
<u>CURRENT EXPENSES</u>	\$ 26,200
<u>CAPITAL OUTLAY</u>	\$ 800
<u>CONSULTANT FEES</u>	\$ -0-
<u>CONTINGENCIES</u>	\$ 5,000
	<u>\$ 331,500</u>
<u>TOTAL BUDGETED EXPENSES</u>	
To be funded from surplus	\$ 32,900
Total Assessments for FY2002	298,600
	<u>\$ 331,500</u>

Assessments 2002		
Colorado	51.75%	\$154,530
New Mexico	11.25%	35,590
Utah	23.00%	68,680
Wyoming	14.00%	<u>\$ 41,800</u>
		<u>\$298,600</u>

* Modified October 2000.



UPPER COLORADO RIVER COMMISSION

355 South 400 East • Salt Lake City • Utah 84111 • 801-531-1150 • FAX 801-531-9705

+114
Upper Colo-3
Compact Admin
Response on 9-27
OK as outlined

MEMORANDUM

TO: Upper Colorado River Commissioners
FROM: Wayne E. Cook, Executive Director
DATE: September 19, 2000
SUBJECT: Staffing and Budget Adjustments FY 2001

As you are aware, staffing and budget plans have really changed for Fiscal Year 2002. Let me elaborate:

(1) Ms. Magura (PJ) was placed on administrative leave without pay on July 3, 2000 and terminated without a severance compensation (\$6,200 offered) on July 16, 2000. My June 2, 2000 meeting with PJ ended in her insistence that she would not discuss employment matters except through her "attorney." At that time, she was placed on administrative leave with pay pending further negotiations. Her June 1, 2000 memo to all of us said that "I . . . have decided in the best interest of both the Upper Colorado River Commission and myself that our working relationship be terminated" Her attorney met briefly with me on June 19 after which he would not meet again. I attempted follow-up meetings on June 20, 27 and 28. Ms. Magura's attorney had suggested she get a second opinion and there was no need for him to meet further.

On July 3, 2000, we offered PJ a severance payment of \$6,200.00 and gave her until July 14, 2000 to respond. On July 13th we received a FAX copy from PJ of a letter from another attorney containing a counteroffer of \$110,200 but reiterating her desire to "continue negotiations"

However, attempts to make any contact with this second attorney twice on July 14, on July 17, and on July 19 were unsuccessful. The second attorney would not even return my calls to her secretary or to voice mail. As a result of their continued unwillingness to negotiate and their conscious refusal to respond to our severance offer, I notified PJ of her termination as of July 15, 2000 by letter dated July 20, 2000. On June 15, 2000 we sent PJ a check for unused annual leave (181 hours - \$2,428.10). This payment was made from our FY2000 budget contingency account. As stated before, we did not pay her severance pay as offered. We have not heard anything from PJ or her attorney since July 13, 2000.

In mid- July, PJ filed for unemployment compensation. She could receive up to \$309.00 a week for six months. This compensation has been approved in spite of our recommendation that PJ not be compensated. That decision is now on appeal. PJ's annual leave compensation will apparently reduce that exposure to about five months and is estimated to be about \$7,500.00.

The Upper Colorado River Commission is not required to pay regular unemployment compensation tax and as such has a reimbursable benefit responsibility. Any payments awarded to PJ now do not come out of Workforce Service's budget but must come out of ours on a reimbursable basis. Perhaps this circumstance is "tainting" the decision. Nevertheless, if we are not successful in our appeal, we could be responsible for up to \$7,500.00 of unemployment compensation from FY 2001 funds.

In order to help us accomplish some of PJ's work load for the next few months, we have asked Hanna Wetmore to return to work part time. Hanna has graciously accepted an offer to work on a contract basis at 20 hours/week for up to six months. This will give us time to reconcile our ultimate financial status with PJ and recruit a replacement. My current thinking is to recruit

and fill the position with a permanent "part time" employee. This may let us hire someone with better fiscal experience while maintaining some budget control.

(2) At our Budget Committee Meeting on June 1, 2000, I made recommendations that Jane Bird and Everett Sunderland receive salary adjustments to keep their salary's commensurate to those with similar responsibilities in the individual states. Additional information received after our 6/1/2000 meeting confirmed a need for those adjustments.

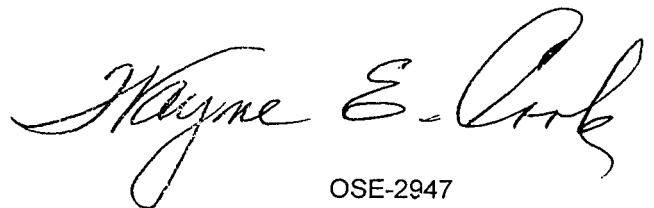
Our currently approved FY 2001 budget contemplates salary amounts for Jane Bird and Everett Sunderland of \$55,000/yr and \$35,000/yr respectively. On June 1, 2000 I recommended these salaries be adjusted to \$62,000 for Jane Bird and \$40,000 for Everett Sunderland.

Prior to finalizing recommended adjustments to our approved 2001 budget, I would like your approval of these individual salary adjustments. Even though these salary adjustments would appear to require a budget increase, several other factors will also influence our FY 2001 spending.

As you are also aware, Everett has been called into active military duty in Kosovo for at least six months, and is in a military leave without pay status as of September 16, 2000. Our administrative costs may also be significantly adjusted as well. In addition, Everett's travel for training will not be as extensive as last year, and beginning July 2000, costs for Adoption Management Activities have been authorized to be a USBR reimbursable cost.

Pending your approval of the above salary adjustments, I will finalize recommendations for a revised FY 2001 budget as well as an evaluation of expected expenditures. Anticipating significant under expenditures due to the above FY 2001 employee circumstances, we may be able to adjust State assessments beginning in 2003.

Please contact either Chairman Fassett or myself regarding your decision on salary adjustments as recommended as soon as possible.



Wayne E. Cook

(Approved 12-13-00
Ale
Upper Colo -3
Compact Admin

**MINUTES
OF THE
UPPER COLORADO RIVER COMMISSION
MEETING**

Salt Lake City, Utah
June 1, 2000

The meeting of the Upper Colorado River Commission was called to order by Chairman Frank E. (Sam) Maynes at 2:00 p.m. on Thursday, June 1, 2000 at the Utah Department of Natural Resources Conference Room in Salt Lake City, Utah.

ATTENDANCE

Frank E. (Sam) Maynes, Chairman, Commissioner for the United States of America

Scott Balcomb, Commissioner for the State of Colorado
Ted Apodaca, Commissioner for the State of New Mexico
D. Larry Anderson, Commissioner for the State of Utah
Gordon W. Fassett, Vice Chairman, Commissioner for the State of Wyoming
Dan S. Budd, Alternate Commissioner for the State of Wyoming
Wayne E. Cook, Executive Director and Secretary
Jane Bird, Assistant to the Executive Director and General Counsel
Everett Sunderland, Staff Engineer
P. J. Magura, Administrative Secretary
Linda J. Smurthwaite, Court Reporter

ADVISERS PRESENT

State of Colorado

Jennifer Gimbel, Chairman, Legal Committee
D. Randolph Seaholm, Engineering Committee

State of New Mexico

Jay C. Groseclose, Engineering Committee

State of Utah

Robert King, Engineering Adviser

State of Wyoming

Tom Davidson, Legal Committee

OTHERS PRESENT

Colorado

Eric Kuhn, Colorado River Water Conservation District

New Mexico

Tammy Zokan, Office of the State Engineer, Legal Services Division

Wyoming

Ann Strand, Colorado River Basin Coordinating Council, Rock Springs

Colorado River Energy Distributors Association

Cliff Barrett

United States Bureau of Reclamation

Rick Gold, Deputy Regional Director, Upper Colorado Region, Salt Lake City, Utah

Western Area Power Administration

Dave Sabo, Manager, Colorado River Storage Project (CRSP) Management Center, Salt Lake City, Utah

REPORTS

- A. Rick Gold, Deputy Regional Director, Upper Colorado Region, U. S. Bureau of Reclamation in Salt Lake City, Utah distributed copies of a written report and orally discussed the following topics:
1. Hydrology update - snowpack and water supply forecast
 2. Steady flow test at Glen Canyon Dam
 3. Endangered species related operations at Flaming Gorge Dam
 4. Institutional home for Grand Canyon Monitoring and Research Center employees
 5. Central Utah Project Update
 - a. Block Notice for repayment of municipal and industrial costs issued
 - b. Work continuing on the Wasatch County Efficiency Project and the Daniels Replacement Project
 - c. Diamond Fork system modifications
 - d. Gate installation at Syar tunnel
 6. Planning on the Spanish Fork-Nephi System terminated
 7. Black Canyon National Park reserved water right
 8. Draft biological opinion on the operation of the Aspinall Unit as it affects endangered species
 9. Update on the Colorado River endangered fishes recovery program funding legislation
 10. Update on the Animas-La Plata Project legislation and environmental compliance
 11. Privatization of Dutch John, Utah

