

**City of Aurora  
City of Grand Junction  
Colorado River Water Conservation District  
Colorado Springs Utilities  
Denver Water  
Northern Colorado Water Conservancy District  
Pueblo Board of Water Works  
Southeastern Colorado Water Conservancy District  
Southwestern Water Conservation District**

April 22, 2005

The Honorable Gale Norton  
Secretary of the Interior  
1849 - C Street, N.W.  
Washington, D.C. 20240

Dear Secretary Norton:

We are writing to you on behalf of most of the major water user organizations and utilities utilizing water from the Colorado River in Colorado. These entities are the Cities of Aurora and Grand Junction, the Colorado River Water Conservation District, Colorado Springs Utilities, Denver Water, the Northern Colorado Water Conservancy District, the Pueblo Board of Water Works, the Southeastern Colorado Water Conservancy District, and the Southwestern Water Conservation District. These entities encompass the entire Western Slope of Colorado, and serve the bulk of the urban population and agricultural areas in the Colorado Front Range.

The 2005 Annual Operating Plan for Colorado River System Reservoirs provides that you will undertake a review in April 2005 to determine if the runoff forecast warrants an adjustment in reservoir releases from Lake Powell for the remainder of water year 2005. Recently, the Upper Division States of the Colorado River Basin<sup>1</sup> and the Upper Colorado River Commission wrote to you, expressing their united position that you should reduce the quantity of water released from Lake Powell below the minimum objective release of 8.23 million acre-feet ("MAF") in 2005. We are writing to express the support of the entities listed above for the position of the Upper Division States.

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<sup>1</sup> Colorado, New Mexico, Utah and Wyoming

**The Secretary has the authority to make a mid-year downward adjustment to release less than 8.23 MAF from Lake Powell in 2005.**

You clearly have the authority under applicable law to release from Lake Powell any amount less than 8.23 MAF in 2005. Moreover, because the Upper Division States have requested that you release less than this amount from Lake Powell, you should give this request presumptive consideration, since the Upper Division States bear the ultimate responsibility with regard to any obligations under Articles III(c) and (d) of the Colorado River Compact.

The keystone of the body of law known as the Law of the River is the Colorado River Compact. The Compact is not only an agreement among the seven Colorado River Basin States, but also it is federal law, is incorporated into other federal laws, and is the overriding and controlling authority as to your obligations in the storage and release of water in Lake Powell and other federal reservoirs in the Colorado River Basin. The Colorado River Compact imposes no burden or limitation on the Upper Basin to make any minimum delivery in any one year.<sup>2</sup>

The Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs ("LROC"), were authorized pursuant to § 602 of the 1968 Colorado River Basin Project Act to "comply with and carry out the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty."<sup>3</sup> The LROC cannot override the Colorado River Compact. Instead, the LROC is subject to the Compact. For example, the introduction to the LROC states, "The Operating Criteria will be administered consistent with applicable Federal laws, the Mexican Water Treaty, interstate compacts, and decrees relating to the use of the waters of the Colorado River." Additionally, Article II (5) of the LROC states that releases from Lake Powell "shall not prejudice the position of either the upper or lower basin interests with respect to required deliveries at Lee Ferry pursuant to the Colorado River Compact."

In fact, the minimum objective release of 8.23 MAF at Lake Powell was established by the Department of the Interior with the agreement of neither the Upper Basin nor the Lower Basin. This objective was established as a temporary condition pending the planned augmentation of flows of the Colorado River from other sources.<sup>4</sup>

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<sup>2</sup> Article III(d) of the Compact provides that the states of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75 MAF on a ten-year running average. Article III(c) provides the Upper Division States will bear one-half of any Mexican Treaty delivery obligation, if a deficiency in the quantities specified in Articles III(a) and (b) exists. For the past 10 years, the delivery at Lee Ferry was 102.5 MAF, more than enough under any interpretation of the Compact to comply with these Upper Basin obligations.

<sup>3</sup> 43 U.S.C 620(a)

<sup>4</sup> See, generally, Meeting of Federal and State Representatives for Review of Basic Data Pertinent to the Preparation of Operating Criteria for the Colorado River Pursuant to Section 602 of Public Law 90-537, United States Department of the Interior, Bureau of Reclamation, July 25, 1969; Notes of Meeting of the Task Force on Operating Criteria for the Colorado River on October 30, 1969; Letters to the Governors of the Seven Basin States from the Secretary of the Interior, December 16, 1969 at 3.

Therefore, the 8.23 MAF release objective has no special significance whatsoever. You are not bound by any existing law or policy to release a minimum quantity of 8.23 MAF. To the contrary, you have the authority to release less than this amount as conditions dictate, especially when requested by the Upper Division States.

Finally, you have the authority to deviate from the operations described in the Annual Operating Plan ("AOP"). You explicitly reserved such authority in the 2005 AOP, by providing for a potential adjustment in the quantity of water released from Lake Powell. Such a "mid-course correction" is entirely consistent with applicable law and the LROC.<sup>5</sup>

**The decision as to whether to adjust the minimum objective release in 2005 should be based on hydrologic conditions throughout the Basin.**

We believe your authority to consider the level of release from Lake Powell in 2005 should not be constrained solely to a consideration of runoff conditions into Lake Powell. Since pursuant to law the operation of Lake Powell is to be coordinated in certain respects with the operation of Lake Mead, you should also consider runoff and water supply conditions in Lake Mead and throughout the Basin in making your determination. In considering these basinwide conditions, it is our position that sound water supply management dictates you preserve additional basin storage by releasing less than 8.23 MAF of water from Lake Powell in 2005.

