

# Animas-La Plata Project

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## **Animas-La Plata Project**

The Bureau of Reclamation originally designed the Animas-La Plata Project (A-LP) to store water on the Animas River on the Colorado-New Mexico border and divert it to farmers growing low-value crops in the La Plata River basin. Planned to benefit a relatively small number of farmers, the project had a shaky economic profile. In 1968 Congress authorized the Animas-La Plata Project as part of Colorado River Basin Project Act, but nothing came of the project for several decades as a result of environmental opposition, concern over water supply, and cost. In the 1980s national and local politicians, water users, and federal agencies refashioned A-LP as an Indian water project that would satisfy Ute tribes' long-standing claim to water development on their reservations. In this reformatted design, water would continue to go to non-Indian farmers, but a greater percentage of project costs fell to cities and industries in the region which anticipated a greater use for the project water. In the end, Congress scaled back the project to service Indian reservations only. Dividing farmers, ranchers, environmentalists, business people, and Native American tribes, A-LP is among Reclamation's most controversial constructed projects. Its story highlights broader conflicts over resource use and policy in the United States.

### **Project Location**

The Animas-La Plata Project is located in the heart of Anasazi and Puebloan country in the American Southwest. The project spans two states and several sparsely settled counties in southwestern Colorado and northwestern New Mexico. The San Juan River, a tempestuous river cutting through that dry land, is the major feature of the landscape. The river arcs south from its origins in Colorado's San Juan Mountains into

New Mexico, then turns northwest, crossing into Utah near the artificial political boundaries at the Four Corners. Like most major rivers in the west, the San Juan is no longer free flowing along its entire course; two dams—Glen Canyon in Arizona and Navajo in New Mexico, both built by the Bureau of Reclamation—have created large reservoirs in its canyons.

A-LP would not add a third dam to the San Juan River, but by diverting water from two main-stem tributaries, the Animas and La Plata rivers, it would have a considerable impact on the San Juan's water supply. The larger of the two rivers, the Animas River, rises in the San Miguel and Needle mountains and flows in a southerly direction through a deep and narrow canyon for most of its course. Fifteen miles north of Durango, Colorado, the canyon opens into a broad valley where Reclamation proposed to impound the river and divert it to the La Plata River basin. To the west of the Animas River over a divide is the La Plata River which also runs in a southerly direction from the San Juan Mountains parallel to the Animas. The land in that basin had, according to one local, "excellent loam soil" but lacked sufficient water to produce a profitable crop.<sup>1</sup> Originally designed as an irrigation project servicing acreage in the La Plata River basin, the project was later reconfigured to deliver water to the Ute Mountain Ute and Southern Ute reservations and to regional cities and communities in Colorado and New Mexico.

### **Historic Setting**

In a sense the San Juan country is both a center and a periphery. At Aztec, Salmon Ruin, Mesa Verde, and Chaco Canyon large prehistoric populations flourished in this region, creating an elaborate, self-sustaining network of settlements and social

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<sup>1</sup> U.S. House of Representatives, Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs, *Lower Colorado River Basin Project*, Hearings, 89<sup>th</sup> Cong., 2<sup>nd</sup> sess., 1966, 1232.

relations. Still, an acute lack of water, temperature extremes, and rough desert topography mark the land. For many of the native groups and later Euro-American explorers, military expeditions, slave traders, and settlers beginning in the eighteenth century and continuing through the twentieth, the San Juan region was at the margins of society—harsh, broken, and isolated.

