

SUMMARY OF PROPOSED DECREE

Case No. 01CW05, Water Division 4

DECREE QUANTIFYING THE FEDERAL RESERVED WATER RIGHT FOR BLACK CANYON OF THE GUNNISON NATIONAL PARK

The proposed decree is divided into three sections:

I. FINDINGS OF FACT (Paragraphs 1-18).

This section recites the statutory prerequisites for entry of the decree, establishes the procedural background of the case, and describes the creation of the Black Canyon of the Gunnison National Park and the Aspinall Unit and adjudication of its water rights.

II. CONCLUSIONS OF LAW (Paragraphs 19-27).

This section provides for the Court's jurisdiction over the subject matter, all persons affected thereby, and the United States, and describes the legal precedent that authorizes the federal reserved water right decreed to the Black Canyon.

"The streamflows specified in Paragraph 31.5 of this decree are the result of a negotiated resolution of this case. In order to implement the accommodation of the parties and efficiently allow the streamflow patterns contemplated by Paragraph 31.5, the use of the Aspinall Unit, including its storage and release capacity, may be needed in some years. Such operation of the Aspinall Unit in conjunction with the exercise of the water right decreed herein, is within the scope of the Aspinall Unit's federally authorized purposes and its Colorado Water Court decrees."

III. JUDGMENT AND DECREE (Paragraphs 28-36).

This section defines an instream flow reserved water right in the Gunnison River to fulfill the purposes of the Park with a priority date of March 2, 1933.

The reserved water right has three components:

1. *Base Flow* in the amount of 300 c.f.s. year round.
2. During the period May 1 through June 30, one annual *Peak Flow* of twenty-four hours duration with a mean daily flow in an amount defined by formulae applied to the May 1 forecasted April-July inflow to Blue Mesa Reservoir. Ramping rates are not defined.
3. When forecasted inflow is greater than 561,000 acre-feet, *Shoulder Flows* during the period May1 through July25 when the Peak Flow is not applicable, defined by formulae applied to forecasted inflow. Ramping rates are not defined.

Both the Peak Flow and the Shoulder Flows are in amounts less than applied for by the United States in the Application filed on January 17, 2001.

“The Secretary of the Interior’s exercise of this water right is subject to the Secretary’s discretion and obligations as defined by applicable law, and the Terms and Conditions set forth [below]”.

The reserved water right is subject to terms and conditions:

- A. The decree shall not be exercised to affect operations under existing federal contracts (e.g. 1975 Taylor Park Agreement).
- B. The decree shall not be exercised to supercede flood control operations of the Aspinall Unit in order to protect life and property downstream from the Park.
- C. Peak flows will be reduced under defined drought conditions to allow recovery of Aspinall Unit storage levels.
- D. The water right shall be exercised with due regard for the fishery in the Gunnison River.
- E. To the extent practicable, the reserved water right will be exercised so that Peak Flows are coordinated with releases from the Aspinall Unit made to protect listed species in the Gunnison River and their habitat.
- F. The court retains continuing jurisdiction in the case in the event that the decree prevents a Record of Decision in the Aspinall EIS that does not include a programmatic biological opinion that covers present and future federal and non-federal depletions in the Gunnison River Basin.

Agreements governing the implementation of the reserved water right:

- 1. The reserved water right is subordinated to all water rights senior to the Aspinall Unit water rights (administration no. 39398.00000).
- 2. If a senior right that benefits from the subordination in paragraph 1 is transferred out of the Gunnison Basin, historical use of the right will be evaluated without the benefit of the subordination.
- 3. The reserved water right is subordinated to all water rights that benefit from the Aspinall Subordination Agreement as decreed in Case No. 03CW263.
- 4. If the subordinations described in paragraphs 1 and 2 are deemed unenforceable, the United States will release sufficient water from the Aspinall Unit to the extent necessary to permit depletions to the reserved right that would be permitted under the subordination.

Non-estoppel provision:

“This Decree was entered pursuant to agreement of the parties to address their interests and concerns and resolves them finally in this matter. However, because the issues decided herein have not been litigated by the parties, the parties shall not be collaterally estopped from asserting any factual and/or legal issues in any other cases not involving these water rights. This Decree shall not be used, considered, or cited as precedent in any other case except and only to the extent that the rights decreed herein are at issue.”