



UPPER COLORADO RIVER COMMISSION

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

MEMORANDUM

APR 8 1997

303-236-4286

PostNet
Fax Note

Date
4/9/97

of pages
7

To
Ronald R. Jensen

Fax
Western Water Policy

From
Wayne Cook

Phone

TO: Mr. Dale Pontius

FROM: Wayne E. Cook
Executive Director

DATE: April 9, 1997

SUBJECT: PRELIMINARY COMMENTS ON YOUR DRAFT PAPER "COLORADO
RIVER BASIN STUDY"

Attached are preliminary comments to your subject paper. Although we realize that the final comment period has been extended until April 17, 1997, we wanted you to have our informal comments for consideration as you prepare for your report to the Western Water Policy Review Advisory Commission on the 17th of April.

We will provide formal and similar comments by April 17, 1997 for use in completing your final report.

If you have questions or concerns, please let us know.

WEC:pj

cc: Western Water Policy Review Advisory Commission

APR 11 1997

DRAFT

April 8, 1997

Mr. Dale Pontius
El Coronado Ranch
Star Route, Box 400
Pearce, Arizona 85625

Dear Mr. Pontius:

We appreciate the opportunity to informally comment on your Draft paper, "Colorado River Basin Study." Many of the comments are somewhat technical in nature, and we trust you will accept them in the spirit in which they are given.

We appreciate the report's ability to capture much of the history of many ongoing activities and contingencies within the Basin in such a way as may be understood by the reader. We also agree with many of your recommendations included in the Executive Summary, especially regarding endangered species recovery planning and implementation and ESA Section 7 activities. We are less enthusiastic about your recommendation regarding the Colorado River delta and the decommissioning of the Yuma Desalting Plant.

If the Colorado River delta restoration could be accomplished utilizing new river water or other system-waste supplies from the Mexicali area in Mexico, such activities should be pursued. However, restoration dependent on existing or additional mainstem waters of the Colorado River would be in direct conflict with the United States' utilization of such water for existing or future use.

We also have great reservations regarding your recommendation to decommission the Yuma Desalting Plant. Prior to decommissioning the Plant or even letting the Plant become inoperable due to obsolescence, we must honestly evaluate whether or not there are any other viable alternatives (engineering or political) to the Plant's ultimate function. Abandonment due just to "financial unwillingness" seems short sighted.

On Page 25 - The Law of the River - You suggested that the Grand Canyon Protection Act of 1992 redefined the "operating criteria" for Glen Canyon Dam and as such "...clearly form an overlay to the basic Law of the River." This is not true! The operating criteria referred to in the GCPA refers generally to powerplant operating criteria and does not involve system-wide operating criteria or Law of the River issues. In fact, the GCPA in Sec 1802(b) is very specific that "...the Secretary shall implement this section in a manner fully consistent with and subject to..." The GCPA is not and was never intended to be an overlay as you have suggested.

DRAFT

Mr. Dale Pontius
April 8, 1997
Page 2

The following page by page comments are provided for your further consideration.

Page 5 - Geography - First Paragraph:

Your reference to the "States of the Upper Division" and "States of the Lower Division" is incorrect. Article III(a) of the Compact "Apportioned...in perpetuity to the upper basin and to the lower basin..." The Upper Basin contains a portion of Arizona and the Lower Basin contains a portion of New Mexico and Utah. To differentiate this situation, the terms "Upper Division" and "Lower Division" are used in certain circumstances.

Page 8 - First Paragraph:

Your reference to individual States in this paragraph is now properly Upper Division States and Lower Division States not Basin States.

Page 8 - Hydrology - Third Paragraph:

Why do you not include the long-term historical average (14.95 maf) in the text to compare with tree-ring studies. We also believe, at best, the tree-ring studies might suggest rather than "indicate" a different long-term average flow.

In addition, the historical flows are calculated "virgin" flows, not flows measured for 100 years, and have ranged from 5.8 maf to 24.5 maf¹.

Page 10, First Paragraph:

Your comparison of Colorado River Flows 1896-1930 and 1930-1996 suggests that the average flow for the period 1930-1996 is 13.0 maf. In fact, the average for the 1930-1996 period is 13.9 maf. Releases from Glen Canyon Dam in 1983 exceeded 90,000 cfs.

Page 14 - Major Water Use and Allocation - First Paragraph:

What happened to the 1.0 maf that the Lower Basin was allocated by the Colorado River Compact in Article III(b)?

¹ Upper Colorado River Commission's 47th Annual Report, September 30, 1995

0-97 TUE 22:47 UPPER COLORADO RIVER COMM P. 64

DRAFT

Mr. Dale Pontius
April 8, 1997
Page 3

Page 14 - Third Paragraph:

The statement "...river has been over-allocated by 25%" must rely on tree-ring analysis, does not include Lower Basin tributary supplies and is not a valid statement.

Page 17 - Table 3:

The uses quantified in this table are for the Colorado River mainstem only.

Page 18 - Table 5:

The allocation percentages for New Mexico, Wyoming and Utah are scrambled. Utah = 23%, New Mexico = 11.25% and Wyoming = 14%.

Page 25 - The Law of the River:

(See Page 1)

Page 30 - First Paragraph - Line 3:

The Yuma Desalting Plant does not produce water, but only cleans up Wellton Mohawk return flows. The current "not accounting" of Wellton Mohawk return flow is just a temporary situation.

Page 30 - Third Paragraph - Line 4:

The Upper Basin is not required to deliver 1/2 of the Mexican obligation (Colorado River Compact Article III). The 8.23 maf minimum objective is a target objective in the 1968 operating criteria, does not interpret the Colorado River Compact and as such is not a legal requirement.