The first humans to inhabit the Four Corners region were probably Clovis peoples who subsisted primarily by hunting bison and other large mammals.<sup>2</sup> The scarcity of game was probably one factor why roving bands of natives turned to horticulture for sustenance. The transition from primarily hunting to hunting and gathering to agriculture was gradual and never entirely absolute. In the millennia and a half prior to AD 1, native groups likely turned to agriculture when their hunting and gathering activities could not adequately support them. The Anasazi, or “Ancient Ones,” relied on hunting, gathering, and farming in the two-thousand-plus years they inhabited the region. These people developed intricate irrigation systems featuring rock-dam diversions, ditches, and terraced plots. For a time they flourished in the region. Then they disappear from the historical record. Historians still debate what became of the Anasazi; all that remain are hauntingly magnificent cliff dwellings, rock art images, artifacts, and a few pueblos in New Mexico.<sup>3</sup>

Shortly after the Anasazi mysteriously migrated, disappeared, or integrated into other native groups, circa 1300 AD, the Navajo, Paiutes, and Utes moved into the Four

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<sup>2</sup> Clovis is the name archaeologists have given to the earliest well-established human culture in the North American continent.

<sup>3</sup> James M. Aton and Robert S. McPherson, *River Flowing from the Sunrise: An Environmental History of the Lower San Juan* (Logan: Utah State University Press, 2000), 13-28.

Corners region. Like the Anasazi, these groups practiced rudimentary irrigated agriculture, raised sheep and cattle, and hunted game in the region.

Few Euro Americans put down roots in the region prior to the U.S. Civil War. However, after 1870, prospectors and settlers pushed into the San Juan Mountains seeking silver and other valuable ores. In September 1880 surveyors of the Denver and Rio Grande Railroad established Durango in southwestern Colorado which quickly became the major supply and depot for the area. Early homesteaders settled the Mancos Valley well before the small ranching and farming community was surveyed in 1881. Cattle became the region's main economic industry, especially after the arrival of the Rio Grande Southern Railroad in 1891.

Water in southwest Colorado was always a primary concern. Miners were the first to develop the region's water supply on a large scale, and sometimes they went to great expense to obtain it. Agriculture followed mining, which by the late nineteenth century eclipsed mining (briefly) as the dominant industry in the region. At the turn of the century, there were more acres in production—226,000—than water to irrigate. Even if it did not always dominate the economy, agriculture used a greater share of the water than any other activity.<sup>4</sup>

### **Project Authorization**

As early as 1904, the Bureau of Reclamation had contemplated diversion of water from the Animas River to the La Plata River but concluded that the rough character of the

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<sup>4</sup> U.S. Department of the Interior, Water and Power Resources Service, *Project Data* (Denver, Colorado: United States Government Printing Office, 1981), 3; Duane A. Smith and Duane Vandebusch, *A Land Alone: Colorado's Western Slope* (Pruett Publishing Co., 1981), 184-85.

land made any diversion plan “impracticable.”<sup>5</sup> Private irrigation interests subsequently considered similar water projects, but, again, nothing came of these proposals.

Reclamation revisited its earlier studies in reports dated 1915, 1917, and 1924. Not until the 1930s, however, did the Bureau’s office in Durango again look into the project. In the meantime, the states of New Mexico and Colorado and the U.S. Department of Agriculture also conducted studies into developing the water of the Animas River.

Subsequently, Reclamation issued a report in 1947 called “Draft Plata Project” and then in 1954 a status report, which formed the basis for authorizing a feasibility study as part of the Colorado River Storage Act of 1956. The 1947 report proposed an interstream diversion project consisting of nine reservoirs to provide irrigation for 110,000 acres, power production, and flood control. The 1954 report deleted the power production and reduced irrigation to 66,020 acres of land in Colorado and 20,600 acres in New Mexico. Nearly all of the acreage would be in the La Plata River Valley where farmers irrigated crops and dry farmed on a limited basis.<sup>6</sup>

On April 11, 1956, Congress authorized Reclamation to draft a feasibility study on the project. A major purpose of the study was to outline the project plan in detail. The original A-LP plans called for a reservoir on Animas River. For most of its course north of Durango, the Animas River runs through a deep narrow canyon. Although the canyon makes an ideal dam site, the originally planned site for the reservoir would have inundated the historic town of Silverton and the Denver & Rio Grande Railroad.

