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FACSIMILE COVER SHEET

Date 4/8/97

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Number pages transmitted including cover sheet 1

Comments:

A hard copy of the preceding letter as well as a marked up copy of the draft report will in the mail.

Please Note





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April 8, 1997

Denise Fort
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Ms. FORTENSE

RE: Comments on the Draft Colorado River Basin Study report

The Colorado River Basin Study draft for the Western Water Policy Review Advisory Commission has serious factual and interpretational errors coupled with a manifest bias towards using federal powers to mandate predetermined resolutions in favor of lower basin, environmental, and Native American interests. This comment letter will discuss the general problems with the report, while a marked up copy of the draft report accompanies the letter.

The most serious problem with this report is that it will be taken as a factual portrayal of the conditions by those in power who are unfamiliar with the complexity and political reality of the Colorado River Basin and base federal policy on this inaccurate and oversimplified version of past, present, and desired future conditions for the basin.

The report demonstrates a lack of understanding or insufficient research with regard to the water projects in the basin. This conclusion is demonstrated by the many factual errors concerning to the Central Utah Project. First in the list of Major Storage Reservoirs of Table 1 of the report, the Strawberry Reservoir is missing when it has an active capacity of 1.1 million acre-feet and should be number 6 on the list. In addition, the Joes Valley Reservoir, the Moon Lake reservoir, the Quail Creek Reservoir, the Mill Meadow Reservoir and others that have a capacity of greater than the 20,000 acre-feet of Crystal Reservoir shown in the table are not listed. On the map of major tributaries to the Colorado (figure 3) the Duchesne, the Price, the San Rafael, and the Escalante are not even shown. While the last three rivers may be small, in the arid desert of southern Utah, they are major water courses. The omission of the Duchesne River system is inexcusable given the magnitude of flows and the amount of storage and its key role in the Central Utah Project (CUP).

Figure 4 also demonstrates this lack of understanding of key water projects with the omission of the Moon Lake project, Emery County project, and failing to mention the Bonneville unit of the Central Utah Project. An additional omission occurs on page 14 in the second



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Denise Fort
April 8, 1997
Page 2

paragraph when the Central Utah Water Conservancy District (CUWCD) is not mentioned as a supplier of M&I water from the Colorado River. These omissions are coupled with an incorrect understanding of the changes to the Sevier River basin portion of the CUWCD and CUP. Only Sevier and Millard Counties have withdrawn from the district and the "Project water freed..." cannot be... "picked up by M&I users".... (See page 50, para 2) PL 102-575, the Central Utah Project Completion Act Section 202 only allows water developed for the Bonneville I & D system to be used for irrigation or instream flows but not for conversion to M & I use.

The factual errors appear to apply to more than water development projects, page 58 of the report, paragraph 4 indicates that Utah is a participant in the San Juan Endangered Fish Program which is not the case. Also the Colorado River Endangered Fishes Recovery Program, in which Utah does participate, is constantly referred to as the RIPRAP, which is incorrect. The program should be referred to as the RIP. (Recovery Implementation Program) since the recovery action plan is only one component of the RIP and not the entire program as inferred in the report.

Given the report's inaccuracies relative to the CUP and the Duchesne River System, one cannot help but wonder about what other factual errors are included in the presentation of information from other states. If, as was the case in Utah, a one hour personal conversation by the consultant was the only direct contact with water resource personnel, then factual inaccuracies should be expected. If the facts reported about Utah are representative of the rest of the report, then the factual basis of the report is suspect.

Putting aside the factual difficulties for a moment, the report spends considerable time pointing out the perceived inequities to the Indian tribes of the current operation of the river. While a case may be made for the concerns of Native American interests, a fair and unbiased report would also give the position of the states relative to the tribes' claims. The report spends considerable time (pages 73 through 83) presenting the Native American point of view without a commensurate presentation of the various state concerns with the Indian claims. This needs to be rectified by presenting specific state positions relative to the various tribes located within the state's boundaries. In short, some equity related issues which the report presents in a simplified, narrow fashion are multi-faceted and complex.

As a factual problem, it should also be noted the Northern Ute Tribe settlement of 481,000 AF of Table 10 is the same as the outstanding Indian claim of the Uintah and Ouray Reservation in Table 11. This should be listed in one table or the other, not both. As a note of explanation, with the passage of PL102-575 by Congress in 1992 (the CUP Completion Act), the Northern Ute Tribe's reserved water rights were quantified and the settlement agreement was approved by Congress. The quantification will become finalized with the ratification of the agreement by the tribe and the state. The state is waiting for the tribe to approve the agreement before going to the state legislature for approval.

