

COMMENT LETTER

RESPONSES



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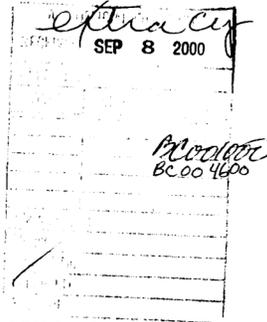
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September 7, 2000

VIA FAX AND OVERNIGHT MAIL

Ms. Jayne Harkins
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 Bureau of Reclamation
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United States Bureau of Reclamation
 Lower Colorado Regional Office
 P.O. Box 61470
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Re: Colorado River Interim Surplus Criteria-Comments on DEIS for 15-year Agreement Governing Lower Basin Water Allocations-Reference DES 00-25

Ladies and Gentlemen:

Enclosed please find the comments of the Union Park Water Authority to the Draft EIS ("DEIS") concerning the 15 year agreement for the proposed Colorado River Interim Surplus Criteria affecting the Lower Basin ("15-year agreement"). The Union Park Water Authority and its attorneys did not receive a copy of the DEIS until September 6, 2000, though one was requested much earlier. The short time frame allowed for comment on this important document and the underlying decision is utterly inadequate to the importance of the topic to the Lower Basin and to the State of Colorado. The Union Park Water Authority requests an additional sixty (60) days beyond September 8, 2000, to make additional comments.

The Union Park Water Authority is composed of the following members, all of which have actual or projected water service responsibilities in the area of southern and southeastern metropolitan Denver and environs: Arapahoe County, Parker Water and Sanitation District, Rangeview Metropolitan District and Arapahoe County Water and Wastewater Authority. The Denver metropolitan area and surrounding communities lie to the east of the Rocky Mountains, but, for Colorado River Compact purposes, are considered a part of the Colorado River basin when Colorado River water is used east of the continental divide. The UPWA is attempting to develop the Union Park Reservoir Project ("Union Park Project"), designed to store surplus flows from the Upper Gunnison River for delivery to both the east and west slopes of Colorado. The Union Park Project is a high altitude, off-river storage project. The Gunnison is a major tributary of the Colorado River, and the basin of the Gunnison River lies entirely within Colorado.

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The Union Park Project lies approximately 35 miles above the Aspinall Unit, a series of three federal reservoirs constructed under the authority of the Colorado River Storage Project Act ("CRSPA"). The largest of these is Blue Mesa Reservoir with a storage capacity of roughly a million acre-feet. The UPWA and its predecessor, Arapahoe County, have been in litigation for 12 years to attempt to obtain water rights to store water at the proposed Union Park Reservoir for municipal uses. UPWA believes that an annual average of 110,000 to 120,000 acre feet may be diverted in each year for use on both slopes. In that litigation, the U.S. Bureau of Reclamation, has now asserted the ability to utilize power generation, recreational and flood control rights at the Aspinall Unit to block new municipal appropriations in Colorado. The United States has not yet made similar assertions related to the other CRSPA units, being the Glen Canyon, Flaming Gorge or Navajo facilities, but plainly could. Since Colorado has the largest entitlement to the Upper Basin's Compact share, the inability of Colorado to develop has a major impact on the Upper Basin's ability to develop.

Comment Summary

1 The 15-year agreement, viewed in concert with related agreements concerning usage in California, affords major, new protections to municipal and industrial use in the Lower Basin, and California in particular. The needs of the Lower Basin cannot be viewed in isolation; without a concurrent commitment to protect municipal requirements in the Upper Basin, including Colorado, there is no protection for the Upper Basin. The DEIS fails to consider either the significance or the practical effect of vigorous, current federal efforts to prevent development of Upper Basin's Compact share for municipal use. The UPWA is deeply concerned that the 15-year agreement will be utilized to support the continuing efforts by the federal government to prevent additional usage of Colorado's Compact share on the Colorado front range. Without a concurrent commitment to develop water resources in the Upper Basin for actual use, the usage of surpluses generated in the Upper Basin will be permanently targeted for use in the Lower Basin for municipal and industrial use and for the protection of endangered species there and in Mexico.