12. Update on progress of an environmental impact statement for Navajo Dam, including a discussion of flow recommendations
 13. Notice of Intent to prepare an environmental impact statement to implement the flow recommendations at Flaming Gorge for endangered fishes and schedule of scoping meetings
 14. U. S. Geological Survey study activities in the Gunnison River Basin
- B. Dave Sabo, Manager, CRSP Management Center, Western Area Power Administration, Salt Lake City, Utah gave an oral report addressing the following topics:
1. Power impacts of the low steady flow test at Glen Canyon Dam
 2. Power shortages and high prices for electricity
 3. Revenues in the Colorado River Basin Fund
 4. Nine percent resource pool in the 2004 CRSP marketing plan
 5. Start of the formal process to implement a firm power rate increase
- C. Reed Harris and Henry Maddux, Fish and Wildlife Service, gave oral reports on the following subjects:
1. Operations at Flaming Gorge to benefit the Colorado River endangered fishes, including participation in the Bureau of Reclamation's National Environmental Policy Act (NEPA) compliance activities and preparation of the Fish and Wildlife Coordination Act report
 2. Atlas Mill tailings cleanup plans and legislation
 3. Virgin River Resource Management and Recovery Program activities and NEPA compliance
 4. Preparation of a recovery implementation program for the Provo River
 5. Findings and petitions on the following species of cutthroat trout: Bonneville, Yellowstone, Colorado River, West Slope and Rio Grande
 6. Programmatic biological opinion on the Colorado River
 7. Contracts executed to provide water to meet the flow targets in the 15-mile reach near Grand Junction
 8. Great Plains Region of the Bureau of Reclamation has initiated a NEPA process for execution of a 12-year contract to deliver water out of Ruedi Reservoir to meet fish flow targets
 9. Flaming Gorge and Gunnison River flow recommendation reports
 10. Yampa management plan, including the Little Snake River
 11. FWS involvement in the Geological Survey study on the Gunnison River
 12. Issues regarding attempts to link Upper Basin and Lower Basin efforts to recover the Colorado River endangered fishes through common recovery goals

- D. Commissioners D. Larry Anderson and Gordon W. Fassett gave oral reports discussing the following activities of the Colorado River Basin Salinity Control Forum:
1. Salinity Forum tour of program activities in the Price-San Rafael area, Utah in conjunction with the biannual Salinity Forum meeting
 - a. Efforts to reduce salinity from irrigation return flows in Carbon and Emery Counties
 - b. Issues regarding securing Department of Agriculture funding for on-farm systems
 2. Issues discussed at the Salinity Control Forum meeting
 - a. Legislation seeking a \$100 million ceiling authorization increase for the Bureau of Reclamation's reformulated program
 - b. Problems with Natural Resources Conservation Service funding of salinity control programs through its EQIP program
- E. Jennifer Gimbel, Chairman of the Legal Committee, gave an oral report on the following topics discussed at a meeting of the Legal and Engineering Committees earlier in the day:
1. Telephone conferences discussing Notices of Intent to sue on Bureau of Reclamation operations in the Virgin River and Colorado River Deltas and whether or not impacts to endangered species in Mexico have to be considered during Section 7 consultations on Lower Basin operations
 2. Update on Rio Grande lawsuits by representatives of New Mexico
 3. Update on Upper Colorado River endangered species recovery legislation
 4. Recent discussions regarding California's 4.4 plan
 5. Detailed description of Seven States interim surplus guidelines
 6. Discussion of the legal enforceability of the Seven States proposal
 7. Report on the status of the environmental impact statement process for the surplus guidelines
 8. Report on the Glen Canyon Dam low test flows
 9. Update on river modeling activities
- F. Wayne E. Cook, Executive Director/Secretary of the Upper Colorado River Commission, gave a report on the following activities of the Commission staff:
1. Involvement in preparation of the Seven Basin States interim surplus criteria
 2. Participation in annual operating plan process, including determination of whether a surplus will be declared
 3. Involvement in an ad hoc work group that is working to complete a suite of management objectives for the Glen Canyon Adaptive Management Program

ACTIONS TAKEN

By motion duly made, seconded and passed, the Commission took the following actions:

1. Approved the Minutes of the Meeting of December 15, 1999. (Movant, Commissioner Balcomb; second, Commissioner Apodaca.)
2. Approved Treasurer Ronald A. Schulthies' appointment of Mr. Robert B. Nixon as the Commission's Assistant Treasurer. (Movant, Commissioner Balcomb; second, Commissioner Fassett.)

Mr. Cook suggested that the next meeting of the Upper Colorado River Commission be held in December 2000 in conjunction with the Colorado River Water Users Association Meeting in Las Vegas, Nevada, subject to approval by the Commission.

VL-3
Completed

**MINUTES
OF THE
UPPER COLORADO RIVER COMMISSION
MEETING**

**Las Vegas, Nevada
December 15, 1999**

The meeting of the Upper Colorado River Commission was called to order by the Executive Director and Secretary of the Upper Colorado River Commission Wayne E. Cook at 2:00 p.m. on Wednesday, December 15, 1999 at Caesar's Palace Hotel and Casino in Las Vegas, Nevada.

ATTENDANCE

- Wayne E. Cook, Acting Chairman, Executive Director and Secretary,
Upper Colorado River Commission
- Philip B. Mutz, Commissioner for the State of New Mexico
- D. Larry Anderson, Commissioner for the State of Utah
- Dallin Jensen, Alternate Commissioner for the State of Utah
- Scott Balcomb, Commissioner for the State of Colorado
- Peter Evans, Alternate Commissioner for the State of Colorado
- Gordon W. Fassett, Commissioner for the State of Wyoming
- Dan S. Budd, Alternate Commissioner for the State of Wyoming
- Jane Bird, Assistant to the Executive Director and General Counsel
- P. J. Magura, Administrative Secretary
- Everett Sunderland, Staff Engineer
- Linda Smurthwaite, Court Reporter

ADVISERS PRESENT

State of Colorado

- Jennifer Gimbel, Chairman, Legal Committee
- D. Randolph Seaholm, Engineering Adviser
- David Merritt, Engineering Adviser
- Eric Kuhn, Engineering Adviser

State of New Mexico

- Jay C. Groseclose, Engineering Adviser

State of Utah

- Robert King, Engineering Adviser
- Don Rasmussen, General Adviser

State of Wyoming

- John W. Shields, Chairman, Engineering Committee

OTHERS PRESENT

Arizona

Herb Dishlip, Department of Water Resources
Mike Pearce, Department of Water Resources
Tom Carr, Department of Water Resources
Tim Henley, Arizona Water Banking Authority
Kenneth Balcomb, Rimrock, Arizona

Colorado

Eric Wilkinson, Northern Colorado Water Conservancy District
Steve Glazer, Upper Gunnison River Water Conservancy District,
Colorado River Task Force (Sierra Club)

Utah

Kathleen Clarke, Executive Director, Department of Water Resources

New Mexico

Tom Turney, State Engineer

Wyoming

Ann Strand, Rock Springs

Nevada

Jim Davenport, Colorado River Commission of Nevada

Colorado River Basin Salinity Control Forum

Don Barnett

Colorado River Energy Distributors Association (CREDA)

Leslie James, Executive Director, Phoenix, Arizona

United States Bureau of Reclamation

Randall V. Peterson, Manager, Adaptive Management & Environmental
Resources Division, Salt Lake City, Utah

Brent Uilenberg, Grand Junction, Colorado

Ed Warner, Grand Junction, Colorado

Barry Wirth, Public Affairs Officer, Salt Lake City, Utah

Dan Crabtree, Water Management Coordinator, Grand Junction, Colorado

United States Fish & Wildlife Service

Reed E. Harris, Field Supervisor, Salt Lake City, Utah

Carol Taylor, Denver, Colorado

Tom Czapla, Denver, Colorado

Western Area Power Administration (WAPA)