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<sup>5</sup> U.S. Department of the Interior, U.S. Geological Survey, *Fourth Annual Report of the Reclamation Service, 1904-05* (Washington, D.C.: Government Printing Office, 1906), 280-81.

<sup>6</sup> The outline history is taken from William S. Eakes, Southwestern Water Conservation District, to Senator Gordon Allott, February 12, 1960, in Wayne Aspinall Papers, D-62b, Box 52, Department of Special Collections and Archives, Penrose Library, University of Denver, Denver Colorado; “The Animas-La Plata Project: A Special Supplement to the Durango Herald,” February 25, 1979, 4, M 092, Box 4, folder 3, in Animas-La Plata Project Collection, Center for Southwest Studies, Fort Lewis College, Durango, Colorado.

Relocating the town and rail line would have been costly. Instead, project planners settled on a site at Howardsville, an old town site on the Animas River upstream of Silverton. Plans called for conveying water through the Animas Diversion Canal to the La Plata River basin. In addition to the main regulating dam and reservoir, the plan also called for six other storage or diversion dams and many miles of canals and laterals.<sup>7</sup>

These studies brought up questions of water rights and availability of water, which stymied the proposed project from moving forward. A series of water studies seemed to confirm that an ample water supply in the San Juan River drainage existed to support the San Juan-Chama, Navajo Reservoir, and Animas-La Plata projects. According to one estimate, the San Juan-Chama and Navajo projects required diversion of 618,000 acre feet. This was less than the one million acre feet available after existing water users in Colorado and New Mexico along with authorized projects in Colorado used their water rights. By that calculation, the Animas La Plata project would use 250,000 of about 400,000 acre feet available to authorized projects in Colorado. Felix Sparks of Colorado's Water Conservation Board believed that "since the proposed Animas-La Plata Project is actually a joint Colorado-New Mexico venture, we believe that any water supply conflict is more imaginary than real." Despite these assurances, no one could say definitively the impact of the projects and future stream flows on water rights.<sup>8</sup>

Given the complexities of interstate water rights and supply, the feasibility study stretched out longer than anticipated. Local water districts and users, eager to jump-start

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<sup>7</sup> U.S. Department of the Interior, Bureau of Reclamation, *Animas-La Plata Project, Colorado and New Mexico, Feasibility Report* (Salt Lake City, Utah, February 1962), 19-26.

<sup>8</sup> Elmer F. Bennett to Aspinall, November 1960; Felix to Stewart Udall, January 3, 1963, in Wayne Aspinall Papers, D-62b, Box 110, folder 2.

the project, had continually urged their elected leaders to expedite completion of the studies.<sup>9</sup> Completion of the feasibility report was only one step in making A-LP a reality; the project still needed approval of Congress. In 1963 Congressman Wayne Aspinall privately wrote that construction on the Animas La Plata project might have to wait at least two or three years. This was bad news for the local economy. Richard Albrecht wrote dejectedly to Aspinall that Reclamation employees in the Durango office would need to relocate “since there are no appropriations in sight for preliminary work on the Animas-La Plata project.” The news was all the more disappointing since about 150 men were close to losing their jobs with the closing of Vanadium Corporation of America’s mill in Durango.<sup>10</sup>

In fact, Aspinall widely underestimated A-LP’s timeline, in part because at that time he did not fully understand how closely the project would become tied up in the debates and controversies over development of the Colorado River basin. The first issue was related to Lake Powell and the newly constructed Glen Canyon Dam on the Colorado River near the Utah-Arizona border. How quickly the reservoir filled determined when projects that relied on the dam’s power revenue from the Upper Colorado River Basin Fund for a portion of construction costs (A-LP included) would be authorized and built. In early 1964, only a year after the reservoir, Lake Powell, began to fill, Aspinall worried that low rains might delay authorization of Colorado’s water projects. “If Glen Canyon

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<sup>9</sup> See William Eakes, Southwestern Water Conservation District, to Senator Gordon Allott, February 12, 1960; Allott to Clinton P. Anderson, March 16, 1960, in Wayne Aspinall Papers, D-62b, Box 52.

