

APPENDIX C

Comment Letters Providing Issues for 10-Year Review



DEPARTMENT OF AGRICULTURE
ADRIAN J. POLANSKY, SECRETARY

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KATH RECLAMATION, GOVERNOR		
Date APR 18 2005		
Code	Surname	Date
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Copy to	1000, 1005, 1003,	1320 (WILSON) 1300

April 14, 2005

(Sunde)

Paula Sunde (EC-1340)
Bureau of Reclamation
Eastern Colorado Area Office
11056 West County Road 18e
Loveland, CO 80537-9711

RE: Ten-year Review of the Operating Principles Trinidad Dam and Reservoir Project

Dear Ms. Sunde:

I have received Brian Person's letter dated March 3rd concerning the initiation of a ten-year review. That letter asked for issues or comments to be addressed in this review. We would like all operations associated with Trinidad Dam and Reservoir Project reviewed. The review should not be limited to the two objectives listed in the letter, but it should also assure that the project has been operated in accordance with the *Operating Principles*.

To that end, I have listed some issues below that should be included, but any review undertaken should not be limited to these issues. As the result of recommendations made in the two previous reviews, some operations have been changed. There should be a full review of those operational changes, specifically:

- the permanent fishery pool
- stockwater releases
- acres irrigated under the project
- progress towards efficient application of available irrigation supply
- Municipal and industrial (M&I)

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Project	TRIN
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In addition, the following issues should be reviewed:

- flood control operations: regulation of flows and channel capacity below Trinidad Reservoir
- Trinidad Reservoir operations
- the status of other storage facilities in the project area, e.g. status and utilization of the Model Reservoir
- the hydrologic impacts of "lands removed from irrigation"

Division of Water Resources David L. Pope, Chief Engineer

109 SW 9th St., 2nd Floor Topeka, KS 66612-1283

Paula Sunde (EC-1340)
Page 2
April 14, 2005

These issues should be reviewed to determine compliance with the *Operating Principles*. Any issue reviewed should compare the operations under the following conditions: 1) no project, 2) if operated as provided for under the *Operating Principles*, and 3) actual operations. The modeling period should be sufficient to show the effects of the project. We would recommend that period should be from 1979 to the present.

We look forward to notice of the public scoping meetings and appreciate the opportunity to provide input on this ten-year review. Should you have any questions, please feel free to contact Kevin Salter, (620) 276 -2901 or David Barfield, (785) 296 - 3830.

Sincerely,



David L. Pepe, P.E.
Chief Engineer

DLM/ks/dlm

pc: Joe Harkins, Governor's Office
Lee Rolfs
David Brenn
Randy Hayzlett
Kevin Salter

STATE OF COLORADO

OFFICE OF THE STATE ENGINEER

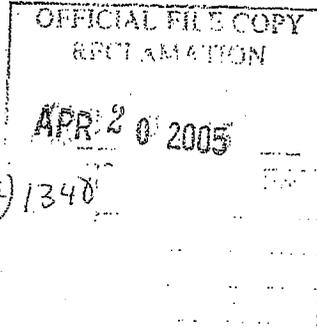
Division of Water Resources
Department of Natural Resources

1313 Sherman Street, Room 818
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Bill Owens
Governor
Russell George
Executive Director
Hal D. Simpson, P.E.
State Engineer



April 15, 2005

(SUMDE) 1340

U. S. Department of the Interior
Bureau of Reclamation
Eastern Colorado Area Office
11056 West County RD 18E
Loveland, CO 80537-9711
Attention: EC-1340, Paula Sunde

1009, 1005, 1003, 1320 (Wilson)

Subject: 10-Year Review of the Operating Principles for the Trinidad Project

Dear Ms. Sunde:

This is written in response to the March 3, 2005 invitation to submit issues or comments that the Division of Water Resources would like to see addressed in the forthcoming 10-Year Review.

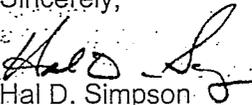
The operating principles refer to the District Storage Right, which in turn is controlled by the decree entered by the Colorado court in Civil Action 19793 (1965). In administering according to the terms of that decree, the Colorado State Engineer has operated one gaging station at Luning Arroyo, while the U.S. Department of the Army and the U. S. Geological Survey have operated gaging stations at the Purgatoire River at Thatcher and on Von Bremmer Arroya. The court's determination of the need for "...a gauging station on the river below Von Bremmer Arroya...", was based on engineering studies of the Bureau of Reclamation.

In the Bureau of Reclamation's 1996 Review of Operating Principles and Project Operations, only the Purgatoire River at Thatcher gage and the Trinidad gage were relied upon for the purpose of evaluating hydrological operations of the Project for the period 1985 through 1994 (see pg. 10, 11, and 22-25).

The United States has recently decided to discontinue operation of the two above-referenced gaging stations it has operated since 1966. The Colorado State Engineer believes that continuing operation of the Purgatoire River at Thatcher gaging station is key to administration of the District Storage Right as set forth in the Model Change Decree and to the Bureau's ability to perform evaluations of hydrological operations of the Project in the future. In the absence of federal participation, it will be difficult for the Colorado State Engineer to operate all three gages, and it may be appropriate to evaluate, as an adjunct to the review of the operating principles, which gaging stations should continue to operate and whether an appropriate role for the Bureau of Reclamation should include funding the continued operation of these gages through a cooperative agreement with the U. S. Geological Survey.