Dave Sabo, Salt Lake City Service Area Manager

REPORT

- A. Mr. Wayne E. Cook, Executive Director and Secretary, Upper Colorado River Commission, placed before the Commission the election of a Vice Chairman to replace James S. Lochhead. By majority vote, Mr. Gordon W. Fassett of Wyoming was appointed Vice Chairman of the Upper Colorado River Commission. Mr. Cook introduced the newly appointed Commissioner for Colorado, Mr. Scott M. Balcomb.
- B. Mr. Charles A. Calhoun, Regional Director, Upper Colorado Region, Bureau of Reclamation, submitted a written report and gave an oral report of the following activities of the Bureau of Reclamation:
 - 1. Update on the Bureau of Reclamation Mission Goals as outlined in its 1997 Strategic Plan in compliance with the Government Performance and Results Act (GPRA). Summary of those goals were outlined in the written report.
 - 2. Overview of current hydrology and operations at Fontenelle, Flaming Gorge, Aspinall, Navajo and Glen Canyon Dams.
 - 3. Update on the year 2000 rollover and Y2 K concerns.
 - 4. Improving customer service.
- C. Mr. Dave Sabo, Salt Lake City Service Area Manager, Western Area Power Administration, submitted a written report and gave an oral report on the activities of WAPA. He covered the following subjects in the reports:
 - 1. Status of the Basin Fund.
 - 2. Contract Extension/Post 2004 Marketing Plan.
 - 3. SLCA/IP Firm Power Rate.
 - 4. Transmission Rate Schedule.
 - 5. Y2K compliance issues.
 - 6. Upper Colorado River Recovery Implementation Program for Endangered Fish Species.
 - 7. Flaming Gorge.
 - 8. Aspinall Units.
 - 9. Glen Canyon Operations.
- D. Ms. Leslie James, Colorado Energy Distributors' Association expressed her appreciation to the Commission for its continued support.
- E. Mr. Reed Harris, Field Supervisor in Salt Lake City, United States Fish & Wildlife Service, gave an oral report on the activities of the Fish & Wildlife Service and was assisted by Mr. Tom Czaplak and Ms. Carol Taylor as follows:
 - 1. Introduction of Mr. Tom Czaplak representing the Recovery Implementation Program and Ms. Carol Taylor representing the San Juan River area.
 - 2. Update on Fish & Wildlife contact regarding a 60-day Notice to sue to protect the southwestern willow flycatcher.

3. Completed Final Environmental Impact Statement (FONSI) for critical habitat on the Virgin River.
 4. Synthesis report for Flaming Gorge operations.
 5. Flow recommendations for Aspinall Unit.
 6. Final biological opinion for the Narrows Project.
 7. Petitions to list endangered fishes.
 8. Freedom of Information Act requests status.
 9. Section 7 consultations and depletions tables.
 10. Long-term funding bill for endangered fishes.
 11. San Juan Program/website/final reports (7-year research) due February 2000.
 12. Stocking/downsizing and fish passage updates.
 13. Various water development projects update.
- F. Mr. Peter Evans, Alternate Commissioner for the State of Colorado recommended that the Commission write a letter commending the Fish & Wildlife Service for the advancements the agency has made through some difficult years.
- G. Mr. Don Barnett, Colorado River Basin Salinity Control Forum, gave an oral report on the following issues:
1. The 1999 review of water quality standards in the Colorado River Basin and public hearings held.
 2. Technical modeling subcommittee quarterly meeting.
 3. Senate Bill 1211 and similar bill in House.
 4. Funding of salinity under EQIP program.
- H. Mr. Wayne E. Cook, Executive Director and Secretary of the Commission gave a report on behalf of the Commission as follows:
1. Motion to accept reports of treasurer and auditor.
 2. Adequate future depletion tables for the Basin.
 3. The Commission move for the adoption of a resolution on the depletion tables.
 4. Update on California 4.4 Plan and the 7 Basin States.
- I. Ms. Jane Bird, Assistant to Executive Director and General Counsel for the Commission, gave a summary of the following litigation and issues:
1. *City of Albuquerque Case v. U. S.*
 2. Defenders of Wildlife & Forest Guardians filed in New Mexico against a number of Federal defendants. [*Forest Guardians v. Babbitt*]
 3. Expressed appreciation to New Mexico's Commissioner for his legal staff's support in supplying updated material to the Commission.
 4. Sixty-Day Notice letter to Interior Department from Center for Biological Diversity regarding the Lake Mead Virgin River Delta.

ACTIONS TAKEN

By motion duly made, seconded and passed, the Commission took the following actions:

1. Nomination made for Vice Chairman of the Commission. Commissioner Gordon W. Fassett of Wyoming elected to that position. (Movant, Commissioner D. Larry Anderson; second, Commissioner Philip B. Mutz.)
2. Approved the Minutes of the Meeting of May 25, 1999. (Movant, Commissioner D. Larry Anderson; second, Commissioner Philip B. Mutz.)
3. Accepted the Report of the Treasurer and CPA's annual audit. (Movant, Commissioner D. Larry Anderson; second, Commissioner Philip B. Mutz.)
4. Adoption of the Resolution on Depletions. (Movant, Commissioner Scott M. Balcomb; second, Commissioner D. Larry Anderson.)

The Commissioners agreed that the next meeting of the Upper Colorado River Commission would be held in May or June of 2000. Commissioner Philip B. Mutz invited the Commission to hold its spring meeting in New Mexico.



**THE
NAVAJO
NATION**

P.O. BOX 9000 - WINDOW ROCK, ARIZONA 86515 - (520) 871-6000

*File 40
3
compact*

KELSEY A. BEGAYE
PRESIDENT

DR. TAYLOR MCKENZIE
Vice President

T E L E C O P Y T R A N S M I T T A L

FROM

**WATER MANAGEMENT BRANCH
P.O. Box 678
Fort Defiance, Arizona 86504**

DATE: 11-29-00

TO: JOHN WHIPPLE #
PHIL MUTZ

NO. PAGES: 3
includes coversheet

FAX NUMBER: (505) 927-6188

FROM: JOHN LEBER
NDWR

TELEPHONE: (520) 729-4004
FAX NO : (520) 729-4126

SUBJECT: _____

**IF YOU ENCOUNTER PROBLEMS WITH RECEIVING THIS FAX, PLEASE CALL
(520) 729-4004. THANK YOU.**

Similarly, with respect to the protection of endangered fish species, the contract should condition the delivery of water on compliance with the Endangered Species Act and other environmental requirements. We are hopeful that the current efforts to refine the hydrologic modeling will yield additional depletions from the San Juan River for the Project. If additional depletions are not forthcoming, the Project may be forced to work with other water users to develop a depletion schedule that is consistent with the flow recommendations adopted by the San Juan River Recovery Implementation Program. Other water users may be willing to forbear their depletions during the times the water is needed for endangered species. We believe there is sufficient flexibility in the San Juan River system to protect the endangered species while moving forward with much needed water development such as the Navajo-Gallup Water Supply Project.

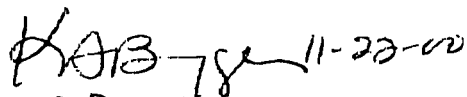
Mr. Commissioner, we have a limited window of opportunity to accomplish these objectives. The identification of the water supply for the project is the single most time-critical element in the preparation of the draft Environmental Impact Statement for the Project. By copy of this letter to the Western Colorado Area Office, we are evincing our intent to work collaboratively with your staff to achieve the objectives set forth in this letter. We also recognize that it will be necessary to work with the Fish and Wildlife Service to ensure that depletions made pursuant to these contracts are consistent with the flow regimes necessary to protect the endangered fish species.

We understand that you may be in Las Vegas in December for the Colorado River Water Users Association annual meeting. We know that significant demands will be placed on your time; however, we would greatly appreciate the opportunity to have our representatives provide you with a briefing at that time. Please let us know when we could meet with you at your earliest possible convenience to discuss this matter.

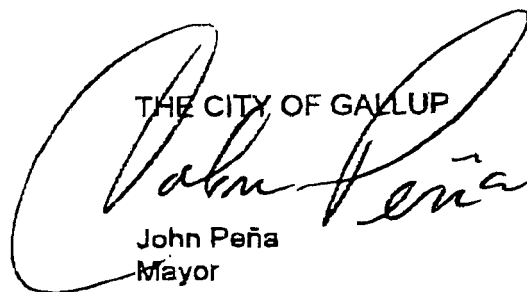
Thank you for your anticipated cooperation.