In the Lower Basin, extremely high precipitation and runoff have resulted in Lake Mead rising to elevation 1145.89 feet or 16 MAF or 62% of live storage capacity, as of April 20, 2005. The Lower Basin runoff this year has resulted in the filling and spilling of most Lower Basin tributary storage reservoirs. Substantial quantities of water continue to flow out of these Lower Basin tributaries, in excess of tributary uses, and into the mainstream. This water is being used to meet mainstream demands in the United States as well as deliveries to Mexico, thus reducing the need to release water from Lake Mead. In fact, the level of Lake Mead has risen well above elevation 1125 feet – the point at which Lower Basin surplus conditions would exist under the Interim Surplus Guidelines, and it is expected to remain above this level through early 2006 according to the latest 24 month study. As a result, the Lower Basin is under a substantially reduced risk of shortage conditions at this time.

In contrast to the conditions in the Lower Basin, water supply conditions in the northern Upper Basin remain below average. In Colorado, storage levels in reservoirs are still recovering from the past several years of drought. Throughout the course of the

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<sup>5</sup> § 602(b) of the 1968 Colorado River Basin Project Act directs the Secretary to submit the annual operating plan each year, and characterizes upcoming operations as "projected," which clearly contemplates potential mid-year adjustments in annual operations. Moreover, the LROC expressly reserves such authority in the Secretary, stating that the AOP "may be revised to reflect the current hydrologic conditions." LROC Article I(2). You have carefully and consistently consulted with the Basin States and other affected interests in this matter.

The Honorable Gale Norton

April 22, 2005

Page 4 of 5

spring, overall precipitation and snowpack conditions in Upper Basin tributaries have continued to decline, and the runoff forecast into Lake Powell is predicted to be near average. However, an average runoff will not substantially help the storage condition of Lake Powell. Storage in Lake Powell is at elevation 3357.48 or 8.1 MAF acre-feet or 33% of live storage capacity, as of April 20, 2005. Storage in Lake Powell remains dangerously close to the minimum power pool elevation, jeopardizing a critical source of revenues for programs important to the Department of the Interior and Bureau of Reclamation, including the Upper Basin and San Juan Recovery Programs.<sup>6</sup> Moreover, storage in Lake Powell will remain below the 602(a) level in 2005. As a result, the Upper Basin remains threatened with the potential impairment of annual consumptive uses pursuant to the Colorado River Compact. Storage in Lake Powell will also remain below the level of Lake Mead. In this regard, we note that the thrust of the Colorado River Basin Project Act of 1968, § 602(a)(3)(ii), is "to maintain, as nearly as practicable, active storage in Lake Mead equal to the active storage in Lake Powell."

As a general matter, prudent management of the system dictates holding as much water in upstream storage as possible. In 2005, this general principle is enforced by the relative abundance of water in the Lower Basin as compared to the drought conditions that continue to persist in large parts of the Upper Basin, and the relative storage conditions in Lakes Powell and Mead. With levels in Lake Mead up, and Lake Powell continuing to be down, the equities of relative risk of shortages in the Upper and Lower Basins would also dictate retaining some additional storage in Lake Powell.

Finally, simply because runoff conditions into Lake Powell are projected to be near average this year does not mean that the multiple year drought has passed. It is certainly possible that drought conditions could resume next year. Since the Colorado River Compact contemplates multiple year obligations of the Upper Division States, we believe you should manage the storage in Lake Powell with a longer term view. For all of the reasons stated above, this longer term view argues heavily toward retaining some additional storage in Lake Powell in 2005.

Therefore, we urge you to conserve water in the Upper Basin during the remainder of 2005 by reducing releases from Lake Powell to less than 8.23 million acre-feet. We appreciate your review and consideration of this important matter.

[Signatures on following page]

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<sup>6</sup> In this regard, please note House Report No. 1312 (April 24, 1968), to the 1968 Act, which at page 86 states: "Also the production of power and energy is a relevant factor that must be considered if the financial feasibility of Federal developments in the Colorado River Basin is to be assured."

The Honorable Gale Norton

April 22, 2005

Page 5 of 5

Sincerely,

CITY OF AURORA

  
Peter D. Binney, P.E.  
Director of Utilities  
City of Aurora

COLORADO SPRINGS UTILITIES

by 

DENVER WATER



Hamlet J. Barry III

CITY OF GRAND JUNCTION



Bruce Hill  
Mayor

Board of Water Works of Pueblo, Colorado

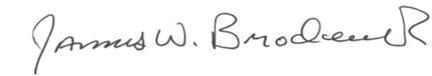
by:   
Alan C. Hamel  
Executive Director

  
R. Eric Kuhn  
General Manager  
Colorado River Water Conservation District

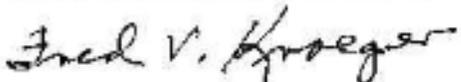
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Fred V. Kroeger, President