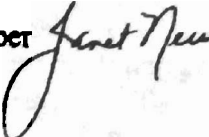


## MEMORANDUM

**TO** WWPRAC Members, Basin Researchers, and Staff

**FROM** Janet Neuman, Commission Member 

**DATE** April 17, 1997

**RE** River Basin Studies

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I am very, very sorry that I cannot attend the first day of the Boulder meeting to meet with the basin researchers and discuss their reports. I greatly appreciate the tremendous effort that all of the researchers have put into the studies. I think the final studies will constitute an important body of work, not only for the Commission, but for others as well. Following are my comments on 4 of the 6 basin studies. My comments on the Truckee-Carson and the Sacramento-San Joaquin studies will be sent under separate cover, along with comments on the watershed initiatives study. I have made a few general comments on each study, and then followed with specific comments organized in the same order as the report.

#### UPPER RIO GRANDE BASIN STUDY

**General Comments:** When I first started into this study, I was concerned that the economic perspective and focus of the discussion was going to make the study difficult to use, understand, and compare to the other basin studies. By the time I finished, this concern was for the most part eliminated. Overall, I think the study does an excellent job of describing the challenges in this basin and how the various issues interrelate.

#### **Specific Comments:**

**Executive Summary:** The one place I think the economic focus causes some problems is in the Executive Summary. Since many people may only read this section of the study, I think it needs to be particularly clear. The use of economic terms of art (such as "industrialized and monetized", "suboptimal allocation" and so forth, without lay definitions or sufficient explanation, makes the summary recommendations much too vague and dense. This section should be carefully reviewed and translated into more accessible language because it contains some very important points that lose value if they are too obscure.

**Pp. 14-15:** I hope that the section on state water laws is carefully reviewed by local experts for accuracy. There are a couple of points that don't seem quite right to me, however. On page 14, the last full paragraph is confusing in its description of how Texas law treats underground streams. In particular, the second to the last sentence makes no sense. On page 15, the reference to the "futile call" doctrine is misleading. This doctrine is applied generally in the western states with prior appropriation systems and is not unique to Texas.

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**P. 17:** The first full sentence refers to "gauged flows." Where are these measured? The first full paragraph describes the underdelivery of water under the Rio Grande Compact. What were the reasons given for the shortfalls? There is also a compact on the Pecos, a major tributary of the Rio Grande, and perhaps others as well, that should be covered in this discussion.

**P. 18:** The local district discussion highlights eight entities. How many districts are there all together, and how much of the basin is covered? What is the overall economic contribution, in addition to the per acre values discussed? The per acre values are missing for a few of the districts.

**Instream Flows:** I think the case needs to be developed for the true underlying reasons that instream flows need protection. Although I think this report covers this issue a bit better than some of the others, it is still easy to lose the point in the thicket. Is it only because of the Endangered Species Act? If so, then it would be easy to eliminate the problem by amending or repealing the ESA. Is it only to support recreation for urban dwellers? If so, then it is just a political battle between the urbanites and the agricultural interests. Both of these perspectives are too narrow and obscure the underlying importance of protecting water supplies for long term human needs of all sorts. I think it is critical to be very clear that ecological health of watersheds and the aquatic ecosystems they support is crucial to long-term sustainable use of resources, and thus crucial to the survival of human health, communities, and economies.

**Figure 2.1:** My comment on this diagram and the related discussion is related to the above comment. Don't the boxes really overlap? I see myself as occupying all four boxes, and I suspect many people would. That makes the whole system more complicated than just having the different groups "vote" their preferences, whether they are voting at the ballot box or in the marketplace.

**Figure 2.2:** It might be instructive to comment a little on what accounts for the significant difference in water consumption for these various cities, especially the contrast between Albuquerque and Santa Fe.

**Water Quality:** I assume the authors reviewed the EPA report submitted to the Commission? This information should be integrated. This same comment also applies to the demographic report, and the other information in "The West Today" studies. I realize the basin researchers have a tremendous job in terms of the amount of available material, but it seems that they may be better able to do some of this synthesis than Dan can possibly do for all of the basins.