Sincerely,

THE NAVAJO NATION


Kelsey A. Begaye
President

THE CITY OF GALLUP

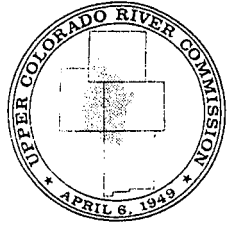

John Peña
Mayor

xc: Carol DeAngelis
Western Colorado Area Office, Bureau of Reclamation

Philip Mutz
New Mexico Interstate Stream Commission

Joy Nicholopoulos
Ecological Services, Albuquerque Field Office, U.S. Fish and Wildlife Service

1410-1



UPPER COLORADO RIVER COMMISSION

ABM
Are
Upper Colorado Impact Admin

355 South 400 East • Salt Lake City • Utah 84111 • 801-531-1150 • FAX 801-531-9705

MEMORANDUM

TO: Upper Colorado River Commissioners

FROM: Assistant to the Executive Director and General Counsel

DATE: November 3, 2000

SUBJECT: Denial of Unemployment Benefits for Former Administrative Secretary.

On October 16, 2000, Wayne and I testified at a hearing before an administrative law judge regarding our appeal of the granting of unemployment benefits to the Commission's former administrative secretary, P. J. Magura. Yesterday, we received a copy of the judge's decision. To summarize, the judge reversed the initial granting of unemployment benefits (finding that Ms. Magura was discharged for "just cause"), relieved the Commission of all charges and ruled that Ms. Magura must repay the \$3,708 in benefits that she has already received from the Utah Department of Workforce Services. A copy of the judge's decision is enclosed for your information.

The decision will become final unless Ms. Magura appeals in writing to the Workforce Appeals Board within 30 days from November 1, 2000. As we understand it, the only ground for appeal is that the appeal hearing process was flawed in some way. The Appeals Board would rule based on the appeal hearing record only; neither the Commission staff nor Ms. Magura would appear before the Appeals Board to give testimony or present any additional evidence. We understand that the only recourse from a decision by the Appeals Board is to file a civil lawsuit in Utah State court.

Jane Bird

NOV 10 2000
 10:01 AM
 10:01 AM

DEPARTMENT OF WORKFORCE SERVICES
APPEALS SECTION

Decision of Administrative Law Judge

RECEIVED

NOV - 2 2000

UPPER COLORADO
RIVER COMMISSION

Employer

PERSONNEL DEPARTMENT
UPPER COLORADO RIVER COMM
355 S 400 E
SALT LAKE CITY UT 84111

Claimant

P J MAGURA
2721 NORA DRIVE
SALT LAKE CITY UT 84124

S.S.A. NO: 486-42-9382

CASE NO: 00-A-03909-R

APPEAL DECISION: Benefits are denied.
The employer is relieved of charges.
An overpayment is established in the amount of \$3,708.

CASE HISTORY:

Effective Date of Allowance: July 16, 2000
Date of Initial Agency Determination: August 7, 2000
Date of Appeal filed by Employer: August 18, 2000
Date of Appeal Hearing: October 16, 2000
Appearances: Claimant/Employer
Issues to be Decided: 35A-4-405(2)(a) - Discharge
35A-4-307 - Employer Charges
35A-4-406(4) - Fault Overpayment

The original Department decision allowed unemployment insurance benefits on the grounds the claimant was discharged, but not for just cause. That decision also charged the employer's benefit ratio account for benefits paid to the claimant. If this decision were reversed, an overpayment would be established.

JURISDICTION FOR REVIEW: Jurisdiction for this review is established in accordance with Section 35A-4-406(3) of the Utah Employment Security Act and the Rules pertaining thereto.

APPEAL RIGHTS: The following decision will become final unless, within **30 days** from **November 1, 2000**, further **written** appeal is made to the Workforce Appeals Board (PO Box 45244, Salt Lake City, UT 84145-0244. FAX 801-526-9244) setting forth the grounds upon which the appeal is made.

CB/jn

FINDINGS OF FACT:

Before filing for unemployment insurance benefits, the claimant last worked for the Upper Colorado River Commission from January 2, 1991 until July 14, 2000 when she was discharged for the reasons described below.

The claimant was employed as an administrative secretary. In June 1999 the claimant placed a newspaper column on a fellow employee's desk and told the employee the column described him. The employee was offended by the column and the claimant's statement. The offended employee approached the director and voiced his displeasure with the claimant's behavior. The director spoke to the claimant and told her she needed to stop her confrontational behavior. The director informed the claimant that this behavior was upsetting her fellow employees.

In August 1999 the claimant deducted hours worked from the time sheet of the employee she had the confrontation with in June 1999. It was the claimant's responsibility to complete time sheets for the office employees, but the fellow employee did not agree with the claimant's record keeping. The incorrect keeping of the time sheets resulted in a confrontation with the fellow employee. The confrontation was disruptive and affected the ability of the staff to work together. The director contacted the claimant and discussed her confrontational behavior and ability to upset her fellow employees. The director told the claimant that the confrontations could not continue. The claimant was informed that if her confrontational behavior did not end that her job could end.

In September 1999 the claimant had another confrontation over record keeping of time sheets. The confrontation led to additional disruption at the workplace. The director addressed the claimant and told her that her employment was jeopardized if she continued being confrontive and disrupting the office.

On May 10, 2000 the claimant had another confrontation with an employee. This confrontation dealt with the expenditure of commission funds. The confrontation rose to the level of name-calling and swearing. The confrontation lasted a number of minutes and was concluded by the claimant telling a fellow employee to "go to hell" and informing another employee, the assistant director, that she could "go to hell" also.

On June 2, 2000 the claimant was placed on administrative leave with full-pay and benefits. The claimant retained legal counsel and attempted to negotiate a severance package. The claimant refused the severance offer from the employer and the employer refused the severance demanded by the claimant. The claimant was terminated on July 14, 2000.

The claimant filed for unemployment insurance benefits effective July 16, 2000. The claimant's report and the employer's report of the reasons for the discharge are inconsistent. The claimant stated in her statement of discharge that the employer gave her no reason for her discharge. The employer gave explicit reasons for the claimant's discharge. The reasons for the discharge have been described above. The claimant was awarded a weekly benefit amount of \$309 and has received a total of \$3,708 through the week ending October 28, 2000.

REASONING AND CONCLUSIONS OF LAW:

SEPARATION

Section 35A-4-405(2)(a) of the Utah Employment Security Act provides that an individual is ineligible for benefits or for purposes of establishing a waiting period if the employer discharged the claimant for just cause or for an act or omission in connection with employment not constituting a crime, which is deliberate, willful or wanton and adverse to the employer's rightful interests.

Unemployment insurance benefits must be denied if the employer had just cause for discharging the employee. In order to have just cause for discharge pursuant to Section 35A-4-405(2)(a) there must be fault on the part of the employee involved. The basic factors as established by the Rules pertaining to Section 35A-4-405(2)(a) which are essential for a determination of ineligibility under the definition of just cause are:

(a) Culpability. This is the seriousness of the conduct as it affects continuance of the employment relationship. The discharge must have been necessary to avoid actual or potential harm to the employer's rightful interests.

(b) Knowledge. The employee must have had a knowledge of the conduct which the employer expected.

(c) Control. The conduct must have been within the power and capacity of the claimant to control or prevent.

In the present case, the claimant's behavior produced a confrontational work environment. The resultant negative work environment caused harm to the employer. This harm occurred throughout her employment but increased during her last year of work. The element of culpability is established.

The claimant was informed that her confrontational behavior was unacceptable in June 1999, August 1999, September 1999, and May 10, 2000. The claimant denied being told that her behavior would result in disciplinary action. The testimony of the employer and the employer's witness was more credible than the claimant's testimony. The director and the assistant director both testified concerning the claimant's behavior and the director testified that he warned the claimant that her job was in jeopardy. The element of knowledge is established.

The claimant did not present any evidence that she was unable to control her confrontational behavior. The claimant testified that she was not under any medication that would prevent her from controlling her actions or outbursts. The claimant did not give any reason for her profanity and confrontational behavior. The element of control is established.

The employer has established all the elements of a just cause discharge by a preponderance of the evidence. Benefits are denied.

An employer may be relieved of charges when the claimant was separated from employment for reasons which would have resulted in a denial of benefits under Section 35A-4-405(1) or Section 35A-4-405(2) of the Act. In this case, the reason for the claimant's separation is disqualifying and, therefore, the employer is eligible for relief of charges.

