

**DISTRICT COURT,
WATER DIVISION NO. 4, COLORADO**

Montrose County Justice Center
1200 N. Grand Avenue, Bin A
Montrose, Colorado 81401-3146

**CONCERNING THE APPLICATION OF
THE UNITED STATES OF AMERICA TO
MAKE ABSOLUTE A CONDITIONAL
WATER RIGHT**

in Montrose County, Colorado.

Attorneys for Upper Gunnison River Water
Conservancy District:

Bratton & McClow, LLC

John H. McClow, Atty. Reg. No. 6185

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Filed in the District Court
Water Division 4

MAR 28 2001

Kay Phillips, Clerk of Court

▲ **COURT USE ONLY** ▲

Case Number: 01CW005

STATEMENT OF OPPOSITION

1. Name, Address and Telephone Number of Opposer:

Upper Gunnison River Water Conservancy District

c/o Bratton & McClow, LLC

232 W. Tomichi Ave., Suite 202

P. O. Box 669

Gunnison, CO 81230

Telephone: (970) 641-1903

Facsimile: (970) 641-1943

2. Name of ditch or other structure: Not applicable.

3. Facts or reasons as to why the Application should not be granted or why it should be granted only in part or on certain conditions:

a. Opposer's Interest.

i. The Upper Gunnison River Water Conservancy District (Upper Gunnison District) owns water rights, and has a beneficial interest in other water rights, in various tributaries of the Gunnison River which will be adversely affected if the Application is granted.

ii. The Upper Gunnison District is a party to the Taylor Park Reservoir Operation and Storage Exchange Agreement dated August 28, 1975;

iii. The Upper Gunnison District is a party to the Contract Between the United States, The Uncompahgre Valley Water Users Association, The Upper Gunnison River Water Conservancy District and Colorado River Water Conservation District dated April 16, 1990;

iv. The Upper Gunnison District is a party to the Agreement Among the United States of America, the Colorado State Engineer, the Colorado River Water Conservation District and the Upper Gunnison River Water Conservancy District for the Administration of Water Pursuant to the Subordination of Wayne N. Aspinall Unit Water Rights Within the Upper Gunnison River Basin (Subordination Agreement);

v. The rights and benefits of the Upper Gunnison District and its citizens under the foregoing contracts with the United States will be adversely affected if the Application is granted.

b. Applicant claims more water than is necessary to fulfill the purposes of the reservation.

c. Applicant is entitled to only that amount of water necessary to fulfill the purposes of the reservation.

d. Applicant must prove that the claimed quantity of water is available to satisfy the reserved right given upstream depletions authorized by Congress subsequent to the date of the reservation of lands on March 2, 1933, that the quantity of water claimed is the minimum amount necessary to prevent the primary purposes of the monument from being defeated, and that

Applicant's conservation and management goals are within the scope of the decree confirming Applicant's reserved right.

e. Applicant must prove that the alleged appropriation is feasible and nonspeculative. Applicant must prove that it can exercise its right consistent with existing river management operations and constraints, including the structural capacity of upstream dams, potential downstream flooding, and the ongoing efforts to recover endangered fish in the Colorado River and its tributaries.

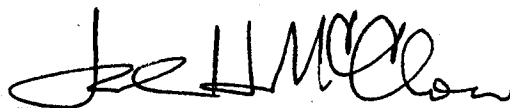
f. Applicant must prove that its water right, or the quantification thereof, was not modified, in whole or in part, by Congress' authorization of the Wayne N. Aspinall Unit of the Colorado River Storage Project, and that the exercise of its water right will not impair or injure the ability of the U.S. Bureau of Reclamation to fully operate the Aspinall Unit as contemplated by the authorizing legislation, operating policies and contracts entered into by the Bureau of Reclamation, including the Subordination Agreement.

g. Applicant must prove that the exercise of its water right will not impair the ability of water users to divert water under senior water rights.

h. Because of the lack of information in the Application, the Upper Gunnison District is unable to determine all of the relevant and pertinent facts necessary to adequately set forth further objections. Therefore, the Upper Gunnison District reserves the right to raise additional objections at a later date founded upon the information not readily ascertainable from the Application.

i. This Statement of Opposition is continuing in nature and shall apply to any amendments to the Application deemed necessary by the Applicant or the Court without the necessity of filing any additional statements of opposition.

DATED this 27th day of March 2001.



John H. McClow
L. Richard Bratton

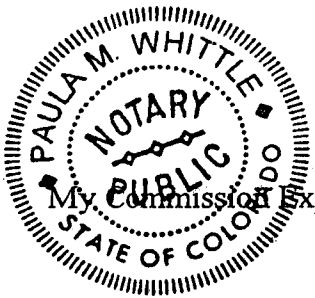
VERIFICATION

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

I, Kathleen E. Curry, Manager of the Upper Gunnison River Water Conservancy District, state under oath that I have read this Statement of Opposition and verify its content.

Kathleen E. Curry
Kathleen E. Curry

Subscribed under oath before me this 28th day of March 2001.



Paula Whittle
Notary Public

My Commission Expires: 1-8-03

CERTIFICATE OF SERVICE

The undersigned certifies that on the 28th day of March 2001 the foregoing **STATEMENT OF OPPOSITION** was served on the Applicant by placing a copy thereof in the United States Mail, first class postage prepaid, addressed to the following:

David Gehlert, Attorney
U. S. Department of Justice
Environment & Natural Resources Division
999 18th Street, Suite 945
Denver, CO 80202

Paula Whittle