The DEIS fails to discuss the federal government's assertion that its ownership of CRSPA facilities in the Upper Basin allows it to prevent the upstream development of Colorado's Compact share for municipal use. The protection of municipal and industrial uses in the Lower Basin, while actively attempting to prevent municipal use in the Upper Basin, is a threat to the long-term interests of the Upper Basin states. The interests and needs of both basins must be considered concurrently.

2 The DEIS's sensitivity analysis indicates that the threat to Lake Powell storage levels may be very great during periods of prolonged drought. The analysis contained in the DEIS appears to be founded on average flow conditions. A threat to Lake Powell storage levels is a threat to the Upper Basin states, including Colorado, and needs to be taken far more seriously.

3 The DEIS also fails to take into account the importance of groundwater banking of artificial surplus waters in the Lower Basin on Lake Powell storage levels. First, there is a question as to whether

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1: The DEIS recognized that future water development will be taking place in the Upper Basin. The computer model simulations of the Colorado River used in the DEIS incorporate an Upper Division depletion schedule, developed by the Upper Colorado River Commission in 1996 in coordination with the Upper Basin States. This Upper Basin depletion schedule, as contained in Appendix K, shows Upper Basin water development taking place in the future with Upper Basin depletions increasing with time. For the FEIS a revised depletion schedule, developed in 1999, was incorporated into the Colorado River computer model. While the analysis performed for the FEIS uses increasing depletion estimates for the Upper Division, the development of specific new water projects within the Upper Division and the environmental compliance and the legal issues to be resolved in such specific projects are not part of the scope of this proposed action.

2: The analysis does show that Lake Powell storage is sensitive to periods of drought under all alternatives considered in the EIS. Changes in Lake Powell storage resulting from surplus water deliveries to the Lower Basin is an important impact being analyzed in this EIS.

3: The Colorado River Basin Project Act of 1968 (CRBPA), in Section 602 (a)(3), states that water not required to be stored under Sections 602 (a)(1) and 602 (a)(2) of the CRBPA shall be released from Lake Powell under specified conditions, and one of those conditions is if it can be reasonably applied in Lower Division States to the uses specified in Article III (e) of the Compact. Article III (e) of the Compact specifies water must be applied to domestic and agricultural uses. The CRBPA further specifies that water is not to be released from Lake Powell when the active storage in Lake Powell is less than the active storage in Lake Mead. As long as the conditions set forth in the CRBPA and the LROC for Colorado River reservoirs are satisfied, we believe the release of surplus water for groundwater banking is fully in compliance with applicable law. Finally, the Lower Division states each define groundwater banking to be a beneficial use.

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groundwater banking is a current, beneficial use of Compact water under §602. This question is separate and distinct from how wise banking might be from an engineering standpoint.

This is a highly relevant inquiry, in that the delivery of artificial "surplus" waters for groundwater banking will require lowering Lake Powell to make equalizing deliveries to Lake Mead. The draft agreement should be modified to prevent lowering of Lake Powell storage levels to make deliveries to the Lower Basin for other than current, beneficial uses, and should specify that releases should not be made for groundwater banking in the Lower Basin.

4

The 15-year agreement appears to contain the potential for substantial damage to be done to Upper Basin interests absent firm requirements for limiting or de-linking equalizing releases from Lake Powell to Lake Mead. The strategy of lowering Lake Powell to make delivery of artificial surpluses to the Lower Basin is, in UPWA's view, highly risky.

Colorado and the Rest of the Upper Basin Will Only Be Protected by Development of Their High-Altitude Storage Capacity--The 15-Year Agreement Contains no Assurances of Colorado's Right to Develop its Remaining Compact Share

The 15-year agreement offers significant assurance to the Lower Basin population centers that municipal and industrial water will be available for delivery during the 15-year agreement period, at some substantial risk to Lower Basin agriculture. At the same time, however, the United States and environmental groups are acting to prevent new municipal appropriations in the Upper Basin, principally in Colorado. We do not believe that these developments can be ignored by the DEIS, or that they are unrelated.