**P. 67:** The text should clearly identify whose plan the Bosque Management Plan is, and what its legal effect is.

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**Problem Discussion/Solutions:** I found the discussion of the problems very insightful and instructive. For the most part, I think the recommendations section is also very helpful, but I think additional effort should be made to match the solutions to the problems, in sophistication, creativity, etc., and to be particularly clear about the federal role here. For instance, beginning right on p. 82, to what extent can the federal government directly deal with the four prerequisite factors for cooperative resource management? On page 97, I'm not sure that the recommendations on adaptive management are strong enough to accomplish any real change. The last two sentences on that page are particularly unsatisfying. Is this really all we can say?

On page 101, the recommendation for more "outreach" also seems significantly lacking in "oomph." At the bottom of that page, how do the recommendations about reducing transaction costs fit within the existing institutions, particularly the compacts? On page 102, relating to the "broker" discussion, it would be useful to have this author and the Columbia Basin researcher compare notes and see if the Northwest experience could be instructive here. To the extent that the federal government becomes an actual buyer or seller, rather than a broker, this may be perceived as a big threat by many groups.

The recommendations on page 103 sound like a suggestion for "economic impact statements." At the risk of sounding rather flippant . . . "Yuck!" Is this really what is intended, and, if so, how would they really be given any bite and how should they be used?

Finally, I also think the suggestion for "statements of federal interest" is rather weak. Is this really a request for quantification of federal water rights, among other things? Again, how would they be used, how would they be made effective, etc.?

What I am really trying to get at in these comments is that the study should clearly and concisely tie the proposals to the very good description of the problems earlier in the report. How will these suggestions address the serious groundwater overdraft problems, for instance, or begin to repair the Bosque ecosystem?

Again, I think that this study overall is very good, by both posing and beginning to answer the questions that I believe the Commission needs to address, with an excellent "local flavor."

#### **PLATTE BASIN STUDY:**

**General Comments:** I find it much more difficult to give detailed comments in response to this study. It could be partly because I am singularly unfamiliar with the Platte River, but I certainly don't consider myself well informed about any of the other basins except the Columbia, so that is only a partial explanation. My major overall comment is that I was not able to obtain from the study a clear, comprehensive picture of the Basin's make-up, its problems (other than the

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Endangered Species Act), and how the recommendations will help solve those problems. In other words, the study didn't help me become familiar enough with the Platte to understand what lessons can be learned from it, if any.

In some ways, the study seems too general--for instance, the description of the basin didn't give me enough information. From headwaters to mouth, what does the basin look like, what are the significant water problems, and how are they related to each other? Why is the Big Bend Reach so important? Which species are involved and how do they fit into the larger region? What are the economic implications of both species loss and species preservation? What are the economic contributions of the basin's agricultural sector? What are the other components of the basin economy? Are there any Tribal issues involved in this basin at all?

In other ways, the study was too specific. I got lost in the details of the various statutes, agreements, and lawsuits, without really getting a good "big picture" sense of what it all means or how it fits together (or doesn't, as the case may be).

Throughout the study, there is a need for much more summary and transitional discussion. As it is, the study seems to jump from one issue to the next, with insufficient explanation of linkages, and without conclusions for each section.

#### **Specific Comments:**

*Section II:* As discussed above in relation to the Upper Rio Grande study, the limited focus of discussion on the Endangered Species Act (and the suggestion on p. III-2 that one way of resolving the major conflict in the basin over water flows would be to repeal the Act) begs the larger question of why we have the Act in the first place. Why do we care about ecosystem preservation? At least in part, there is a strong argument that it simply makes sense to build water policy with respect for ecosystems and natural riverine functions, because if we don't, we are ineffectually fighting nature, and damaging our ability to use the water and related resources sustainably over a long period of time.

*P. II-4:* The last two sentences of the first partial paragraph on this page (about linking the Nebraska v. Wyoming case settlement negotiations with the ESA recovery process and the FERC proceedings) raise very important issues, that would seem to deserve more discussion in the later sections of the study.

*Pp. 11-21:* It is difficult to tell from the water quality discussion what the magnitude of this problem is. The EPA study prepared for the Commission should be incorporated to some degree, or at least referenced.

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***P. IV-1 et seq.:*** Several of the recommendations seem eminently sensible, but I did not get a good sense of how they would solve the problems identified earlier. The study clearly states that a "system" approach is needed to resolve flow problems in the Platte, and yet the proposals do not seem to rise to this challenge. The statements about river basin commissions seem circular: some such structure is needed, but the states don't want to give up any authority; the previous commissions failed because they weren't given sufficient authority, so any new bodies need to be given authority, and the states should assure that. Why should we assume that the states can or will do so?

