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TO: Colorado Water Conservation Board

FROM: John W. Suthers
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Peter Ampe
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RE: Report of the Attorney General

FEDERAL & INTERSTATE MATTERS

1. **Irrigation Improvement Rules (09cw110) (Division 2)**

Twelve of the 21 Opposers have settled, including a surprise early settlement with the Verhoeff family - the only Opposer that provided opposing 26a2 disclosures. All remaining parties have indicated they expect to enter stipulations by mid-September when their Boards meet to vote. If this occurs, the State will ask the Court whether it may submit the evidence in support of the Rules without a trial.

2. **Water Division 3 Ground Water Rules**

The State Engineer considered further public comment at meetings in Alamosa on August 5th in Alamosa. This office explained to the Advisory Committee the extensive changes made to the draft Ground Water Rules, incorporating provisions from Judge Kuenhold's May 27, 2010 Findings of Fact, Conclusions of Law, Judgment and Decree, in which the Court approved Subdistrict No. 1's Amended Plan in 07CW52 and 06CV64. Both the Subdistrict's Ground Water Plan of Water Management, and the draft Rules, were authorized by S.B. 04-222 (now codified in section 37-92-501), so the Court's interpretations and his ruling were very instructive. The next meeting is scheduled for October 8, 2010, in Alamosa. The State Engineer is waiting for additional crucial modeling information.

3. **Legal Counsel regarding Colorado River matters**

The Subunit has provided the Colorado Water Conservation Board, Department of Natural Resources, and the Upper Colorado River Commission legal counsel on the following topics:

- US and Basin State negotiations with Mexico on potential efficiency, augmentation, and shortage sharing projects;
- Inquiries on compact administration consistent with the Upper Colorado River Basin Compact;
- Inquiries on the Draft Colorado River Water Availability Study
- Inquiries on the application of the Federal Advisory Committee Act to Colorado River activities
- Development of the 2011 Annual Operating Plan for the Colorado River Basin and Implementation of the Interim Guidelines for Lower Basin Shortages and Coordinated Operation of Lake Powell and Lake Mead;
- Inquiries on a draft Memorandum of Agreement between the Upper Division States, the Western Area Power Administration, and the Colorado River Energy Distributors Association regarding the Upper Colorado River Basin Fund.
- Planning and implementation of the Colorado River Basin Water Supply and Demand Study as part of the Bureau of Reclamation's Water Conservation Initiative; and
- Development of Long-Term Experimental Protocol of High Flow Tests and projected monthly hydrographs from Glen Canyon Dam.

Interstate Litigation with respect to Colorado River matters:

4. Quantified Settlement Agreement (QSA) Verification Proceedings JC4353

The California Court of Appeals granted the various Motions to Stay Judgment pending appeal. No additional information at this time.

5. Grand Canyon Trust v. Bureau of Reclamation

The Federal District Court denied GCT's Motion for 54(b) certification which would have allowed GCT to take a portion of the Court's Order denying their claims to the appellate Court. On September 2, the Bureau of Reclamation distributed the new Incidental Take Statement - briefing on this matter will be according to the case management schedule.

WATER RIGHTS MATTERS

6. Concerning the Application for Water Rights of the Eagle River Water & Sanitation District, Case No. 08CW77, Water Division 5

This case involved an augmentation plan for developments proposed for the Wolcott area along the Eagle River. Recently, lands in the Wolcott area were included within the areas to be served by the Eagle River Water & Sanitation District. Under the augmentation plan, the District will replace its out-of-priority depletions from diversions at Wolcott with releases from two upstream reservoirs, the Eagle Park Reservoir and the Homestake Reservoir. Recently, the water court approved the settlement reached by the parties, which included the District, the CWCB, the State and Division Engineers and certain Grand Valley water users. A final decree has been entered and the four-day trial set for August was vacated.

7. Application of Robert Gregg Sease, Case No. 08CW10, Water Division 3

As mentioned in the previous Report of the Attorney General, Sease filed for a Plan for Augmentation and Change of Water Rights in Case No. 08CW10. This application was in response to a judicial enforcement action filed on behalf of the State and Division Engineers (collectively “Engineers”) to enjoin Sease’s unlawful uses of water. Two sources of replacement water are proposed for use within the augmentation plan; the first is a native irrigation right and the second is a transmountain irrigation right originating in water division 4. The CWCB filed a Statement of Opposition in order to protect its instream flow rights in water divisions 3 and 4. The Engineers are also opposers of record in this case. The trial was vacated because of an error in publishing the Amended Application. However, the hearing on the State and Division Engineers’ Motion for Contempt in the enforcement action went forward on August 10-12, 2010. After three years of attempting to work with the Defendant to end his out-of-priority depletions, the Engineers sought a finding of contempt of court and punitive and remedial sanctions in the form of fines and/or imprisonment. The Defendant was found in contempt for his failure to comply with prior settlements and orders of the court. A sentencing hearing will be held on November 1, 2010 to award punitive and remedial sanctions.

8. Colorado Springs and Aurora. Case No. 95CW272, Water Division 5

This application for changes and additions to the Homestake Project was bifurcated into surface water and ground water components. The CWCB obtained terms protective of its rights for the surface water portion of the application. A prima facie trial on the surface rights was held on June 23, 2010. Concerns remain about applicants’ ground water modeling and their ability to accurately replace out of priority depletions from wells. The applicants are determining whether and when to pursue their ground water claims and will notify the parties of their status in four months.

9. CWCB and Board of County Commissioners of Pitkin County, Case No. 10CW184, Water Division 5

On June 30, 2010, CWCB and Pitkin County filed a change of water rights application for the Stapleton Brothers' Ditch to allow use of the water right for instream flow purposes on Maroon Creek and the Roaring Fork River in Pitkin County. The deadline for filing statements of opposition was August 31, 2010. Thirteen parties filed statements of opposition, two of which were supportive. All parties involved in the November hearing before the Board filed statements of opposition, with the exception of Trout Unlimited. At this time, no specific issues have been identified, other than those heard at the November Board meeting. The application was not published in all necessary counties due to an error in the original application. The error has been corrected; the new deadline for filing statements of opposition is October 31, 2010.