5

The 15-year agreement does offer Colorado and the Upper Basin some degree of certainty with regard to water allocation in the Lower Basin. The principal assurance to the Upper Basin is establishing firm benchmarks as to when the Secretary will act to declare surplus or shortage conditions in the system. Clearly, the agreement favors the certainty of municipal supplies in the Lower Basin when viewed in light of the active construction of additional storage there and the re-allocation of Lower Basin priorities.

The situation in the Upper Basin inspires less confidence. When, at the same time as municipal supplies in the Lower Basin are being protected, the U. S. Bureau of Reclamation is acting to prevent municipal development of Upper Gunnison waters in the Colorado portion of the Upper Basin, there is little cause for the Upper Basin states to believe that they are truly protected. In essence, the silence of the Upper Basin gives Lower Basin interests a virtual green light to assure the survival of the surpluses past the 15-year point by utilizing vigorous and active efforts to prevent Upper Basin development.

Without a comprehensive commitment to act to develop Upper Basin resources, the 15-year agreement is but half a loaf. The agreement fails to take account of any need to act to develop Upper Basin water resources to meet critical needs there. The DEIS fails to evaluate the impact of

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4: As noted in Section 1.4.2, the equalization requirement in the LROC is the mechanism through which delivery of surplus water to the Lower Basin can influence the operation of Glen Canyon Dam resulting in changes to the storage of water in Lake Powell. Changes in Lake Powell storage resulting from surplus water deliveries to the Lower Basin is an important impact being analyzed in this EIS.

5: The DEIS recognized that future water development will be taking place in the Upper Basin. The computer model simulations of the Colorado River used in the DEIS incorporate an Upper Basin depletion schedule, developed by the Upper Colorado River Commission in 1996 in coordination with the Upper Basin states. That Upper Division depletion schedule, shows Upper Basin water development taking place in the future with Upper Basin depletions increasing with time. For the FEIS, a revised depletion schedule, developed in 1999, was being incorporated into the Colorado River computer model. While the analysis performed for the FEIS uses increasing depletion estimates for the Upper Division, the development of specific new water projects within the Upper Division and the environmental compliance and the legal issues to be resolved in such specific projects are not part of the scope of this proposed action.

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Upper Basin development on the needs and water availability in the Lower Basin, including the extent to which development of high storage capacity in the Upper Basin might lead to less frequent surplus conditions in the Lower Basin. The situation in the Upper Basin is not neutral. The U.S. BUREC and the U.S. Fish and Wildlife Service are asserting legal positions which are making it more difficult to appropriate water under the Upper Basin States' Compact shares. This is not a theoretical concern, but one which exists today, and which can only worsen if continued for 15 more years.

The 15-Year Agreement is Not Without Risk to the Upper Basin

7

Though the primary risks inherent in the 15-year agreement will fall within the Lower Basin, the agreement is not without risk to the Upper Basin. It is apparent from the notice that the Metropolitan Water District of Southern California ("MWD") is a major beneficiary of the agreement. It is clear that MWD has major new assurances that it will be able to deliver a firm supplies of water for municipal and industrial ("M & I") use during the 15 year period. The risks seem to fall mainly on agricultural use in the Lower Basin, and upon storage levels in Lake Mead. It seems clear that a series of drought condition years would cause a major run-down of Lake Mead storage levels.

8

The likelihood of a major rundown in Lake Mead storage should be further evaluated under historic drought conditions, as well as under anticipated "average flow" conditions. To the extent that this was done in the Sensitivity Analysis of Shortage Assumptions, major decreases below storage protection targets occur at Lake Powell. In the Final EIS, a line should be included in the Lake Powell End of Year Elevations to show the collapse of storage levels below the 3630 level targeted for protection by the 15-year agreement. The results of the sensitivity analysis are startling, and are deserving of far greater attention in the DEIS.