<sup>10</sup> Aspinall to Albrecht, March 15, 1963; Albrecht to Aspinall, March 26, 1963, in Wayne Aspinall Papers, D-62b, Box 110, folder 2.

does not fill,” he wrote, “it will then be impossible for us to go to Congress for further authorizations.”<sup>11</sup>

A-LP also became tied to a major piece of legislation that would authorize the massive Central Arizona Project (CAP). Aspinall vociferously opposed CAP because he believed it, like other new lower basin water projects, threatened upper basin water rights. Therefore, as chairman of the powerful House Interior and Insular Affairs Committee, he decided to fold several upper basin projects (actually, all of them were western Colorado projects in his own district) into the CAP bill as a bargaining chip. This way each of the western Colorado projects could be authorized in one act of Congress instead of the more painful way of moving each through the legislative process separately. Some proponents of CAP considered Aspinall’s move an “act of extortion.”<sup>12</sup>

Even if Aspinall’s move strategically packaged five upper basin projects as part of the Colorado River Basin Project Act (CRBPA), each project still had to pass the Bureau of the Budget’s economic feasibility test. In February 1966 the Bureau of the Budget issued a report that found the A-LP to be financially unfeasible. Since Aspinall was committed to getting favorable reports for each of the upper basin projects before supporting the CRBPA, Department of the Interior officials had no choice but to push for completion of the reports and to find a way to make A-LP financially palatable. In March 1966 Reclamation modified the plan that had been outlined in the 1962 feasibility report by eliminating certain lands for irrigation and allocating more of the water to municipal and industrial uses. Some project water would have gone to the Ute Mountain Ute and Southern Ute tribes for irrigation and domestic water use. The 1966 modified

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<sup>11</sup> Aspinall to Archie B. Toner, April 7, 1964, in Wayne Aspinall Papers, D-62b, Box 139, folder 39 G(8).

<sup>12</sup> Stephen C. Sturgeon, *The Politics of Western Water: The Congressional Career of Wayne Aspinall* (Tucson: University of Arizona Press, 2002), 83-85.

plan shed a large chunk of acreage on the Ute Mountain Ute Tribal reservation and instead allocated water to municipal and industrial purposes on the reservation. Aspinall opined that M&I water would be more valuable to the Indian tribes anyway and urged Ute Mountain Ute Tribal Chairman Scott Jacket to accept the new agreement. Moreover, Durango and several New Mexican communities had expressed interest in using water from the project as a domestic supply, and the Peabody Coal Company and the Pittsburgh and Midway Coal Mining Company hoped to fire up a coal-fueled powerplant and use 30,000 acre feet of water to cool the plant.<sup>13</sup>

Each of the five upper basin projects moved rapidly through the Department of the Interior and the Bureau of the Budget. The Bureau of the Budget was still critical of the high cost per acre on each of the projects and even recommended deferring three of the projects, but its report on the economics of the A-LP was favorable.<sup>14</sup> House subcommittee hearings on the five projects began on May 9 and continued through May 18, 1966. The bill then moved to the House Interior and Insular Affairs Committee and to the Rules Committee which effectively squashed any consideration of the bill in 1966. By this time, debate over CRBPA had become highly contentious and national over the planned dams in the greater Grand Canyon area.<sup>15</sup>

After two more years of wrangling, Congress finally authorized the Colorado River Basin Project Act, which included A-LP. On September 30, 1968, President Lyndon B. Johnson signed the bill into law (Public Law 84-485). Aspinall had inserted a

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<sup>13</sup> Sturgeon, *The Politics of Western Water*, 87-88; John A. Carver, Jr., Undersecretary of the Interior, to Scott Jacket, August 1965, in Wayne Aspinall Papers D-62b, Box 179, folder L-11b(2)A; Aspinall to Jacket, March 29, 1966, D-62b, Box 213, folder L-11b(2)a; *Congressional Record*, 114 (May 15, 1968), 13410.