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File Code: W-40
Project: TRI
Folder I.D.: 1808
Control No.: 500493

Sincerely,


Hal D. Simpson
State Engineer

4/20/05
bn

MacDOUGALL, WOLDRIDGE & WORLEY, P.C.
 530 Communication Circle, #204
 Colorado Springs, CO 80905-1743

**ACTION
 REQUIRED**

M.E. MacDougall
 Julianne M. Woldridge
 Henry D. Worley

jwoldridge@waterlaw.tv

Telephone
 (719) 520-9288
 Fax
 (719) 520-9447

October 5, 2005

Official File Copy
File Code: WTR-4.00
Project: TRIN
Folder I.D.: 180082
Control No.: 5010082

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Date _____		
Code	Surname	Date
1300		
Copy to: 1320, 1003		

U.S. Dept. of the Interior
 Bureau of Reclamation
 11056 West County Rd. 18E
 Loveland, CO 80537-9711
 Attention: EC-1340, Paula Sunde

10/12/05

Re: 10-Year Review, Operating Principles, Trinidad Project

(WILSON) (Vetner) (100)

Dear Ms. Sunde:

This office represents the Purgatoire River Water Conservancy District, the entity charged with operating the Irrigation Capacity of the Trinidad Dam & Reservoir Project in Trinidad, Colorado.

As part of the new 10-year review of the Operating Principles for the Trinidad Project, the District requests that the Bureau of Reclamation analyze the impacts, if any of storing direct flows in the Irrigation Capacity during the non-irrigation season. This subject has been discussed before. Attached is some correspondence explaining the history of this issue.

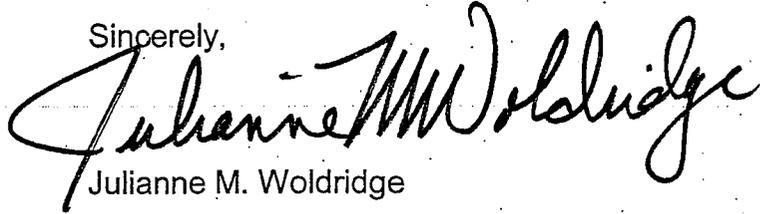
The District believes that this practice is in compliance with the Operating Principles, an opinion also previously expressed by the Bureau and the State of Colorado. In recent discussions with the State of Colorado, the State suggested that the issue be analyzed as part of the 10-year review of the Operating Principles in order to satisfy concerns raised by the State of Kansas.

Attached for your information is a series of correspondence between the District and the State of Colorado in this respect, which explains in more detail the proposed practice of storing non-irrigation season direct flows.

Please consider this a formal request to consider the effects of such a practice as part of the 10-year Review now underway. If the District can be of any assistance, or can provide any further detail on the proposed practice, please feel free to contact me or the District's general manager, Dr. Jeris Danielson.

Ms. Paula Sunde
October 5, 2005
page 2 of 2

Sincerely,



Handwritten signature of Julianne M. Woldridge in cursive script.

Julianne M. Woldridge

JMW
enclosures
cc: PRWCD
Carol Angel
Dennis Montgomery

STATE OF COLORADO

OFFICE OF THE STATE ENGINEER

Division of Water Resources
Department of Natural Resources

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Bill Owens
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Hal D. Simpson, P.E.
State Engineer

November 2, 2004

Ms. Julianne M. Woldridge
MacDougall, Woldridge & Worley
530 Communication Circle, #204
Colorado Springs, CO 80905-1743

Re: State Engineer's Order of April 27, 1989

Dear Julianne:

This is written in response to your letter dated July 30, 2004 in which you requested that the State of Colorado rescind the above referenced order as it relates to storage of winter direct flows under the priorities of the Trinidad Project ditches

I have carefully considered the information provided in your letter, as well as other pertinent information. I have consulted with legal counsel in reaching the conclusion that it would be imprudent to grant this request until at least such time as the District has made additional efforts to demonstrate that such storage operations, independent of the volumetric limitations associated with the transferred Model storage right, will not result in future violations of Article IV. D. of the Arkansas River Compact, and has requested approval to amend the Operating Principles to specifically allow storage of water during the winter separate from the transferred Model storage right from the entities who approved the original Operating Principles. Such evidence will unquestionably facilitate amendment of the Operating Principles as recommended by the United States Bureau of Reclamation in the December, 1996 Final Report Review of Operating Principles and Project Operations.

In Kansas v. Colorado, 514 U.S. 673, 681 (1995), the U.S. Supreme Court pointed out that the Bureau of Reclamation, recognizing that Article IV-D of the Arkansas River Compact prohibits any development of the Arkansas River basin that results in a material depletion of usable river flow, conducted studies regarding the future operation of the Trinidad Project and then established Operating Principles whereby the Trinidad Project could be administered without adverse effect on downstream water users and the inflow to John Martin Reservoir. The Governor of Kansas reviewed the Bureau of Reclamation's proposed Operating Principles and indicated that if five additional conditions were adopted, then Kansas would be in a position to approve the amended Operating Principles and to support completion of the project. The studies conducted by the Bureau of Reclamation accounted for water stored during the winter under the direct-flow water rights of the Project ditches as counting against the Model Storage Right, and these studies were what the Bureau and the

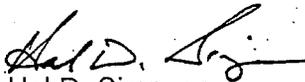
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District relied on to demonstrate that future operation of the Trinidad Project would not injure downstream water users and the inflow to John Martin Reservoir.