***P. IV-5:*** Is there anything the federal government can or should do to help the states develop the necessary institutions discussed in this section?

## **COLORADO BASIN STUDY**

**General Comments:** I found this study to be very well done. It paints a very clear picture of the complexities and unique aspects of the Colorado River water management issues. I also think the recommendations are for the most part clear, specific and concrete, and seem to begin to address the problems identified. To be absolutely honest, this study gives me a headache, because it describes so well the incredibly difficult and convoluted problems in this basin. I also appreciated the good use of maps and other graphics.

### **Specific Comments:**

***Geography, et seq.:*** Right off the bat, the complexities begin to show up with the comment that 7500 square miles of Southern California is considered part of the Basin, even though it is "not a part of the natural drainage." Later in the study, the description of the massive physical manipulation of the Colorado, as well as the information about water imports from and exports to other basins, further develops the picture of a river being stretched perhaps way beyond its sensible limits to accommodate human desires. The note on page 10 that some observers believe that reservoir evaporation may in fact be causing a net loss in usable supplies is relevant here as well. And of course, the most significant fact of all in this regard is that the 1922 Compact was based on wet year data, thus memorializing "rights" to 15 maf of water every year, even though such rights may often amount to unrealistic expectations.

I think that the report could make some even more hard-hitting comments about this overall notion of "limits" than it does. Shouldn't it be federal policy that we at least try to respect the notion of the carrying capacity of natural systems? If so, then we have to recognize that there is only so much that one river can do, and at some point it just can't support any more growth in

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uses without some significant reallocation. I think there is still a blindness to this problem by many policy makers and certainly by constituency groups involved in specific disputes. The continued push for "augmentation" of supply is symptomatic of this refusal to accept limits, as is the position that delivery of water to Mexico is a federal obligation. It may be appropriate for it to be a federal financial obligation, but the water does have to come from somewhere. I think it defies common sense to deny that delivery of water to Mexico is a shared responsibility, just as it should be a shared responsibility to assure each state a reasonable share of basin supplies.

**Operation of the River:** One of the mind-boggling aspects of this study is the amount of money being spent on various aspects of river operation, particularly in trying to "fix" problems created by other aspects of operation. I think it would be extremely instructive to put all of these figures into a chart or matrix of some sort. For instance, there are the basic project numbers, such as the construction and O & M costs of the CAP, the CUP, and all of the other federal facilities. Then there are the environmental restoration costs, the tribal settlement costs, the salinity costs (including the staggering amounts for NOT operating the Yuma Desalter), and other items. Being able to compare and contrast these figures graphically would allow even more insight than reading about them narratively. In fact, the issues of cost effectiveness and mitigation costs loom so large in this basin that it might be appropriate to add a short section to the report pulling together this information in one place.

**P. 41:** The statement about the CAP Advisory Committee's recommendation against leasing Arizona water should be clarified. Was this recommendation heeded, and does that mean that the Arizona Water Banking Program discussed elsewhere is intended to cover non-CAP water only? Further down on the page, the references to "the settlement" are unclear. Which settlement is being discussed here?

**P. 42:** The way the last paragraph on this page reads, it sounds as if no review was done of the effect of CAP on endangered fish before construction, but only after the fact as part of the review of water delivery. Is that true? If so, it hardly seems cost effective to make decisions to commit millions of dollars to a project that then immediately creates the need to spend millions more to solve problems that probably could have been anticipated. We should expect more from federal decision-making.

**P. 43-44:** Where is the funding coming from for the "in-lieu recharge" plan? I can't help but hit myself on the forehead when I read that after all of Arizona's efforts to reform its groundwater law, at least part of the purpose of which was to encourage conservation of irrigation water, some retired land is being put back into production to take advantage of new supplies of cheap surface water. Maybe the market is making a sensible decision here, but it certainly sounds as if various programs are working at cross purposes to each other.

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*P. 45:* I appreciate Nevada's interest in obtaining a larger share of the Colorado River water, but once again, the water isn't going to come from the sky, and someone else is going to have to give it up. I therefore shudder to see policy makers abandoning sound planning goals (probably out of sheer frustration), such as requiring demonstration of firm supplies before approving development plans. I also recognize the need for flexibility, however, and it certainly seems sensible to allow Nevada access to tributary water even once it has reached Lake Mead (assuming access to good flow data).