<sup>14</sup> Sturgeon, *The Politics of Western Water*, 89.

<sup>15</sup> Steven C. Schulte, *Wayne Aspinall and the Shaping of the American West* (Boulder: University Press of Colorado, 2002), 195-203.

provision in the legislation that the five western slope water projects would be built concurrently and “completed no later than the date of the first delivery of water from said Central Arizona Project.” The other provision was that A-LP could not to be built until Colorado and New Mexico had ratified a compact regarding water storage and diversion rights on the Animas and La Plata rivers.<sup>16</sup>

### **Delaying the Project**

Congress essentially ignored the provision in CRBPA that A-LP and the other upper basin water projects be built simultaneous to CAP. After a long wait for authorization, appropriations for A-LP were not forthcoming even while construction on CAP continued in earnest. In 1984 the city council in Farmington, New Mexico, reportedly directed its attorney to look into legal action that could stop CAP, but, of course, the project could not be stopped.<sup>17</sup> Part of the reason that A-LP languished was that the country had entered into a new era in water politics. Congress did not appropriate major funding for water projects between 1972 and 1982; in the 1980s Reagan further cut funding for projects and required local communities and water interests to participate in cost sharing initiatives (what some saw as another breach of trust, since the 1968 legislation provided that A-LP would be built with power revenues generated in the Colorado River basin). Some of the misgivings over large water projects derived out of economic concerns, and some were caused by environmental opposition. Both factors contributed to the long wait for A-LP appropriations, despite the specific provisions Aspinall had inserted into the authorizing legislation.

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<sup>16</sup> Colorado River Basin Project Act, P.L. 90-537, September 30, 1968, 12; Sturgeon, *The Politics of Western Water*, 113, 121. For a detailed account of CRBP, including a chapter on A-LP, see Helen Ingram, *Water Politics: Continuity and Change* (Albuquerque: University of New Mexico Press, 1990).

<sup>17</sup> Ingram, *Water Politics*, 127.

Preparations for A-LP did not entirely cease in the decades following authorization. In the early seventies, an advisory group was formed to evaluate the A-LP plan. Over a three-year period, the group considered numerous proposals and alternative designs. Ultimately, it proposed several modifications to the originally authorized plan. The biggest change was eliminating the reservoir at Howardsville on the main stem, and installing a pumping plant on Animas River to pump water from a location near Durango to an off-site storage reservoir in the Ridges Basin. Water would be conveyed through underground pipes, which the team believed would have less impact than an open canal system on the surrounding environment.<sup>18</sup>

In 1977 Congress appropriated \$1 million to the project, but that was quickly eliminated from the federal budget as part of the Carter administration's "no new start policy." Colorado senators Floyd Haskell and Gary Hart promised to restore funding on the A-LP and three other Colorado water projects. But by that time, however, opposition to the project for primarily economic and environmental reasons had begun to coalesce. When Haskell made a visit to Durango in July 1978, voices in opposition to the project at a town meeting surprised him.<sup>19</sup>

In the meantime, the Bureau of Reclamation worked on the Definite Plan Report (DPR), released in September 1979, and on the Final Environmental Statement (FES), released in July 1980. The FES concluded that the project would have no notable impacts on river flow and water quality, and only slight negative impacts on non-game fish like sucker species and on recreational use of the Animas River. The DPR laid out

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<sup>18</sup> "The Animas-La Plata Project: A Special Supplement to the Durango Herald," February 25, 1979, 4, in Animas-La Plata Project Collection, M 092, Box 4, folder 3.