While the Special Master acknowledged that there might be some dispute about the interpretation of the Operating Principles in his 1992 decision granting Colorado's motion to dismiss Kansas' Trinidad Reservoir claim in *Kansas v. Colorado*, he also said, "there is no doubt that the 1961-64 studies did not include the practice of rollover or the storage of winter water outside the Model right." He said that Kansas' ultimate approval of the Operating Principles with the Kansas conditions "represented the kind of good faith cooperation that must be forthcoming if the Compact purposes are to be fulfilled." He further found that Kansas had clearly relied on the 1961-64 studies and the Operating Principles to provide protection to its own Compact entitlement. The Special Master concurred in the Bureau of Reclamation's recommendations in its 1988 report that all interested parties work together to amend the Operating Principles to provide for optimum beneficial use in the Trinidad area "consistent with the protection of downstream non-project rights" and that any proposed amendments be submitted to Kansas for approval. In light of the Special Master's concurrence in the recommendations of the Bureau of Reclamation's 1988 report, I do not feel that I can rescind the above-references order.

I want to encourage the District to consider developing additional technical evidence that will effectively assure downstream non-project water users that their interests will not be adversely affected in order to advance this proposal to achieve optimum beneficial use of water in the Trinidad Project area. Although the cost of an additional technical analysis will undoubtedly be significant, the potential cost to the people of Colorado and the Purgatoire River Water Conservancy District to defend against another lawsuit is much greater. If I can be of assistance to the District in this regard, please feel free to call on me.

Sincerely,


Hal D. Simpson
State Engineer

cc: Carol Angel, First Assistant Attorney General
Ken Knox, Chief Deputy State Engineer
Steve Witte, Division 2 Engineer
Dennis Montgomery, Hill & Robbins
Rod Kuharich, Director, CWCB

MacDOUGALL, WOLDRIDGE & WORLEY, P.C.

530 Communication Circle, #204
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Juliianne M. Woldridge
Henry D. Worley

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Telephone
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(719) 520-9447

July 30, 2004

Mr. Hal Simpson
State Engineer
1313 Sherman Street, Room 818
Denver, CO 80203

Re: State Engineer's Order of April 27, 1989

Dear Hal:

This office represents the Purgatoire River Water Conservancy District ("Districts"), which operates the irrigation capacity of the Trinidad Dam and Reservoir Project, a Bureau of Reclamation Project on the Purgatoire River. The District owns and controls the Model Storage Right for 20,000 acre-feet, as well as an additional storage right for the Joint Use space in the Trinidad Reservoir. The District also manages and controls direct flow water rights for participating ditches in the Project. The purpose of this letter is to address the storage of direct flows during the non-irrigation season. As you may know, the District has been discussing this issue with the Division Engineer, Mr. Steve Witte since November, 2003.

I believe a little background information is helpful. In 1965, the District obtained a decree changing certain water rights involved with the Project. That decree, as confirmed by the Supreme Court in Purgatoire River Water Conservancy District v. Kuiper, 197 Colo. 200, 593 P.2d 33 (1979), changed to storage the winter direct flow use of the Project ditches' water rights.

In the 1980s, in relation to the Kansas v. Colorado litigation, the State of Kansas raised objections to the District's practice of storing winter direct flows under the priorities of the participant ditches. Although Kansas' claims against the District in regard to the operation of the Project were dismissed from the Kansas v. Colorado litigation, this issue continued to be one of contention among the involved parties.

In 1988, the Bureau issued its Review of the Operating Principles, questioning whether the practice of storing winter direct flows under the priorities of the ditch rights was in compliance with the Operating Principles governing the Project. As a result of that report, the Colorado State Engineer issued a letter dated April 27, 1989, copy

Mr. Hal Simpson
July 30, 2004
page 2

attached, ordering that any storage of such winter direct flows must be accounted for as stored under the 1908 Model Storage Right. This order appeared to be based upon the Bureau's interpretation of the Operating Principles at that time.

In 1996, however, the Bureau reversed its position on this issue. In its 1996 Review of Operating Principles, the Bureau states clearly "[t]he storage of winter water under the direct flow rights in any of the irrigation capacity is allowed by the operating principles..." However, the Bureau, for some apparently illogical reason continued by recommending that amendments to the Operating Principles be made "to clarify this issue." December, 1996 Final Report Review of Operating Principles and Project Operations, Bureau of Reclamation, p. 34.

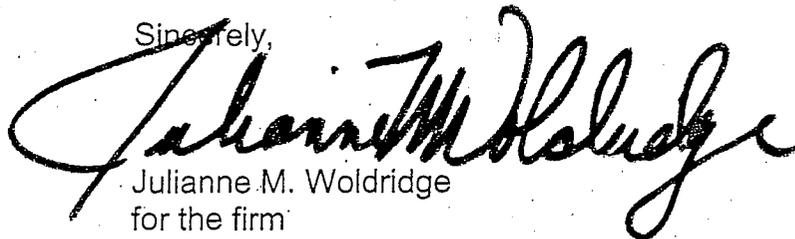
The District has always and continues to take the position that it has the right to store winter direct flows under the direct flow priorities and that such should not be accounted for as having been stored under the 1908 Model Storage Right. The District may store such in the Joint Use Capacity and under the conditional storage right for such. This is allowed under Colorado law - the 1965 change decree provided for such and is binding upon all Colorado water users and the State of Colorado. This is allowed under the current Operating Principles, and the Bureau has now confirmed this as well.

Attached is some historical documentation of this issue, which I provided to Mr. Witte.