Denise Fort
April 8, 1997
Page 3

Additional bias is present in the report by the individual listing of concerns for each of the lower basin states, (Az., Cal. & Nev.) while the concerns of the upper basin states (Colo., NM, Ut., & Wyo.) are lumped together in one section. While the upper basin is more unified than the lower basin, each state has individual concerns and positions that are very different. For example, Utah is taking a very active role in looking at marketing of water as a tool to meet needs in the Colorado River Basin while the other upper basin states oppose this matter. Also Utah actively promotes cloud seeding and has had an ongoing program for the past 20 years of seeding winter storms in part of the Colorado River Basin. These issues are only mentioned in the report and then dismissed out of hand.

This biasing of the report to the lower basin states is further manifest by the long explanations of growing demands in California and Nevada as well as the water bank of Arizona. These explanations imply that the lower basin needs are more important than future upper basin needs. As the report points out, California has long used more than its share, with the implied recommendation that California be given even more because of a high demand. This gives rise to the idea that Colorado River operations should be "demand driven" and not "supply controlled". This goes against the fundamental reason the Colorado River Compact was negotiated. Demands in downstream states, i.e. the development of the Imperial Valley in the early part of the 20th century, alarmed the upstream states about their future. The Compact was negotiated to allocate supplies based on water supply availability and not water use demands. The failure of the report to reflect this reality indicates an underlying flaw in the understanding of the "Law of the River" and undermines the credibility of this report.

Further bias against current operations of the river is manifest in the statement on page 25, paragraph 3, which states, "Yet there are aspects of the Law of the River that are inflexible and create management problems in the rapidly urbanizing Colorado River Basin". Utah disagrees with this statement. The "Law of the River" has always been flexible to the point that consensus on needed changes is reached. Inflexibility is only introduced when one or more of the interested parties is unwilling to yield to the majority. Changes come slowly and deliberately and this is desirable as the impacts of change can affect many, the report points out. Many significant changes have been reached in the past through this process. For example the change to the annual minimum objective release of 8.23 MAF from the Upper Basin in normal years from the original compact requirement of 75 MAF in any 10 year period. Another example is the inclusion of a bypass of the Glen Canyon power plant to achieve sufficient flows for a test beach building regime in the 1996 AOP. These and other significant changes reflect the flexibility of the "Law of the River" when all parties reach consensus on the desirability of change. Failure of the report to distinguish deliberation and consensus building from inflexibility again underscores the failure of the report to have a true and fundamental understanding of the "Law of the River".

The recommendations calling for the Secretary of the Interior to formalize a cooperative management structure and allow more public input in developing a plan for reservoir operations

Denise Fort
April 8, 1997
Page 4

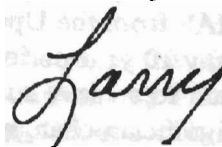
and surplus and shortage criteria that protects the entitlements of all basin states and meets federal statutory obligations and treaty obligations to Mexico ignores the current processes in place that provide the same function. The 7 state - 10 tribe meeting process to consult with the Secretary of the Interior and Interior agencies fulfills the same purpose. These meetings, along with the other forums listed below, provide ample opportunity for all interested parties and the public to participate if they so desire. Recommendations and comments are provided to the Secretary by this process. Through the Annual Operating Plan process, which is also open to the public, ample opportunities are made available for public input. Additional forums also include the Colorado River Basin Salinity Control Forum, and the Glen Canyon Adaptive Management Federal Advisory Commission.

The report fails to recognize political realities while calling for the federal government to mandate changes. This ivory tower approach ignores that the "Law of the River" is political in nature and that the Secretary is subject to immense political pressures. Calling for more studies, data collection, and agency re-organization is typical of the "think tank" approach.

Where are the concrete proposals that address the problems head on, i.e. what parts of the "Law of the River" should be examined and changed? If this report is to accomplish anything more than re-hashing previous studies, then the commission needs to make concrete proposals and be prepared to accept the major political battles while the interested parties struggle to reach agreement over a long period of time. An example of this would be the recommendation that an interstate water bank be developed between all the states, both upper and lower, to allow willing states to market water to those in need, including the federal government. While making this type of proposal will not make everyone happy, it would be a departure from previous reports and recommendations, and possibly provide the impetus to look at new ways to solve the problems facing the Colorado River Basin.

Thank you for the opportunity to review and comment on this report. A marked up copy of the draft accompanies this letter.

Thank you,



D. Larry Anderson
Director