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Kent:

I made a new year's resolution to take every opportunity to let Utah water users know more about the complexities of the operation of the Colorado River system, particularly how our continued use of water depends on compliance with the federal Endangered Species Act (ESA). Your hearing in Green River on January 12, 2010 is my first opportunity to do that. I want to clarify that the Division of Water Resources did not protest the change application at issue and my comments should not be taken as supporting or opposing any particular application. On the other hand, I would like this letter to be included in the hearing record. The information below is part of a story that Utah water officials need to understand if we want to continue to maximize our beneficial use of Colorado River water.

Under the Law of the River, including the Colorado River Compact and the Upper Colorado River Compact, Utah has a legal right to use a specified amount of water, but such use must occur against the backdrop of the ESA, the scope of which is complex and far-reaching. Many congressional efforts to change the main thrust of the ESA have failed. Recent federal court decisions have determined that the need to meet ESA requirements may trump water delivery requirements, even in some cases where water is provided under long-standing federal water delivery contracts. Thus, Utah's continued use of Colorado River water depends on careful consideration of ESA compliance.

Four endangered fishes inhabit the Colorado River Basin: razor back sucker, Colorado pikeminnow, humpback chub, and bonytail chub. In the 1970s when the Bureau of Reclamation and other entities proposed major water projects in the Upper Colorado River Basin, the U.S. Fish and Wildlife Service (FWS) responded by writing ESA "jeopardy opinions," which outlined how construction of the projects would jeopardize the continued existence of the endangered fishes. The ESA path around a jeopardy opinion is implementation of a reasonable and prudent alternative to the single-minded pursuit of project construction and water development.

In 1988 Utah, Colorado, Wyoming, Western Area Power Administration, and the Department of Interior signed a cooperative

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