Given this, the District hereby formally requests that the State of Colorado rescind that order in the State Engineer's letter of April 27, 1989 as it relates to storage of winter direct flows under the priorities of the Project ditches. I also would like to request a meeting with you to discuss this matter, at your convenience.

I look forward to your response on this matter.

Sincerely,



Julianne M. Woldridge
for the firm

JMW

Enclosure

cc: PRWCD w/o enc.

Jeris Danielson w/o enc.

Steve Witte w/o enc.

2954-2L

2954-11L j:\PRWCD\7-30-04 Simpson

Julianne M. Woldridge

From: Julianne Woldridge [jwoldridge@waterlaw.tv]
Sent: Friday, November 07, 2003 10:26 AM
To: 'steve.witte@state.co.us'
Cc: 'PRWCD'
Subject: PRWCD winter direct flow storage

COPY

Steve:

As promised, attached is some historical information on the issue of storing winter direct flows under the ditch priorities as opposed to storing under the 1908 Model Storage right. Attached is a 5/1/98 letter I wrote to Jack Garner on this issue, as well as a summary of the history which I prepared in 1999.

Although I had discussions with Wendy about rescinding the SEO's 4/27/89 letter, it appears that PRWCD never formally requested rescission as I had thought.

Julianne M. Woldridge
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This message is intended for the above referenced person(s) only, and contains privileged and/or confidential information. If you receive this message in error, please contact the sender and delete the message.

2. in its December, 1988 Final Report, Review of Operating Principles, the Bureau of Reclamation took the position that such storage under any other right than the 1908 Model storage right "differs from the intent of the operating principles", and recommended that such practice be discontinued until the Operating Principles were amended "to recognize this practice";

3. on April 27, 1989, the Colorado State Engineer ordered that such practice be allowed only if the storage is charged to the 1908 Model storage right, until such time as the Operating Principles were amended "or a court of competent jurisdiction determines that these practices are not a departure from the intent of the Operating Principles..."; and

4. the District has attempted for years, but has been unable to secure amendments to the Operating Principles specifically recognizing the practice of such storage outside the 1908 Model storage right. Most recently, at the 1998 Arkansas River Compact meeting, both the Bureau and the State of Colorado reversed previous positions and refused to support such amendments.

I. HISTORY

A brief history is necessary to an understanding of the District's rights. The Arkansas River Compact is a compact between Colorado and Kansas regarding the Arkansas River, signed December 14, 1948. Both states are bound by its terms and are entitled to enforce it.

The compact specifically provides:

This compact is not intended to impede or prevent future beneficial development of the Arkansas River basin in Colorado and Kansas by federal or state agencies, by private enterprise, or by combinations thereof, which may involve construction of dams, reservoirs and other works for the purposes of water utilization and control, as well as the improved or prolonged functioning of existing works: Provided, that the waters of the Arkansas River...shall not be materially depleted in usable quantity or availability for use to the water users of Colorado and Kansas under this compact by such future development or construction.

The Trinidad Reservoir is a post-compact reservoir. The Project was authorized by Public Law 85-500 of the United States Congress, dated July 3, 1958, "subject to the conditions recommended by the Chief of Engineers..." The conditions

recommended by the Chief of Engineers are in House Document 325, dated January 30, 1956.

Neither of these documents contain "operating principles" per se. The Chief of Engineers' recommendation, however, was that the irrigation capacity (including the irrigation pool and the unsedimented joint use pool) be operated in accordance with five conditions, one of which was "the storage in Trinidad Reservoir of the winter flows of the Purgatoire River historically diverted for winter irrigation of project lands."

Studies were then conducted about proposed operation of the Project. As part of these studies, the original "Operating Principles" were developed (presumably as a joint effort between the Bureau and the District). There were no signatures on the original document.

On April 15, 1965, the District Court, Las Animas County entered a decree changing the 1908 Model storage right to the new Trinidad Reservoir site. That decree stated that storage of water under the 1908 Model right must be conducted in accordance with the conditions of operation in House Document 325 and the "Operating Principles" that had been developed. This decree was later interpreted by the Colorado Supreme Court to have also changed the winter direct flow ditch rights to storage in Trinidad Reservoir for administration by the District. This decision binds the District, the State of Colorado, and several ditch companies downstream of the Project.

On February 10, 1967, the District and the United States entered into what has become known as the Repayment Contract. This contract incorporated the Operating Principles that had been developed, thus making them a contract between the two parties. Pursuant to this contract, the Corps is to regulate and store water at the District's direction, under the terms of the Operating Principles.

In late 1966, the State of Kansas requested that five conditions be added to the Operating Principles. The District approved these conditions on January 26, 1967. The Bureau added these conditions to the Operating Principles on March 26, 1967.

One of these conditions states:

Assurances that there will be no significant increase in water use which would result in a depletion of water yield to other Colorado and Kansas water users.

Another of the conditions requires that any subsequent amendment should be subject to review and approval of the same interests as provided for in the original procedure.

In December, 1988, the Bureau concluded its Review of the

Operating Principles and issued a Final Report. This report concluded that storage of winter direct flows outside the 1908 Model storage right "differs from the intent of the operating principles", and recommended that such practice be discontinued until the Operating Principles were amended "to recognize this practice". The report also concluded, however, that such practice would not "cause the future usable inflow to John Martin Reservoir to be less with Trinidad Project in operation than it would have been without the Project."