15

Should a storage rundown occur, and should major shortages develop in the Lower Basin, the Upper Basin is theoretically protected by a required de-linking of equalizing flows from Lake Powell, behind Glen Canyon dam, to Lake Mead under §602 (a). It is virtually certain that strong political pressure would be brought to bear to release Compact storage from Lake Powell to relieve shortage conditions at Lake Mead and in the Lower Basin generally. The 15-year agreement does not appear to contain assurances that the Secretary would not act to meet shortage conditions by releasing waters from Lake Powell, other than to mandate a minimum storage value at Lake Powell of 14.85 maf and a minimum storage target of elevation 3630.

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There appears to be a danger that the flow assumptions which underlie the 15-Year Agreement are too optimistic, and that greater attention needs to be paid to the effect on storage levels of prolonged low flow, or drought, conditions. Indeed, modeling of other parameters indicates that the actual fluctuations may be far greater than those depicted on the end of year elevations.

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6: Comment noted.

7: See response to Comment 5-2 with regard to effects of interim surplus criteria on the Upper Basin. The FEIS addresses the risk of severe drawdown of Lake Mead.
8: The method used to model the future inflows into the Colorado River in the FEIS is referred to as the Index Sequential Method (ISM). This technique has been used since the early 1980s and involves a series of simulations, each applying a different future inflow scenario. Each future inflow scenario is generated from the historical natural flow record by "cycling" through that record. As the method progresses, the historical record is assumed to "wrap around," yielding a possible 85 different inflow scenarios. The result of the ISM is a set of 85 separate simulations (referred to as "traces") for each operating criterion that is analyzed. The ISM captures the range of historical inflows that include drought periods, wet periods and in-between periods. This method enables an evaluation of the respective criteria over a broad range of possible future hydrologic conditions using standard statistical techniques.

15: The Lake Powell water surface elevation of 3630 feet is not an elevation identified as a specific threshold water surface elevation. As such, this specific elevation was not analyzed. Other Lake Powell water surface elevations were analyzed that ranged from 3695 to 3612 feet. These range of elevations that were analyzed include all the elevations identified as specific threshold Lake Powell water surface elevations.

16: With interim surplus criteria in effect, the Colorado River would still be operated according to existing regulations. Please see response to Comment No. 5-2.

9: Elevations of lakes Powell and Mead may fluctuate more than 10 feet within any given year. These fluctuations are represented by end-of-December analyses for Lake Mead and end-of-July water level analyses for Lake Powell. However, the Index Sequential Method of modeling which was performed using monthly time steps (see response to Comment 61-8), and presentation of 10-percent, 50-percent and 90-percent exceedence levels (see Section 2.3.4) indicate reasonable responses of reservoir levels to a wide range of hydrologic conditions.

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The Needs of the Lower Basin for Certainty Cannot be Divorced from Identical Needs in the Upper Basin

10 The Lower Basin cannot be viewed in isolation from the Upper Basin. The Secretary has now taken the position that BUREC may operate CRSPA facilities to prevent Upper Basin development, at least development not politically favored by the Secretary. This position is dangerous to the position of the Upper Basin, despite any assurances that Colorado's negotiating team may have given to the other Upper Basin States. If BUREC can utilize CRSPA to prevent, rather than to aid, Upper Basin development, why should the Upper Basin believe that Lake Powell storage levels will remain inviolate, if indeed they will at all? Could a 14.85 maf storage level at Lake Mead trigger Compact delivery requirements at the other, smaller CRSPA reservoirs above Lake Powell?

Given BUREC's recent attempts to prevent Upper Basin development in Colorado, representing the majority of the Upper Basin's Compact Share, the opportunity afforded the Upper Basin to sue the Secretary to protect Lake Powell storage levels may not be a viable remedy.

Inadequate Attention is Paid to the Delivery of "Surplus" Waters For Groundwater Banking in the Lower Basin

Groundwater banking in the Lower Basin of genuine flood surplus flows is unobjectionable, and generally wise. The situation is different where the delivery of artificial surpluses, which require lowering Lake Mead storage levels, is made for groundwater banking.