Page 32 - Table 6:

This title needs to reflect the values are Colorado River mainstem water use.

Page 45, Fourth Paragraph:

The discussion on tributaries needs to include a statement that the total Lower Basin apportionment is 8.5 maf.

TUE 22:46 UPPER COLORADO RIVER COMMISSION P. 85

DRAFT

Mr. Dale Pontius
April 8, 1997
Page 4

Page 46 - Last Partial Paragraph:

The Act of 1968 is the Colorado River Basin Project Act.

Page 47 - First Paragraph:

The Dallas Creek Project in Colorado has also been completed.

Page 47 - Last Paragraph, Line 3:

Perhaps your reference to the Lower Basin "...now diverting more than 7.5 maf..." needs some further explanation. Mainstem uses in the Lower Basin cannot exceed 7.5 maf unless a "surplus" condition has been determined (Article II(b)(1)-(3) of the decree in *Arizona vs. California*). Such a determination has been found from 1996 to 1997. Future availability of surplus water will be dependent on water supply and not demand.

Page 47 - Last Paragraph - Line 6:

The Upper Basin did not insist on equalization. The purpose of equalization was perhaps to smooth out power production at Lake Powell and simplify Federal power marketing.

Page 48 - Current Uses and Projected Demand in the Upper Basin - Last Paragraph:

The use of less than 7.5 maf as a target full depletion in the Upper Basin is not the result of any acceptance of the fact that flows are less than anticipated in 1922. Only 15 maf of the Lee Ferry supply was allocated between Basins, and today's historical flow is still nearly 15 maf. The Upper Basin, however, agreed to guarantee an average of 7.5 maf annually to the Lower Basin and presently has insufficient storage in Lake Powell or the entire Upper Basin to totally control the Lee Ferry flows. Therefore, the firm yield (26-year dry cycle) is approximately 6-6.5 maf depending on ultimate Mexican delivery requirements as required by Article III of the Colorado River Compact. As a result, the Upper Colorado River Commission does not object to the use of 6 maf as full development for planning purposes.

Page 49 - Table 7:

Reservoir evaporation in the Table appears to be too low. For instance, Lake Powell evaporation itself range from 575-625 thousand acre feet/year.

DRAFT

Mr. Dale Pontlus
April 8, 1997
Page 5

Page 50 - First Paragraph:

The CUP did not have a repayment problem that was solved in 1992. It had a ceiling issue. The authorized CUP indexed ceiling on total appropriations had been reached.

Page 50 - Last Paragraph:

Congress did not add an instream flow requirement to the CUP Project in 1990. The reallocation of 44,000 af of CUP water was completed prior to the 1988 revised DPR and was done in response to local concerns about Strawberry River and other Uintah Basin fisheries below the Strawberry collection system.

Page 56 - Bottom of Page - Program Accomplishments:

You need to add construction of the Redlands Diversion Dam Fish Ladder.

Page 58 - First Full Paragraph:

The more stable source of funding is additional CRSP revenues plus a significant increase in State cost sharing monies for construction activities.

Page 64 - Fourth Paragraph:

This entire paragraph is not in keeping with the departmental commitments in the Glen Canyon Dam EIS Record of Decision to use waters bypassed for dam safety. The power users are comfortable with the Record of Decision criteria for dam safety purposes, and Mr. Stevens' statement is irresponsible.

Page 65 - The Salinity Control Forum - Line 5:

The Federal Water Pollution Control Act (Clean Water Act) was extensively modified by P.L. 92-500 in October 1972. EPA, after consultation with the Basin States, then promulgated water quality standards for the Colorado River through downstream points. The Act also required a three-year review and report to EPA as to whether the standards have been met. Since the mid-1970's this review and reporting has been accomplished by the Salinity Control Forum and approved by EPA.

Page 72 - Table B:

The San Juan/Hammond contribution of 1.0 m tons/yr looks high.

DRAFT

Mr. Dale Pontius
April 8, 1997
Page 6

Page 81 - Navajo Claims to the San Juan River - Second Paragraph - Line 2:

New Mexico does not divert most of its Colorado River water to the Rio Grande River Basin through the San Juan Project. San Juan Chama Project diversions are only 22% of the present depletion by New Mexico and are exceeded by both local uses and present development on NIIP. New Mexico is presently using about 70% of its water allocation, assuming a 6.0 maf yield. Ultimate NIIP uses will utilize as much as 40% of New Mexico's Colorado River allocation.

Page 83 - Third Paragraph:

The Upper Colorado River Commission believes that congressional approval of the Colorado River Compact and Upper Colorado River Basin Compact made them Federal laws immunized from attack under the commerce clause (see *Intake Water Co. v. Yellowstone River Compact Commission*, 9th Cir., 769 F.2d 568, review denied 476 U.S.1163,90 L.Fd.2d 729,106 S.Ct.2288 (1986)). Therefore, the Sporhase decision does not apply to waters apportioned by the Colorado River Compact.

Page 103 - Last Paragraph:

Perhaps augmentation of the Colorado River is not legally required but Public Law 90-537 (Sec 202) made it clear that satisfaction of the Mexican Water Treaty (delivery of 1.5 maf) from the Colorado River Basin is a national obligation. To date, no action has been taken by the Department of the Interior to identify how this burden is going to be removed from the Seven Basin States where it presently rests.

We hope these comments have been constructive and helpful. If you have further questions, please let us know.

Very truly yours,

CC: Western Water Policy Review Advisory Commission