In December, 1996, the Bureau concluded another review of the Operating Principles and issued a Final Report. It concluded that "[t]he storage of winter water under the direct flow rights in any of the irrigation capacity is allowed by the operating principles", but unnecessarily goes on to recommend that "the operating principles should be amended to clarify this issue." The Bureau also concluded that the operation of the Trinidad Project "has not resulted in an increase in depletions of Purgatoire River flows in the Project area and has had no effect on downstream Colorado and Kansas water users" in accordance with the condition added to the Operating Principles at Kansas' request. Furthermore, to attain optimum beneficial use of the District water supply, which is the intent of the Operating Principles, the Bureau recommended that the storage of winter direct flows outside the 1908 Model storage right be recognized.

In 1986, Kansas sued Colorado in the United States Supreme Court, alleging that Colorado had allowed the Trinidad Project to operate in violation of the Operating Principles, thus violating the Arkansas River Compact. Specifically, Kansas complained about the practice of storing winter direct flows outside the 1908 Model storage right.

In 1992, the Special Master dismissed Kansas' claims relating to the Trinidad Project. The Special Master found that in order to establish a violation of the Compact, Kansas had to prove that there was a material depletion of the flows of the Arkansas River, in usable quantity or availability. The Special Master found that Kansas had not proven this. The Special Master also held that Kansas cannot unreasonably withhold its consent to the amendments to the Operating Principles.

The Special Master acknowledged that there was a dispute about the interpretation of the Operating Principles, but also expressed no doubt that such storage was not included in the 1961-64 pre-project studies. He expressed his concern that the project "was not initially operated according to the earlier understandings"; however, acknowledged that the only issue before him was one of Compact violations, not contract violations.

Because the Operating Principles do not specifically recognize winter direct flow storage outside the 1908 Model storage right, the dispute that has arisen is about how the Operating Principles should be interpreted. Kansas'

interpretation is that they do not authorize such storage. The District's position is that such storage is and has always been authorized. In 1988, the Bureau took the position that such storage was not within the intent of the Operating Principles. In 1996, the Bureau modified its position, stating that such storage, while possibly a departure from the pre-project planning model, was allowed by the Operating Principles. It recommended that the Operating Principles be amended to clarify this. Colorado has taken the position that such storage is permitted by the Operating Principles.

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DAVID I. LIBERMAN

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May 1, 1998

Mr. Jack Garner
Bureau of Reclamation
11056 West County Road 18E
Loveland, CO 80537-9711

Re: Trinidad Reservoir Operating Principles

Dear Jack:

Pursuant to our February 18, 1998 meeting in Kansas, the Purgatoire River Water Conservancy District provides the following information:

Irrigated Acres

The Project lands are identified in the original (1965-66) contracts with the Ditch companies that participate in the Project. The total is more than 19,717 acres; but not all of the acres are irrigated in any given year and some may never be irrigated. The original Operating Principles designated water rights and acres by participating ditches. Three of those ditches listed elected not to participate fully in the Project, but the corresponding water rights and acres were never deleted from the lists in the Operating Principles. The Bureau has proposed to delete them, which would change the total irrigated acres to 19,499. This proposed change is reflected in the amendments to the Operating Principles proposed by the Bureau in November, 1997.

The District does have procedures for verifying that the number of irrigated acres does not exceed 19,717. Prior to opening the irrigation season, the District asks the participating ditches to identify the number of acres they anticipate irrigating. Enclosed is a copy of the March 10, 1998 letter. All of the ditches did not respond and the District renewed its request in an April 14, 1998 letter, copy enclosed.

The District has the authority to ensure that participating ditches do not exceed acreage specified in the ditch contracts. In addition, the District has the authority to limit irrigated acreage within the Project to ensure the limit in the Operating Principles is not exceeded. There are certainly numerous ways to do this. The current procedures appear to be

Mr. Jack Garner
May 1, 1998
Page 2

adequate.

In 1994-95, the District commissioned a 100% field survey of irrigated acres in the Project. This survey verified that the 19,717 acre limit was not exceeded in 1994.

Finally, the District's consultant spot checks irrigated acres on occasion.

The District would like to focus on the maximum number of irrigated acres in the Operating Principles, and have some flexibility on the numbers under each ditch. The ability to move acres around within reason is beneficial. The currently proposed amendments specify that the acres per ditch will be as reflected in the list "as nearly as practicable." This provides the flexibility needed to best manage the water.

There is a current proposal being discussed to reduce the acres under the Model by 400 and under the Salas by 50, and to increase the acres under the Lewelling and McCormack by 100. Although this changes the acres under each ditch, the total limit is still not exceeded.

ALLOCATION

The Bureau's 1996 Review of Operating Principles expressed concern over how the District determines transportation losses and the irrigation requirement for Project ditches. Article IV, paragraph B.2. of the Operating Principles states:

All water deliveries to the 19,717 acres of the District irrigable area will be limited during the irrigation season to the irrigation requirements at the farm headgate as determined by the District. Allowance for canal and lateral losses on the individual ditch systems will also be determined by the District.

Paragraph C.2. states:

The District water supply will be allocated by the District to the ditches within the District to provide each acre of the District irrigable area an equitable share of the District water supply after allowance has been made for individual ditch transportation losses, provided such allocation will not exceed the irrigation

Mr. Jack Garner
May 1, 1998
Page 3

requirements at the farm headgate.

Prior to opening the irrigation season each year, the District's consultant forecasts the water which may be available and makes an initial allocation to the ditches. If necessary, the District makes additional allocations or reallocates water that is left, before closing the irrigation season. Enclosed is a copy of Jeris Danielson's April 23, 1998 letter, with additional details on the procedures used by the District.