<sup>19</sup> "Animas-La Plata Funds Cut," *Durango Herald*, June 16, 1977; "Haskell Pushes for Plan," *Durango Herald*, July 3, 1978, in Animas-La Plata Project Collection, M 092, box 4, folder 1.

the projected cost and scope of the project. The estimated \$336-million project would require construction of a pumping plant and pipeline on the Animas River near Durango to transport water to Ridges Basin where it would be stored and pumped through canals and tunnels to the La Plata River basin. The report also included construction of a second reservoir at Southern Ute on the Colorado-New Mexico state line. The project would deliver 118,100 acre feet of water to 70,100 acres of farm land; over 80,000 acre feet for municipal and industrial uses. According to the most recent proposal, likely as a measure to gain additional support for the project, the report proposed allocating a small amount of water (7,600 acre feet per year) to the Navajo Nation.<sup>20</sup>

Completion of these reports led to attempts to insert A-LP funding into miscellaneous appropriations bills. In 1983 a massive supplemental appropriations bill for water development would have provided construction funding to forty-three water projects including A-LP. Environmentalists attacked the legislation for promoting wasteful spending on environmentally destructive projects. Friends of the Earth specifically pointed to the A-LP as a regressive water project that did not belong in the same bill that allocated funding to water pollution clean up and wildlife protection. The Environmental Policy Center objected not only to the project's environmental impacts but to its benefitting, in the Center's estimation, "approximately 179 farmers." Although the supplemental appropriations bill passed the House by voice vote, it died in the Senate.<sup>21</sup>

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<sup>20</sup> Roger L. Williams to Al Jonez, August 1980, folder 25, box 1, M 092; "EPA Still Isn't Satisfied with the A-LP Project," *Durango Herald*, August 13, 1980, in Animas-La Plata Project Collection, M 092, Box 4, folder 5; U.S. Department of the Interior, Water and Power Resources Service, *Animas-La Plata Project, Colorado-New Mexico, Definite Plan Report*, September 1979, Summary Sheets 2-6.

<sup>21</sup> *Congressional Record*, 134 (October 5, 1983), 27356-7

In 1985 Colorado Congressman Mike Strange successfully inserted A-LP start-up funding in the supplemental fiscal year appropriations, contingent on water users reaching a cost sharing agreement. State and local interests reached an agreement in 1986. In negotiations over cost sharing, the parties decided that the Ute Indian Water Rights Settlement would become the cornerstone of the project. Although the economics of the project did not add up, the Office of Management and Budget (OMB; formerly Bureau of the Budget) and the Department of the Interior accepted the cost sharing agreement primarily because the project would settle, once and for all, the question of water rights on two Ute Indian reservations.<sup>22</sup>

### **Resolving Tribal Water Rights**

The difference between A-LP and other water projects that had languished after being authorized was A-LP's connection to Indian water rights. Originally, this was only a component of a project designed primarily to deliver irrigation water to Anglo farmers in the La Plata River basin. Little by little, the water rights settlement with the Utes morphed into the project's centerpiece because it made the project more palatable by satisfying the government's long-standing commitment to uphold tribal water rights.

The question of Indian water rights derives from the moment Congress created the reservation system. In the nineteenth century, the federal government forced the Ute Mountain Ute Tribe and the Southern Ute Tribe into relatively small reservations in southwestern Colorado with a promise that the federal government would construct two reservoirs and an irrigation system. The Supreme Court upheld the Indian tribes' "reserved rights" to water within reservations in the famed *Winters v. United States*

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<sup>22</sup> W. Martin Roche, "The A-LP Project Cost Sharing Agreement," in Animas-La Plata Project Collection, M 092, Box 3, folder 6; Ingram, *Water Politics*, 127-28.