OVERPAYMENT

Section 35A-4-406(4) of the Utah Employment Security Act provides that if any person receives benefits to which he is not entitled by reason of his fault, the claimant must repay the Department the sum of benefits received. Section 35A-4-406(4) of the Utah Employment Security Act provides:

(4)(a) Any person who, by reason of the individual's fraud, has received any sum as benefits under this chapter to which the individual was not entitled shall repay the sum to the division for the fund.

(b) If any person, by reason of the individual's own fault, has received any sum as benefits under this chapter to which under a redetermination or decision pursuant to this section the individual has been found not entitled, the individual shall repay the sum, or shall, in the discretion of the division, have the sum deducted from any future benefits payable to the individual, or both.

(c) In any case in which under this subsection a claimant is liable to repay to the division any sum for the fund, the sum shall be collectible in the same manner as provided for contributions due under this chapter.

The Unemployment Insurance Rules pertaining to Section 35A-4-406(4) provide:

R994-406-403. Claimant Fault.

(1) Elements of Fault.

Fault is established if all three of the following elements are present. If one or more elements cannot be established, the overpayment does not fall under the provisions of Subsection 35A-4-405(5).

(a) Materiality.

Benefits were paid to which the claimant was not entitled.

(b) Control.

Benefits were paid based on incorrect information or an absence of information which the claimant reasonably could have provided.

(c) Knowledge.

The claimant had sufficient notice that the information might be reportable.

(2) Claimant Responsibility.

The claimant is responsible for providing all of the information requested of him in written documents regarding his Unemployment Insurance claim, as well as any verbal instructions given by a Department representative. Before certifying that he is eligible for benefits, he is under obligation to make proper inquiry if he has any questions to determine definitely what is required. Therefore, when a claimant has knowledge that certain information may affect his claim, but makes his own determination that the information is not material or if he ignores it, he is at fault.

The claimant received a weekly benefit amount of \$309, and as of the week ending October 28, 2000 the claimant received \$3,708. The claimant was not entitled to these benefits. The element of materiality is established.

The claimant knew that she was terminated for her confrontational behavior, yet denied knowing why she was discharged. The claimant could have reasonably provided this information. The element of control is established.

The claimant knew that the reason for the separation and discharge was reportable. The claimant was directly asked for this information on the initial determination of eligibility form. The element of knowledge is established. A fault overpayment has been established.

The issue of fraud was not considered as part of this hearing. The case has been referred to the Department to determine whether fraud has been committed.

DECISION AND ORDER:

SEPARATION

The Department's decision allowing benefits pursuant to Section 35A-4-405(2)(a) of the Utah Employment Security Act is reversed. Benefits are denied effective July 16, 2000, and continuing until the claimant has returned to bona fide covered employment, earned six times her weekly benefit amount, and is otherwise eligible.

The employer, Upper Colorado River Commission, is relieved of liability for charges in connection with this claim, as provided by Section 35A-4-307 of the Utah Employment Security Act.

OVERPAYMENT

A fault overpayment has been established pursuant to Section 35A-4-406(4) of the Utah Employment Security Act which must be repaid by the claimant. The overpayment amount is \$3,708 for benefits paid between September 24, 2000 and October 28, 2000.

If the claimant is unable to repay the entire overpayment immediately, she should contact the Collections Department at 801-526-9370 or write to: PO Box 45288, Salt Lake City, UT 84145-0288, to make arrangements for repayment on an installment basis.

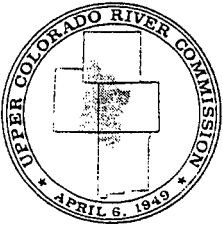


Craig Bunker

Administrative Law Judge

DEPARTMENT OF WORKFORCE SERVICES

Issued: **November 1, 2000**



UPPER COLORADO RIVER COMMISSION

VL -
Comptrol Adm

355 South 400 East • Salt Lake City • Utah 84111 • 801-531-1150 • FAX 801-531-9705

May 22, 2000

NOTICE

of the

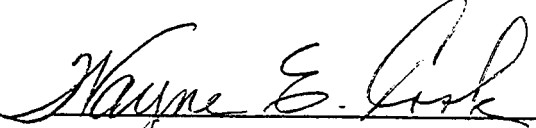
MEETING

of the

UPPER COLORADO RIVER COMMISSION

In accordance with paragraph 3 of Article IV of the By-Laws, notice is hereby given that a Meeting of the Upper Colorado River Commission will be held on Thursday, June 1, 2000 from 2:00 p.m. to 4:00 p.m. at the office of the Utah Commissioner, D. Larry Anderson, Main Floor Conference Rooms 1040-1050, 1594 West North Temple Street, Salt Lake City, Utah.

In compliance with paragraph 4 of Article IV of the By-Laws, unanimous written consent of the Commissioners has been granted to hold the meeting at the time and place above set forth.


WAYNE E. COOK
Executive Director and Secretary

UC-3
Compact Adm

AGREEMENT TO ESTABLISH TIME AND PLACE

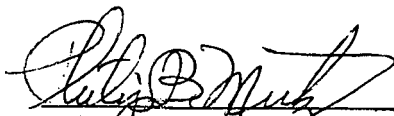
of a

MEETING

of the

UPPER COLORADO RIVER COMMISSION

Pursuant to Article IV, paragraph 4, of the By-Laws of the Upper Colorado River Commission, I agree that a meeting of the Upper Colorado River Commission be held on Thursday, June 1, 2000 beginning at 2:00 p.m. at the office of the Utah Commissioner, D. Larry Anderson, 1594 West North Temple Street, Salt Lake City, Utah.



Phillip B. Mutz, Commissioner
for the State of New Mexico

Date: May 17, 2000

Mailed 5-12-00

NEW MEXICO INTERSTATE STREAM COMMISSION

COMMISSION MEMBERS

RICHARD P. CHENEY, Chairman, Farmington
HAL E. ENGLE, Vice-Chairman, Rociada
THOMAS C. TURNEY, PE., Secretary, Santa Fe
PALEMON A. MARTINEZ, Valdez
HOYT PATTISON, Clovis
JOHN S. BULSTERBAUM, Deming
PHILIP R. GRANT, Albuquerque
HAROLD HOUGHTALING, Jr., Lake Arthur
NARENDRA N. GUNAJI, Las Cruces



BATAAN MEMORIAL BUILDING, ROOM 101
STATE CAPITOL
POST OFFICE BOX 25102
SANTA FE, NEW MEXICO 87504-5102

(505)827-6160
FAX:(505)827-6188

VC
Compact Adm


May 31, 2000

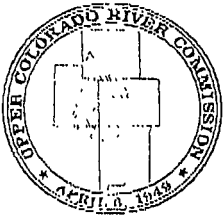
Mr. Wayne Cook,
Executive Director
Upper Colorado River Commission

Dear Mr. Cook:

Because of my inability to attend, I hereby designate Ted Apodaca to act as Alternate Commissioner for New Mexico for me for the June 1, 2000 meeting of the Upper Colorado River Commission.

Sincerely,


Phillip Mutz
Commissioner from
New Mexico



UPPER COLORADO RIVER COMMISSION

355 South 400 East • Salt Lake City • Utah 84111 • 801-531-1150 • FAX 801-531-9705

Memorandum

To: Legal & Engineering Committees' Members

From: Executive Director

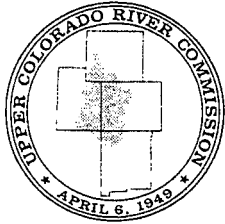
Date: May 26, 2000

Subject: **LEGAL & ENGINEERING COMMITTEES' MEETING**
June 1, 2000

There will be a joint Legal and Engineering Committees' meeting in conjunction with the Upper Colorado River Commission Meeting on June 1, 2000 in Salt Lake City, Utah. The meeting will be held in room 1050 of the Department of Natural Resources building (Commissioner Anderson's office) at 1594 West North Temple from 9:00 a.m. to 12:00 noon.

We anticipate discussion of the following activities:

- (1) Status of discussions on current 60-day notice/litigation activities
Virgin River Delta - Lake Mead.
Colorado River Delta in Mexico.
Rio Grande lawsuits.
- (2) Update on the Upper Colorado River Endangered Species Recovery
legislation pending in Congress. (HR 2348 and S 1544)
- (3) Update on 7 Basin States interim criteria discussions
Review of California 4.4 Water Plan.
Details of 3-tiered criteria.
Development of legally enforceable documents.
- (4) Status of departmental EIS process on surplus strategy
- (5) Update on "Riverware" modeling activities
Salinity.
Long-range planning.