CURRENT STORAGE

The ruling in Purgatoire River Water Conservancy District v. Kuiper, 197 Colo. 200, 593 P.2d 333 (1979) confirmed the District's right to store winter direct flow. It states:

Highland has contended that the 1965 transfer decree merely changed the place of storage of the Model Storage Right to Trinidad Reservoir and did not change to storage the winter direct flow use of the Project ditches. This change of use was set forth as a part of the plan in House Document 325 and the Operating Principles, both of which were incorporated by reference in that decree. The clear effect of the transfer decree was to make the change as set forth in those documents. So far as the persons who are bound by that transfer decree are concerned, the effect was to change both the place of storage and the use of winter direct flow.

A copy of the published opinion is enclosed.

Details on storage of such water is provided in Mr. Danielson's enclosed letter.

CONCLUSION

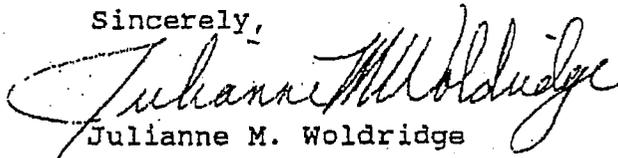
Several letters have now circulated concerning what happened at the meeting in Kansas City on February 18, 1998, and what information the various parties were supposed to supply. As is usual in a meeting with that many people, I am not sure everyone heard the same thing. In addition, because of the enormous amount of correspondence that has circulated over the years regarding the Operating Principles, and the passage of many years since this began, some may have temporarily forgotten some

Mr. Jack Garner
May 1, 1998
Page 4

information that was previously supplied. I hope that the February 18, 1998 meeting served to open a dialogue and communication between the parties to discuss the proposed amendments to the Operating Principles and the related details. If, therefore, any of the involved parties desire additional information from the District, whether requested February 18, 1998 or not, I urge them to contact me. The District will make every attempt to provide such additional information. It is important that we keep the lines of communication open for this process to succeed for everyone.

In addition, as soon as is practicable, I would like to set dates for the special ARCA meeting or to discuss things further. Please let me know how you would like to do this.

Sincerely,



Julianne M. Woldridge

JMW

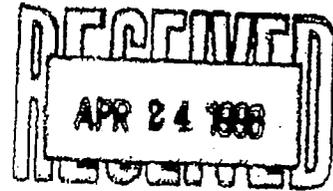
Enclosures

cc (w/ enc.):

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Jeris Danielson (mail)
David Pope and Leland Rolfs (fax)
John Draper (mail)
Wendy Weiss (fax)
Steve Miller (fax)
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April 23, 1998

Ms. Julianne M. Woldridge, Esq.
MacDougall Law Office
102 North Cascade Avenue, Suite 400
Colorado Springs, CO 80903

Re: Trinidad Reservoir Operating Principles

Dear Ms. Woldridge:

The following information is submitted concerning certain procedures followed by the Purgatoire River Water Conservancy District (PWRCD) for inclusion in your response to the United States Bureau of Reclamation.

Issue 1. **Summarize the Procedures Utilized by the PRWCD in Establishing Allocation of Project Water.**

The PRWCD is required by Article IV, C, 2 of the Operating Principles for the Trinidad Dam and Reservoir Project and by Part B - Allocations of the Purgatoire River Water Conservancy District Operating Criteria to make an allocation of the available District Water Supply so as to provide an equitable share of water to each irrigable acre within the PRWCD. This allocation is not allowed to exceed the irrigation requirement at the farm headgates.

The allocation process begins with an initial allocation based upon the reasonable minimum supply expected to be available. This initial estimate is made utilizing forecasting techniques which predict reservoir inflow from observed snowpack values, estimated return flows and accretions to the river below Trinidad Dam, and, consideration of the amount of water in storage in Trinidad reservoir at the time of the determination. This initial allocation is made in advance of the irrigation season, usually around the first week in April. As additional snowpack and runoff data become available, adjustments to the initial allocation are made.

In no case is any ditch allowed to divert more than the current District

allocation. If a ditch reaches the allocation, no further diversions are allowed until all other ditches have diverted water in amounts to reach the current allocation.

Issue 2. **Describe the Process Utilized by the PRWCD in Determining the Irrigation Requirement**

The District irrigation requirement is determined by the PRWCD pursuant to Paragraph 4.02 of the Purgatoire River Water Conservancy District Rules and Regulations.

The PRWCD irrigable area is located in a fairly confined and compact area and does not experience substantial variations in climatic, hydrologic or soil characteristics across the service area. As a result of this compactness, the general uniformity of cropping patterns, and the overall condition of having a water supply generally substantially less than the ideal maximum full crop requirement, the PRWCD irrigable lands are considered to have the same general irrigation requirement. The irrigation requirement is established by consultation with the District's consulting engineer, consideration of information available from state and federal agencies and ditch companies, and information provided by individual water users. The District has determined the maximum irrigation requirement shall not exceed that determined for the Hoehne Ditch by the Division II Water Court in Case No. 86CW25 where the court found, after extensive expert testimony, that the maximum requirement was 4.4 acre-feet per acre.

Issue 3. **Describe how Ditch and Canal Losses are Used by the PRWCD**

Due to the compact nature of the District irrigable area and the similarity in ditch systems, the PRWCD has determined that by allocating equal amounts of water per acre at the river headgates of each ditch that an equitable allocation of project water is achieved for each irrigable acre. As resources permit, the District is committed to begin the expensive process of actually measuring canal losses to determine whether refinements can be made to the allocation process. Individual ditch companies are responsible for ensuring that distribution of water is done on an equitable basis to individuals under each ditch.