*P. 50:* Does the URMCC seem to be working? Is it a model for other BOR projects?

*P. 55:* I think this study does a fairly good job in some places of pointing out that ecosystem preservation and sustainability are good things in and of themselves, not just because the FSA says species need to be preserved, but this point needs to be made early in the report as well as in the recommendations.

*P. 89:* I particularly appreciate the author's clear statement of the lessons learned from the Dolores River Watershed effort. It also seems that this is a fairly fragile alliance, with the parties still ready to formally challenge each other at the drop of the hat. Perhaps that is inevitable, however.

*Recommendations:* As mentioned above, I think the recommendations and associated "vision" are insightful and will be very helpful to the Commission as we prepare our final report.

#### **COLUMBIA BASIN STUDY:**

**General Comments:** Although (or perhaps because) I am most familiar with this basin among the six, I actually have fewer comments on the study. I think this report does an excellent job of describing the problems and challenges on the Columbia River, and begins to outline some possible solutions for moving ahead. I agree with nearly all of the report's statements and conclusions, and in the areas that I am not well-versed myself, I trust that the study is accurate and defensible because I know and respect the basin researcher. It may be more instructive for John to receive comments from some of the out-of-basin commission members, because they may find areas needing clarification that are not apparent to those of us who read about these issues every day with our morning coffee.

My comments and criticisms, to the extent that I have them, tend to be in areas where I would like to have more of John's clear thinking. For instance, the study "assumes" that future federal policy will be more ecosystem friendly, and that it will try to achieve more "natural river" functions. I am not sure that this is a safe assumption. I know that this is one of the principles that, so far at least, seems to find consensus among most of the commission members, but our

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that, so far at least, seems to find consensus among most of the commission members, but our discussions have only been preliminary. Therefore, I think this study should briefly state the case for this policy underpinning (above and beyond the ESA). The ESA can simply be perceived as a "threat" to do things a certain way—and a threat that can be eliminated. What we need are positive choices to achieve ecosystem health. This is the same comment I made on the other studies above, but I do not think the argument in favor of this approach can be made often enough.

*P. 183 et seq. (New Footings for Water Policy): P. 191* The study notes that "the role of government may not be to choose sides in value conflicts...." I think a stronger statement is in order here. It is true that existing federal programs embody and reflect many conflicting values such as Reclamation program incentives to divert and use water on one hand, while other agencies scramble to mitigate for the consequences of doing so. I think it is time for the federal government to reconcile some of these obvious and counterproductive policy conflicts, or at least be honest about their existence and the economic costs of working toward conflicting goals.

*P. 192:* The lessons discussed on this page seem too narrow. First, although it is absolutely true that the augmentation vs. drawdown debate needs prompt resolution, but aren't there even larger conclusions to be drawn from the foregoing discussion? If so, what are they? Second, the suggestion for state and federal agencies to "continue meetings" seems less ambitious than it should be. What are the implications for federal policy? What should be the federal strategy for getting the states' attention and cooperation here?

*P. 197:* I am concerned about the dichotomy set up between "management" and "nature." Isn't the real dichotomy between nature on one side and "contrariness" on the other side, by which I mean the refusal to manage with respect for natural parameters (and perhaps leaving some areas free of management, as noted in the footnote)? I think you need to put neon around the statement under "balance or thresholds" that local commitments to find balance have value, but only if they recognize that there can be no compromise with the threshold requirements of fish (or I would say "of basic ecosystem health"). This is an extremely important point that we need to keep surfacing as we move further into our discussion about governance.

*Pp. 198-200:* I found myself writing "Yes!" in the margin here a lot—I think the questions you pose hit the nail on the head. However, I'd love to have you hazard some answers to them as well. (You did do some answering, I realize.)

*Pp. 201-205:* I generally agree with your observations here about the challenges for federal agencies in encouraging effective watershed-based efforts. You note that it may not be possible yet to formulate specific recommendations here, or even general policy. However, I think that the Commission absolutely has to grapple with this issue and attempt to do so. In this regard, I



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think we need the best thinking from all of the basin researchers about just what such a policy might look like. These comments also apply to the adaptive management issue—I would like to see even more specific advice on what an effective infrastructure might look like, or how we go about heading federal policy in that direction—with specific funding and program elements.

Once again, congratulations to all of the basin researchers for a tough job well done.

JCN/jnm