UPPER COLORADO RIVER COMMISSION

355 South 400 East • Salt Lake City • Utah 84111 • 801-531-1150 • FAX 801-531-9705

May 22, 2000

NOTICE

of the

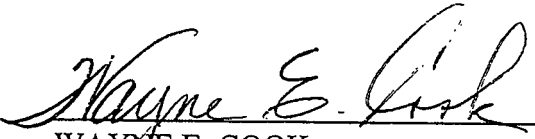
MEETING

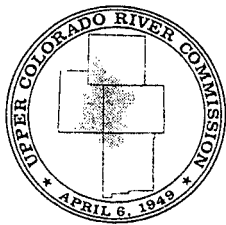
of the

UPPER COLORADO RIVER COMMISSION

In accordance with paragraph 3 of Article IV of the By-Laws, notice is hereby given that a Meeting of the Upper Colorado River Commission will be held on Thursday, June 1, 2000 from 2:00 p.m. to 4:00 p.m. at the office of the Utah Commissioner, D. Larry Anderson, Main Floor Conference Rooms 1040-1050, 1594 West North Temple Street, Salt Lake City, Utah.

In compliance with paragraph 4 of Article IV of the By-Laws, unanimous written consent of the Commissioners has been granted to hold the meeting at the time and place above set forth.


WAYNE E. COOK
Executive Director and Secretary



UPPER COLORADO RIVER COMMISSION

355 South 400 East • Salt Lake City • Utah 84111 • 801-531-1150 • FAX 801-531-9705

April 13, 2000

Compact Admin
SCC
(Orig. to ASD, then
Lazlo of ANIG
for payment)

Mr. Philip B. Mutz
Upper Colorado River Commissioner
Room 101, Bataan Memorial Building
P.O. Box 25102
Santa Fe, NM 87504-5102

Dear Phil,

Enclosed is a copy of the budget for Fiscal Year 2001 (July 1, 2000 through June 30, 2001) that the Commission approved for transmission to the Governors of each State and to the President on May 25, 1999.

In compliance with the above provision, we are enclosing a copy of the budget for the fiscal year ending June 30, 2001. This budget authorizes an expenditure of up to \$317,500. Of this amount, \$29,600 will be funded from surplus funds. The total assessment for the fiscal year 2001 is \$287,900.

The amount due from the State of New Mexico for fiscal year 2001 is 11.25 percent of the total assessment, or \$32,380.

I certify that the above bill is correct and just and that payment therefor has not been received.

Jane Bird
for WAYNE E. COOK
Executive Director

WEC:pj

cc: Jay Groseclose

To Pres + Gov 11/23/99

**BUDGET
UPPER COLORADO RIVER COMMISSION
Fiscal Year Ending June 30, 2001**

	<u>As Approved 5/25/99</u>
<u>PERSONAL SERVICES</u>	
Administrative Salaries	
Executive Director	\$ 95,000
Administrative Secretary	29,500
Professional Services	
Legal Counsel	55,500
Staff Engineer	35,000
Janitor	2,300
Pension Trust	22,000
Social Security	15,500
Health Insurance	<u>13,700</u>
	\$ 268,500
<u>TRAVEL</u>	\$ 18,000
<u>CURRENT EXPENSES</u>	\$ 25,200
<u>CAPITAL OUTLAY</u>	\$ 800
<u>CONSULTANT FEES</u>	\$ -0-
<u>CONTINGENCIES</u>	<u>\$ 5,000</u>
	<u>\$ 317,500</u>

TOTAL BUDGETED EXPENSES

To be funded from surplus	\$ 29,600
Total Assessments for FY 2001	<u>287,900</u>
	<u>\$317,500</u>

Assessments 2001

Colorado	51.75%	\$ 149,000
New Mexico	11.25%	32,380
Utah	23.00%	66,220
Wyoming	14.00%	<u>\$ 40,300</u>
		<u>\$ 287,900</u>

Ernest Allen

COMMISSION MEMBERS

RICHARD P. CHENEY, Chairman, Farmington
HAL E. ENGLE, Vice-Chairman, Rociada
THOMAS C. TURNEY, PE., Secretary, Santa Fe
PALEMON A. MARTINEZ, Valdez
HOYT PATTISON, Clovis
JOHN S. BULSTERBAUM, Deming
PHILIP R. GRANT, Albuquerque
HAROLD HOUGHTALING, Jr., Lake Arthur
NARENDRA N. GUNAJI, Las Cruces



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SANTA FE, NEW MEXICO 87504-5102

(505)827-6160
FAX:(505)827-6188

January 10, 2000

Wayne F. Cook, Executive Director
Upper Colorado River Commission
355 South 400 East
Salt Lake City, Utah 84111

Dear Wayne:

This letter is notification that Ted Apodaca, Director, Legal Services Division of this office is the Legal Adviser to the Upper Colorado River Commissioner for New Mexico and New Mexico's representative on the Upper Colorado River Commission's Legal Committee.

Mr. Apodaca's phone number is (505) 827-3897 and the mailing address is that of this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip G. Mutz".

Philip G. Mutz
Upper Colorado River Commissioner
for New Mexico

cc: Ted Apodaca

r:\colorado\cook1.f00

UC-5
Compact Act

MEMORANDUM

May 24, 2002

To: Philip Mutz, Upper Colorado River Commissioner for New Mexico
From: John Whipple, Staff Engineer
Subject: Use of Upper Basin Water in the Lower Basin

Research into the legislative history of the Central Arizona Project shows additional support for your proposed Resolution of the Seven Colorado River Basin States regarding the use of water apportioned to the Upper Colorado River Basin, which proposed Resolution was transmitted via your March 8, 2002, memorandum to the Upper Colorado River Commission and the Upper Division States for their consideration. The research also shows additional support for your proposed Resolution of the Upper Colorado River Commission regarding the use of revised depletion projections for New Mexico for planning and water supply studies and for your proposed motion that the Commission account for water delivered by the Navajo-Gallup Water Supply Project to the Little Colorado River Basin in New Mexico as a depletion of the Colorado River at Lee Ferry to be charged against New Mexico's apportionment made by Article III of the Upper Colorado River Basin Compact, both transmitted via your May 17, 2002, memorandum to the Upper Colorado River Commission and the Upper Division States for their consideration.

The question as to how to account for diversion of water from the Upper Colorado River Basin, by a State which has an apportionment from the Upper Basin, for use in the Lower Basin portion of that State was considered previously by Congress in its consideration of authorizing legislation for the Central Arizona Project. Section 303 of Public Law 90-537, the Colorado River Basin Project Act, enacted in 1968, provides:

- (a) The Secretary is authorized and directed to continue to a conclusion appropriate engineering and economic studies and recommend the most feasible plan for the construction and operation of hydroelectric generating and transmission facilities, the purchase of electrical energy, the purchase of entitlement to electrical plant capacity, or any combination thereof, including participation, operation, or construction by non-Federal entities, for the purpose of supplying the power requirements of the Central Arizona Project and augmenting the Lower Colorado River Basin Development Fund: Provided, That nothing in this section or in this Act contained shall be construed to authorize the study or construction of any dams on the main stream of the Colorado River between Hoover Dam and Glen Canyon Dam.
- (b) If included as a part of the recommended plan, the Secretary may enter into agreements with non-Federal interests proposing to construct thermal generating powerplants whereby the United States shall acquire the right to such portions of their capacity, including delivery of power and energy over appurtenant transmission facilities to mutually agreed upon delivery points, as he determines is required in connection with the operation of the Central Arizona Project. ...

(d) If any thermal generating plant referred to in subsection (b) of this section is located in Arizona, and if it is served by water diverted from the drainage area of the Colorado River system above Lee Ferry, other provisions of existing law to the contrary notwithstanding, such consumptive use of water shall be a part of the fifty thousand acre-feet per annum apportioned to the State of Arizona by article III(a) of the Upper Colorado River Basin Compact (63 Stat. 31).