Issue 4. **Describe the Historic Utilization of Direct Flow and Storage Rights in the Project Area Prior to Project Development**

Prior to the development of the Trinidad Project, direct flow water

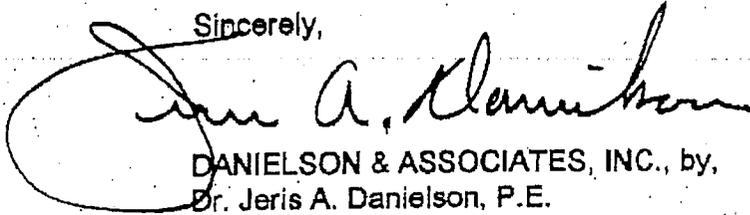
rights in the Project area diverted water on a year around basis for direct irrigation of more than 21,000 acres in what would become the Project irrigable area. The Model Reservoir storage right was exercised, in priority, for storage of up to 20,000 acre-feet in the Model Reservoir. This stored water was subsequently released for irrigation of lands under the Model ditch system. At no time was water stored in the Model Reservoir by exercise of the direct flow water rights listed in Article IV, paragraph A "Water Rights" in the Operating Principles - Trinidad Dam and Reservoir Project. The Colorado Supreme Court has determined that the storage of the direct flow water rights in Trinidad Reservoir during the non-irrigation season is proper and required by the Project enabling legislation and does not result in injury to downstream water users. Studies by the United States Bureau of Reclamation confirm the lack of injury caused by this practice, and, in fact, indicate that the practice results in enhanced flows to downstream water users when compared to the water available to downstream users during the pre-project practice of winter irrigation.

The position of Kansas that water stored during the non-irrigation season under the direct flow water rights must occur in the transferred Model storage account is totally contrary to historic practice and denies the full exercise of the transferred Model storage right. In 1998, the storage of water during the non-irrigation season under the direct flow rights is expected to exceed 12,000 acre-feet. If the PRWCD is required to store this water in the transferred Model storage account, the District will be denied the right to store in excess of 12,000 acre-feet under the Model storage right, which has a priority date of 1908 and is substantially senior to any right ascribed to John Martin reservoir, when John Martin reservoir is *spilling!* This requirement would result in an economic loss to the PRWCD in excess of \$120,000 and will reduce the water available to the District irrigated lands by an amount equal to 0.6 acre-feet per acre. This represents a reduction in allocation of 24 percent.

To require that direct flow water, which was never stored historically, now be stored in lieu of storage of 1908 priority water in the Model storage space is punitive and amounts to a taking of private property rights. This position of Kansas is especially egregious considering the finding by the USBR that the practice of storing non-irrigation season flows in the joint-use capacity, instead of practicing winter irrigation, results in increased flows to downstream water users when compared to the flows available under the historic method of operation.

I trust this provides you with the input needed to respond to the USBR.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeris A. Danielson". The signature is written in a cursive style with a large, looping initial "J".

DANIELSON & ASSOCIATES, INC., by,
Dr. Jeris A. Danielson, P.E.
President

cc: PRWCD Board Members
Thelma Lujan

511. T

STATE OF COLORADO

COLORADO WATER CONSERVATION BOARD
Department of Natural Resources

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Denver, Colorado 80203
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Richard D. Lamm
Governor
J. William McDonald
Director
David W. Walker
Deputy Director

March 3, 1986

Mr. Raymond H. Willms
Project Manager
U.S. Dept. of the Interior
Bureau of Reclamation
Eastern Colorado Projects Office
P. O. Box 449
Loveland, CO 80539-0449

Re: E-100

Dear Mr. Willms:

In accordance with your letter dated December 20, 1985, and the extension of time subsequently agreed to, there are transmitted herewith my comments and recommendations on the first draft of the U.S. Bureau of Reclamation's review of the Operating Principles for the Trinidad Dam and Reservoir Project.

A. Authorizing Legislation For the
Trinidad Dam and Reservoir Project

Since there seems to be considerable misunderstanding about the history of the Trinidad Project, I believe it will be helpful to review the authorizing legislation for the project as a background to my comments. The Trinidad Dam

2. The conclusion that the Operating Principles are "based on" and must be interpreted in a manner consistent with the conditions used in the Operation Studies is contrary to the interpretation of the Operating Principles by the PRWCD and the Colorado water officials. I do not understand the basis for the Bureau's conclusion that "[t]he primary purpose of the Trinidad Project operating principles was to codify operation parameters used in operation studies of the 1965 irrigation report." (p. 26). The differences between the wording of the Operating Principles and the conditions used in the Operation Studies leads me to conclude that this was not the case. The normal rule for the interpretation of contracts is to look first to the plain meaning of the language used in the agreement and only in the case of ambiguity to resort to evidence outside the document. Looking at the language of the contract between the United States and the PRWCD and the Operating Principles, which were made a part of that contract, I see no reason to resort to the conditions used in the Operation Studies to interpret the Operating Principles.

Paragraph 9.a. of the contract states that the Corps of Engineers, at the PRWCD's direction, shall regulate and store the water of the Purgatoire River to which the PRWCD is entitled under the terms and conditions of the contract, the Operating Principles, the Operating Criteria, and the

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laws of the State of Colorado. No reference is made to the conditions used in the Operation Studies as a further condition on the obligation of the Corps of Engineers to regulate and store water "to which the District is entitled."