11 To protect the Upper Basin, it is imperative that equalizing releases from Lake Powell not be made to Lake Mead to replace water delivered for groundwater banking. The 15-year agreement, and the DEIS, fail to account for the potential impact on the Upper Basin from groundwater banking in the Lower Basin.

The UPWA questions whether groundwater banking of other than flood surplus flows is a current, beneficial use in the Lower Basin for which deliveries of other than flood surplus flows are authorized for Compact purposes.

The Protection Offered to the Upper Basin is Illusory Given Related Actions by the United States

12 The UPWA thus brings a unique perspective to its comments. Though the 15-year agreement is ostensibly designed, in part, to offer assurance to the Upper Basin states, including Colorado, that its right to develop Upper Basin allocations will be protected, such protection appears to be illusory, at best. The United States is already moving aggressively to prevent Upper Basin development predicated upon its control of federally owned facilities, including CRSPA facilities.

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10: The statement that the "Lower Basin cannot be viewed in isolation from the Upper Basin", is a true and valid statement. In the analysis, both the Upper and Lower basins were considered. Future increased water development in the Upper Basin is incorporated into the analysis. Computer model simulations of the Colorado River used in the DEIS incorporate the 1996 Upper Basin depletion schedule, developed by the Upper Colorado River Commission in coordination with the Upper Basin States. For the FEIS, an updated depletion schedule, developed in 1999, was used. The computer modeling performed for all alternatives showed no instances where water stored in reservoirs above Lake Powell was required to be released to satisfy the requirements of the Colorado River Compact.

11: During the interim surplus criteria period, the agencies that have contracted for surplus water will use surplus water, when available, to meet direct water supply demands, as well as to provide a source of water for conjunctive use and storage programs. The delivery of water to Colorado River water users will be in accordance with the guidelines developed for the selected surplus alternative, if one is selected, and will be consistent with the Law of the River. The FEIS considered and evaluated the potential impact to the Upper Basin users resulting from the surplus alternatives. The analysis results indicated that the interim surplus criteria would have no significant effect on the Upper Basin users as a result of the interim surplus criteria.

12: Reclamation is required to take certain actions to administer United States obligations under the Endangered Species Act and we acknowledge that some actions to meet species protection mandates may affect river operations. Reclamation's required actions to protect and enhance habitat for threatened and endangered species in the United States should not be interpreted as opposition to Upper Basin development. The United States does not assume an obligation to mitigate for adverse impacts in Mexico, but supports joint cooperation projects that would benefit both the United States and Mexico. We acknowledge that in the long run, Upper Basin development will reduce the amount of surplus water available for delivery in the Lower Basin.

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Recent activities and litigation in the Lower Basin and in the Rio Grande raise concurrent concerns about future use of the Endangered Species Act to bypass statutory and Compact requirements in the name of species protection. The United States and numerous environmental groups are moving aggressively to utilize the Endangered Species Act to prevent additional water development in the Upper Basin and elsewhere, and to concurrently re-orient the use of federal water facilities and water operations to protect endangered species. The DEIS fails to analyze the likely impact of these activities and litigation upon the future operation of facilities in the Upper Basin and the Lower Basin. For example, in the Rio Grande drainage, the United States is asserting that its ownership of facilities allows it to mandate releases and bypasses to meet species protection goals under the ESA. A recent lawsuit by environmental groups in the United States and Mexico to protect endangered species in both countries has raised an issue regarding the ability of the Secretary to honor statutory or Compact commitments in the long term when faced with legal challenges to current patterns of operation. These activities do not occur in a vacuum when considering the fate of Upper Basin development, and raise immediate concerns about federal opposition to further Upper Basin development. The 15-year agreement contains no federal commitments protecting the Upper Basin.