Based on the status of discussions and planning with public and private utility companies, it was contemplated at the time of enactment of Public Law 90-537 that pursuant to subsections 303.(a) and 303.(b), a coal-fired powerplant would be constructed in the vicinity of Page, Arizona, and that such a plant would burn coal obtained from the Black Mesa fields of the Navajo and Hopi Indian Reservations in Arizona to generate electrical power to be used in the operation of the Central Arizona Project.¹ In reference to the powerplant near Page and subsection 303.(d), House of Representatives Report No. 1312 on the Colorado River Basin Project from the Committee on Interior and Insular Affairs, to accompany H.R. 3300 and dated April 24, 1968, at page 144 states:

It has been suggested that the steam plant might be located in northern Arizona, possibly near Page, and adjacent to Lake Powell. However, a careful engineering study may dictate other sites in the State of Arizona as being preferable. The plant is to be located at the most feasible site. It has been contemplated that the plant would burn coal obtained from the Black Mesa fields of the Navajo-Hopi Indian Reservations in northern Arizona, and the water used for the plant would be obtained from the drainage area of the Colorado River system above Lee Ferry - but, there too, these assumptions should not in any way limit working out the most efficient way of constructing, operating, and maintaining this plant. Water for the plant - if diverted above Lee Ferry - would be a charge against the 50,000 acre-feet per year entitlement which Arizona has as a State of the Upper Basin under the Upper Colorado River Basin compact, whether or not the plant is located in the drainage area of the Colorado River system above Lee Ferry.

The cited language in House of Representatives Report No. 1312 is the same as that in Senate Report No. 408 on the Central Arizona Project from the Committee on Interior and Insular Affairs, to accompany S. 1004 and dated July 26, 1967, at page 43.

House of Representatives Report No. 1312 at page 147 further states in reference to the subject subsection:

¹ See House of Representatives Report No. 1312, 90th Congress, 2d Session, Colorado River Basin Project, Report from the Committee on Interior and Insular Affairs, to accompany H.R. 3300 and dated April 24, 1968, pages 75-76 and 143-147. See also Colorado River Basin Project, Part II, Hearings before the Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs, House of Representatives, Ninetieth Congress, Second Session, on H.R. 3300 and S. 1004, January 30, February 1 and 2, 1968, Serial No. 90-5, pages 695-697. See also Central Arizona Project, Hearings before the Subcommittee on Water and Power Resources of the Committee on Interior and Insular Affairs, United States Senate, Ninetieth Congress, First Session, on S. 1004, S. 1013, S. 861, S. 1242, and S. 1409, May 2-5, 1967, pages 141-145.

This subsection requires the thermal power plant to be located in the State of Arizona and makes clear that if the plant is served by upper basin water the consumptive use of that water shall be a charge against Arizona's 50,000 acre-feet per year entitlement under the terms of article III(a) of the Upper Colorado River Basin compact (63 Stat. 31). Use of this water shall not be construed to increase Arizona's entitlement to water under that compact.

Again, the cited language in House of Representatives Report No. 1312 is the same as that in Senate Report No. 408 at page 46.

Principles evident in the legislative record cited are: (1) an Upper Basin State with an apportionment under article III(a) of the Upper Colorado River Basin Compact may divert a part of its apportionment out of the Upper Basin for use within the Lower Basin portion of that State; and (2) the consequent consumptive use is a depletion of the flow at Lee Ferry to be accounted for as a consumptive use charged against that State's apportionment under article III(a) of the Compact. Your proposed resolutions and motion incorporate these principles.

Further, the language in subsection 303.(d) of Public Law 90-537 provides a model for legislative language to incorporate these principles explicitly into Congressional authorizations for the Navajo-Gallup Water Supply Project in both New Mexico and Arizona and for the Lake Powell Pipeline Project in Utah. Legislative language might read, for example: Consumptive uses within the Lower Basin portion of New Mexico served by water diverted from the drainage area of the Colorado River system above Lee Ferry by the Navajo-Gallup Project shall be a part of the consumptive use apportioned to the State of New Mexico by article III(a) of the Upper Colorado River Basin Compact, other provisions of existing law to the contrary notwithstanding.

MEMORANDUM

May 17, 2002

From: Phil Mutz

To: Sam Maynes, Scott Balcomb, Greg Walcher, Rod Kuharich, Randy Seaholm,
Tom Davidson, Pat Tyrell, Larry Anderson, Wayne Cook

By copy of letter to Rick Gold dated February 19, 2002, New Mexico transmitted revised depletion projections for New Mexico and proposed that the 1988 Hydrologic Determination be extended to 2060 to project water availability for the proposed Navajo-Gallup Water Supply Project. Attached is a proposed resolution of the Upper Colorado River Commission to "not object" to the use of the revised projections for planning purposes and water supply studies. The resolution could be acted upon at the June 4, 2002, meeting of the Commission.

In addition, I propose that the Commission consider a motion about as follows:

... move that the Upper Colorado River Commission account for water delivered to the Little Colorado River Basin by the proposed Navajo-Gallup Water Supply Project to serve beneficial uses solely within the boundaries of the State of New Mexico as a depletion of the Colorado River at Lee Ferry to be charged against New Mexico's apportionment made by Article III of the Upper Colorado River Basin Compact.

**RESOLUTION
OF THE
UPPER COLORADO RIVER COMMISSION**

**Re: February 2002 Revision of January 2000 State Depletion Table for
New Mexico**

WHEREAS, the Upper Colorado River Commission at its meeting held December 15, 1999, adopted a resolution to not object to the use of the January 2000 depletion projections for planning purposes and water supply studies within the Colorado River Basin; and

WHEREAS, New Mexico has reviewed existing, anticipated and potential depletions in the Upper Colorado River Basin in New Mexico and submitted a revised depletion projection for New Mexico dated February 2002, and

WHEREAS, New Mexico has proposed that the February 2002 projection be used to extend the 1988 Hydrologic Determination to the year 2060 in order to project water availability for the proposed Navajo-Gallup Water Supply Project now being planned by the Bureau of Reclamation;

NOW, THEREFORE BE IT RESOLVED, that while the **Upper Colorado River Commission** continues to reiterate its position stated in the **Resolution adopted December 15, 1999**, and continues to disagree with the assumption of a minimum release of 8.23 million acre-feet annually from Glen Canyon Dam, the **Commission** does not object to the use of the February 2002 depletion projections for the State of New Mexico for planning purposes and water supply studies within the Colorado River Basin.

BE IT FURTHER RESOLVED, that this resolution be transmitted to the Regional Director, Upper Colorado Region, Bureau of Reclamation, Salt Lake City, Utah, and, as appropriate, to other Federal, State and Congressional officials who may need to use the revised depletion projections for New Mexico.

MEETING MEMO

June 13, 2001

FROM: Philip B. Mutz, Upper Colorado River Commissioner
SUBJECT: Working Session-Upper Colorado River Commissioners.

A working session of the Upper Colorado River Commissioners representing the signatory states and some of their advisers was held at the Denver International Airport on May 29, 2001. The working session was to provide information on several current issues involving the Colorado River; ie

- Annual Operating Plan Process & Schedule
- Mexican Delta
- Glen Canyon Adaptive Management Program
- Colorado River Water use across the Basin divide
- Blue Mesa Reserved Rights
- Consumptive use from stock ponds and domestic wells effect on flow at Lee Ferry
- Yuma Arizona Project groundwater drainage/Implication on Colorado River Operations.

Present were: Scott Balcomb, Rod Kuharich and Jennifer Gimbel, Colorado; Tom Davidson, Patrick Tyrell and John Shields, Wyoming; Larry Anderson and Robert Morgan, Utah; Wayne Cook, Jane Bird and Everett Sunderland, Upper Colorado River Commission staff; and Philip Mutz, New Mexico.

Following are items discussed that I noted for future reference.

For the year 2002 Annual Operating Plan, the Commission staff suggested language that would establish the Lake Powell 602 (a) storage level to be not less than elevation 3630 feet for the period 2002-2016 of the Interim Surplus Criteria agreed to by the Secretary of the Interior and the seven Colorado River Basin States.

Mexican Delta proposed letter to the Secretary of the Interior and the Secretary of State requesting an early meeting with representatives of the states was endorsed. Also the amount of regulatory waste being delivered to Mexico in excess of the Treaty delivery requirement was discussed and there was general agreement that the Upper Basin representatives should request Reclamation to take urgent measures to drastically reduce the recent large amounts of regulatory waste (200,000-300,000 acre feet/year). Colorado representatives reported that an Amicus brief will be filed by Colorado in the lawsuit filed by Defenders of Wildlife concerning applicability of the Endangered Species Act outside of the United States.