Looking next at the Operating Principles, Article IV.D.2(b) states as follows:

"(b) During the non-irrigation season the District will exercise the direct flow water rights and the District storage right only at such times and to the degree as necessary to assure:

"(1) That the maximum possible storage of reservoir inflow is accrued.

"(2) The stock water allowance is distributed in a manner determined equitable by the District." (Emphasis omitted.)

This language should be compared to Condition 3 in the Operation Studies, which provided as follows:

"3. Store in Trinidad Reservoir, under the Model right (maximum rate of 700 c.f.s. and 20,000 acre-foot filling) winter (November through March) flows of the Purgatoire River historically diverted for winter irrigation of project lands which are in excess of flows required to meet the lesser of either the historical diversions or the decreed rights of the Ninemile and Highland Canals and 5 c.f.s. passed through the reservoir for livestock or domestic water purposes. . . ." (Emphasis in original.)^{9/}

^{9/} Irrigation Report, supra, vol. 2 at 53.

There is a substantial difference between the language in Article IV.D.2(b) of the Operating Principles and Condition 3 of the Operation Studies. Article IV.D.2(b) provides that the PRWCD will exercise the direct-flow water rights and the District storage right during the non-irrigation season to assure that "the maximum possible storage of reservoir inflow is accrued." By contrast, Condition 3 provided for storage, "under the Model storage right," of winter flows historically diverted for winter irrigation of project lands. Had it been the intention of the parties to "codify" Condition 3 in Article IV.D.2(b), it seems reasonable to assume that the Operating Principles would have used language similar to Condition 3. The obvious and substantial difference between the language in Article IV.D.2(b) of the Operating Principles and Condition 3 of the Operation Studies leads me to reject the Bureau's interpretation of the Operating Principles.^{10/}

10/ The Operating Criteria support the interpretation of the PRWCD and the Colorado water officials. Part C.2(a)(1) of the Operating Criteria provides that during the non-irrigation season, reservoir inflow "stored under the transferred Model right" will be credited one-third to the Model Account and two-thirds to the Project Account until specified limits are met. Part C.2(a)(2) then provides that all reservoir inflow storable in the unused sediment capacity during the non-irrigation season shall be stored and credited to the Project Account. The Operating Criteria demonstrate that the Bureau and the District knew how to specify storage "under the transferred Model right" when they wanted to do so. Thus, the fact that Article IV.D.2(b) of the Operating Principles did not provide for storage of reservoir inflow during the non-irrigation season "under the

In this regard, it is important to note the qualification on the conditions used in the Operation Studies:

"It is assumed that operation of Trinidad Reservoir in accordance with conditions 1, 2, 3, and 4, as outlined above, can be accomplished under the provisions of Colorado law and the Arkansas River Compact and that improvement of the Trinidad Project area water supply can be accomplished without any net depletion over the period of study to downstream water users and the inflow to John Martin Reservoir." (Emphasis added.)^{11/}

In fact, operation of Trinidad Reservoir in accordance with Condition 3 could not be accomplished under the provisions of Colorado law. That was the basis of the defendants' argument in Purgatoire River Water Conservancy Dist. v. Kuiper, 197 Colo. 200, 593 P.2d 333 (1979). Highland Irrigation Company and Ninemile Canal Co. argued that they were entitled to divert water during the winter under their direct-flow rights, which are senior to the Model storage right, until those rights were fully satisfied without regard to their historical diversions. Thus, they argued that storage in Trinidad Reservoir should be enjoined during the winter to satisfy their senior rights. In Purgatoire River Water Conservancy Dist. v. Kuiper, the Colorado Supreme Court recognized that it was necessary to change

transferred Model right" refutes the Bureau's conclusion that the Operating Principles should be interpreted to incorporate that limitation.

^{11/} Irrigation Report, supra, vol. 2 at 55.

both the place of storage of the Model storage right and to change the decreed direct flow rights of the project water users to storage to accomplish the purposes of the project as set forth in House Document 325 and the Operating Principles. 593 P.2d at 337. Further, the Court held that the clear effect of the 1965 transfer decree was to make both changes. Id. at 337-38. That undoubtedly explains why the Operating Principles did not incorporate Condition 3 used in the Operation Studies.

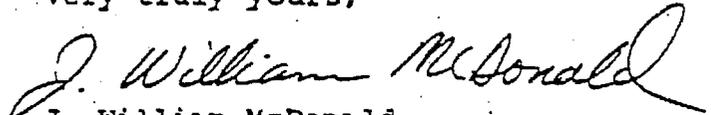
For the foregoing reasons, I believe it is incorrect to assume that the Operating Principles "codified" the operating conditions used in the Operation Studies. In my opinion, the Operating Principles should be interpreted on the basis of the language used in Article IV.D.2(b) of the Operating Principles, which directs the District to exercise the direct flow water rights and the District storage right to assure that the maximum possible storage of reservoir inflow is accrued, subject to the other provisions of the Operating Principles and the laws of the State of Colorado. Thus, I conclude that the storage of winter flows under the direct flow decrees and the storage of more than 20,000 acre-feet in Trinidad Reservoir at one time under the Model storage right are permitted under the Operating Principles.

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CONCLUSION

In light of the substantial number of errors in the draft report, as well as the disagreement over the interpretation of the Operating Principles, I join with the PRWCD in requesting a meeting of those entities involved in the review process with the Bureau after all comments have been submitted.

Very truly yours,


J. William McDonald
Director

JW McD/DMM:ncr

cc: B.E. Martin
LTC David E. Peixotto
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