The operational effects of Federal environmental initiatives, including the ESA, upon CRSPA facilities, critical to meeting Lower Basin needs during the 15-year agreement, must be evaluated. The U.S. is currently involved in litigation as both a plaintiff and a defendant, and the outcome of current ESA litigation on the 15-year agreement, and the Upper Basin, needs to be evaluated. Once again, these concerns are not theoretical, or in the future, but real, and present now. In Colorado, significant releases from Blue Mesa Reservoir are already contractually dedicated to endangered species protection. What is the cumulative impact of all these policies and actions on the Upper Basin and its human populations? The DEIS offers no such analysis.

13

The DEIS further notes that lowering Lake Mead storage levels may create additional habitat for endangered species at several locations. There is no discussion of the arguments that could be made for such a situation becoming either permanent, or the object of additional protection. What effect would the creation of additional habitat at Lake Mead have upon equalizing flows from Lake Powell?

The 15-year Agreement and the DEIS ignore the Need to Develop the Upper Basin as the Necessary Complement to Fair Implementation

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The 15-year agreement has the effect of looking at major developments in the Lower Basin in isolation. Though the 15-year agreement may help to support the Upper Basin's already strong legal claim to develop its remaining Compact share, the practical effect is far more limited. The reasons for those limitations are discussed above.

The Upper Basin has no reason to be sanguine about its future prospects without concurrent action to develop its own rights. The United States and environmental groups are actively working now to put in place legal requirements to make significant Upper Basin development difficult or impossible. Thus, re-orientation of Lower Basin allocations should not be considered in isolation

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13: Additional riparian habitat could develop at various locations around Lake Mead when lower surface elevations occur. As discussed in Section 3.8, lower elevations could occur under baseline conditions and each of the alternatives depending primarily upon future hydrologic conditions and Lake Mead water releases. The EIS recognizes that fluctuating reservoir elevations would continue under baseline conditions and the alternatives, which would likely result in future periods of both inundation and exposure of these areas. The proposed action would not change 602(a) equalization requirements.

14: Reclamation and other federal agencies have complex missions and sometimes conflicts arise on issues. For example, Reclamation's legal responsibility to administer the Endangered Species Act affects river operations and the timing of water deliveries. Reclamation does not oppose Upper Basin development but must fulfill its legal obligations under ESA, NEPA and other applicable federal legislation. We acknowledge that the construction and operation of water development projects has become more complicated with additional laws and environmental considerations, but such considerations cannot be ignored.

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from the crying need for Upper Basin development to avoid major shortages. These areas of shortage will include the Colorado Front Range communities, which are not protected by the agreement.

Pur simply, the protection of municipal uses in the Lower Basin while municipal uses are actively prevented in the Upper Basin raises numerous issues which have not been answered by the DEIS. Such actions in the Upper Basin are directly related to the likely permanence of the use of Colorado generated surpluses in the Lower Basin, and in California particularly.

Conclusion

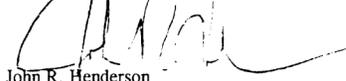
Though the 15-year agreement has some merit, it, like the Colorado River Compact itself, cannot be considered in isolation. The only real protection which the Upper Basin has will come with the development of its own potential, including the ability of Colorado to protect its own citizens from the effects of diminished supply and drought. In the meantime, the DEIS fails to account for federal aggressiveness in attempting to foreclose the very development which, in theory, the 15-year agreement attempts to protect. This is a matter critical to Colorado's water future, including the large urban populations of the Colorado front range. This human environment is plainly a major part of the NEPA equation, and must be addressed.

The DEIS fails to consider the threat to Lake Powell storage levels under drought conditions. The DEIS fails to consider the threat to Lake Powell storage levels from groundwater banking in the Lower Basin of other than flood surplus flows. The 15-year agreement and the DEIS fail to deal with the use of Lake Powell to equalize the delivery of artificial surpluses to the Lower Basin, and to the MWD in particular. Any threat to Lake Powell storage is a threat to the long term future of the Upper Basin. This is an issue of the first importance, but is not addressed.

Thank you for the opportunity to comment. Once again, we would like to renew our request for additional time to develop comments on the DEIS.

Sincerely,

VRANESH AND RAISCH, LLP



John R. Henderson

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cc: Union Park Water Authority

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