Wayne Cook reported that monitoring of the Grand Canyon under the Glen Canyon Adaptive Management Program indicates that sediment in the river is not responding as had been anticipated under the current flow regime. Much discussion has taken place by the Glen Canyon Work Group as to whether the previous or the current flow regime is best for sediment management. Cook also gave a brief update of other items of the Adaptive Management Program

The writer made a presentation on the proposed Navajo-Gallup Water Supply Project including provisions of both the Colorado River Compact and the Upper Colorado River Basin Compact, source of water, pipeline routing, water demand and depletion and use of water apportioned to the Upper Colorado River Basin in the Lower Colorado River Basin. Concern was expressed by Colorado and Wyoming that use of water apportioned to the Upper Basin in the Lower Basin would be a stretch of the definition of "Upper Basin" in the Colorado River Compact. When asked why such concern, Wyoming replied their concern was the potential for opening up the marketing of Upper Basin water to the Lower Basin. Utah had no problem and advised they were looking to a similar transport and use in Utah of some of its Upper Basin apportionment. Both the writer and Utah pointed out several times that the proposed use of Upper Basin water would be made only in the portion of the Lower Basin within the respective state so using the water. The writer also reported on discussions with the Navajo Nation regarding accounting of the depletion in the Upper Basin for use by domestic wells and stock ponds located many miles from perennial streams. The writer suggested such use is likely not a depletion of the Colorado River at Lee Ferry and therefore would not be accounted against the availability of apportioned water under the current method of accounting by the Upper Colorado River Commission. Also the writer noted that salvage of river loss between the site of use in the Upper Basin and Lee Ferry should be considered in accounting availability of apportioned water at the site of use. At the end of the discussion of this item both Colorado and Wyoming asked that the matter of use of Upper Basin water in the Lower Basin not be an agenda item at the meeting of the Legal and Engineering Committee scheduled for June 12, 2001, citing the need for time to study the issue.

Wayne Cook reported briefly on Reserved Rights for Federal reservations on the Gunnison River.

Mr. Cook also briefed the group on proposed alternatives being considered to pump groundwater to alleviate high ground water levels in part of the Yuma Project area and the conveyance of the pumped water to the Colorado River for delivery to Mexico as a part of the Treaty delivery. Also the potential for desalting the pumped ground water by the Yuma Desalting Plant was noted by Mr. Cook.

jrb/mutz/meetingmemo.f01

NEW MEXICO INTERSTATE STREAM COMMISSION

*Upper Colorado
Compact Act*

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Memorandum

March 8, 2002

TO: Frank E. Maynes, Scott Balcomb, Greg Walcher, Larry Anderson, Thomas Davidson, Patrick Tyrell, Wayne Cook

FROM: Philip Mutz, Upper Colorado River Commissioner

RE: Proposed Resolution regarding the use of water apportioned to the Upper Colorado River Basin

Reference is made to previous discussions on the use of water apportioned to New Mexico from the Upper Colorado River Basin for the Navajo-Gallup Water Supply Project, which would include serving areas in New Mexico within the Lower Colorado River Basin.

We have prepared a resolution of the Seven Colorado River Basin States which we suggest would address the possible ambiguity in the provisions of both the Colorado River Compact and the Upper Colorado River Basin Compact that apparently has arisen over the use of water apportioned to a state by the Upper Basin Compact in the Lower Basin of that state. It is our view that if the seven basin states can agree, planning of projects can proceed.

We do not wish to pursue an amendment, believing that there is too great an opportunity for mischief in the legislative process plus it is a very laborious process, and likewise is the procedure of Article VI of the Colorado River Compact.

The proposed resolution is enclosed and we ask your favorable consideration. We always welcome comments and suggestions.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip B. Mutz".
Philip B. Mutz

jrb/Colorado/memoupperbasin3-6-02-1

OSE-2983

Resolution of the Seven Colorado River Basin States

Regarding the use of water apportioned to the Upper Colorado River Basin

WHEREAS, the Colorado River Compact apportioned from the Colorado River System in perpetuity to the Upper Basin the exclusive beneficial use of 7,500,000 acre-feet of water per annum, and the Upper Colorado River Basin Compact apportioned among the States of the Upper Division and the State of Arizona from the Upper Colorado River System in perpetuity the consumptive use of water available each year to the Upper Basin, subject to the provisions and limitations contained in the Colorado River Compact and in the Upper Colorado River Basin Compact; and

WHEREAS, the Colorado River Compact and the Upper Colorado River Basin Compact both define the Upper Basin to wit:

“The term ‘Upper Basin’ means those parts of the States of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said states located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the system above Lee Ferry.”; and

WHEREAS, the Colorado River Compact and the Upper Colorado River Basin Compact both define the Lower Basin to wit:

“The term ‘Lower Basin’ means those parts of the States of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said states located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the system below Lee Ferry.”; and

WHEREAS, Article IV(c) of the Colorado River Compact reads:

“(c) The provisions of this article shall not apply to or interfere with the regulation and control by any state within its boundaries of the appropriation, use and distribution of water.”; and

WHEREAS, the second paragraph of Article VIII of the Colorado River Compact reads:

“All other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that basin in which they are situate.”; and

WHEREAS, Article XV(b) of the Upper Colorado River Basin Compact reads:

“(b) The provisions of this compact shall not apply to or interfere with the right or power of any signatory state to regulate within its boundaries the appropriation, use and control of water, the consumptive use of which is apportioned and available to such state by this compact.”; and

WHEREAS, by definition, parts of the states of Arizona, New Mexico and Utah lie within the Upper Basin and parts of those states lie within the Lower Basin; and

WHEREAS, the Navajo-Gallup Water Supply Project now being planned for authorization and construction would divert water from the part of New Mexico within the Upper Basin for beneficial use in the Little Colorado River drainage, in areas of New Mexico and Arizona in the Lower Basin, both areas lying immediately adjacent to the Basin divide; and

WHEREAS, the Lake Powell Pipeline Project now being planned would divert water from the part of Utah within the Upper Basin for beneficial use in the Virgin River drainage, an area of Utah within the Lower Basin adjacent to the Basin divide; and

WHEREAS, the planning of these projects has revealed a possible ambiguity in the provisions of both compacts in that the definitions of Upper Basin and Lower Basin could be read to prohibit the use of water apportioned to the Upper Basin and among the Upper Basin states in that portion of the States of Arizona, New Mexico and Utah that lie within the Lower Basin despite the recognition in both compacts that their provisions shall not apply to or interfere with the right or power of a state to regulate within its boundaries the appropriation, use and control of water, the consumptive use of which is apportioned and available to such state by the compacts, which is a long-held, recognized policy of water administration in the states; and

WHEREAS, the undersigned representatives desire to remove any possible ambiguity and make clear that a source of water will be available to provide for the water supply needs in areas of Arizona, New Mexico and Utah in the Lower Basin from diversion of water apportioned to the Upper Basin and among said states by use of each state’s apportionment within its boundaries; and

WHEREAS, the undersigned representatives further desire to remove any ambiguity without contravening the definition of either "Upper Basin" or "Lower Basin" as those terms are defined in both the Colorado River Compact and the Upper Colorado River Basin Compact or the provisions of Article VIII of the Colorado River Compact.

NOW, THEREFORE, BE IT RESOLVED that,

1. The undersigned representatives of the Governors of the Colorado River Basin States agree that the definitions and provisions of the Colorado River Compact shall not be construed to prohibit the diversion of water from the Upper Basin to those parts of the states of Arizona, New Mexico and Utah within the Lower Basin so long as the beneficial use of the water so diverted by each state is made solely in the portion of the Lower Basin within the boundaries of that state and is within and accounted as a part of the apportionment of the beneficial consumptive use of water to that state made by the Upper Colorado River Basin Compact.
2. The undersigned representatives state that the position taken in 1. above is not to be construed in any way to compromise the definitions and provisions of the Colorado River Compact or the Upper Colorado River Basin Compact.

The representatives of the respective Governors of the seven Colorado River Basin States endorse this resolution by their signatures below.

Dated: _____ day of _____, 2002

State of Arizona

Joseph C. Smith, Director
Arizona Department of Water Resources

State of Colorado

Greg Walcher, Executive Director
Colorado Department of Natural Resources

And

Scott Balcomb,
Upper Colorado River Commissioner

State of New Mexico

Thomas C. Turney, State Engineer

And

Philip B. Mutz
Upper Colorado River Commissioner

State of California

Thomas M. Hannigan, Director
California Department of Water Resources

And

Gerald R. Zimmerman, Executive Director
Colorado River Board of California

State of Nevada

Richard Bunker, Chairman
Colorado River Commission of Nevada

And

Patricia Mulroy, General Manager
Southern Nevada Water Authority

State of Utah

D. Larry Anderson, Director
Utah Division of Water Resources

State of Wyoming

Thomas J. Davidson
Governor's Representative

And

Patrick Tyrell
State Engineer

2-27-02