(1908) decision. Over subsequent years, however, the Ute Mountain Ute and Southern Ute, like other native tribes, lacked the means to develop water within their reservations, and the government made no move to develop the promised irrigation system.<sup>23</sup>

Since the Winters Doctrine established Indian reserved rights to water within reservations, tribes turned to the courts to assert their claim to water that, in many cases, Anglo water users had already put to beneficial use. In 1976 the United State filed claims on behalf of the two Ute tribes to all water from rivers in southwest Colorado. Many recognized that this could turn into an along and expensive ordeal, primarily because waters of the Animas, La Plata, and other rivers were fully appropriated. Accordingly, both sides preferred to resolve these issues out of court. Discussions between the Ute Mountain Ute and Southern Ute tribes and state and local water interests began in the early 1980s. While some tribal members expressed opposition to a settlement, in part because it would disturb traditional quality of life on the reservation, Ute tribal leaders solidly backed a settlement agreement. The Ute Mountain Ute tribal chairman thought A-LP was the best chance for the government to build a water project on the reservation, and that it was “unrealistic” to think that the Congress would authorize an Indian-only project in the near future. Accordingly, on December 10, 1988, the Colorado Ute tribes and other parties signed the Ute Indian Water Rights Settlement.<sup>24</sup>

Colorado Representative Ben Campbell, the only Native American serving in Congress at the time, introduced legislation to implement the settlement agreement primarily through construction of A-LP. As the major sponsor of the “Colorado Ute

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<sup>23</sup> Daniel McCool, “Indian Water Settlements: Negotiating Tribal Claims to Water,” 28.

<sup>24</sup> McCool, “Indian Water Settlements,” 28; *Congressional Record*, 134 (October 3, 1988), 27879; *Congressional Record* 134 (October 14, 1988), 30999; Ute Mountain Ute Tribe chairman Ernest House officially announced the tribe’s support of A-LP on December 11, 1985, in Animas-La Plata Project Collection, M 092, Box 2, folder 8.

Indian Water Rights Settlement Act of 1987,” Campbell probably brought to the discussion a sense that Indians could get behind this project, although as a Northern Cheyenne he had no blood connections to the Ute. The Settlement Act assured the tribes entitlement to receive water from the A-LP and the Dolores projects in exchange for waiving claims to reserved water rights or any claims against the federal government. The act merely provided for construction of the project, not water delivery, so it also included \$60.5 million in tribal development funds to enable the tribes to develop their water resources. A provision was also made to have non-federal interests—primarily farmers—pay 37 percent of construction costs as cost sharing partners.<sup>25</sup>

A number of congressmen like Tom Petri of Wisconsin and George Miller of California opposed the bill. Petri spoke of A-LP being an affront to farmers in other states that “pay the full costs of production of their crops.” The cost per irrigated acre on the project could simply not be justified; neither was it possible to justify the contradictory federal policy of paying farmers not to grow crops while funding irrigation projects that bring more land into production.

George Miller had even harsher words for the project. “I believe this bill is flawed,” he said, “because it forces the American taxpayer to settle legitimate Indian water rights claims by bootstrapping construction of a \$600 million water project that will primarily benefit non-Indians—a water project that is ill-conceived, overdesigned, wasteful of energy, and environmentally destructive.” While proponents lauded the bill

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<sup>25</sup> *Congressional Record*, 134 (October 3, 1988), 27879; *Congressional Record* 134 (October 14, 1988), 30999.

for negotiating a solution to water rights without going to the courts, Miller insisted that other ways could be found to satisfy Indian rights without tying them to A-LP.<sup>26</sup>

In the end, the Settlement Act received the backing of key congressmen. Morris Udall of Arizona believed that it was better to resolve rights in Congress than in the courts. “While questions have been raised about the viability of this project and its environmental impact, I have weighed the competing interests, including the benefits in settling the Indians’ water claims, and have concluded that this bill is worthy of passage.”<sup>27</sup> Enough of his colleagues felt likewise that Congress passed the “Colorado Ute Indian Water Rights Settlement Act of 1987” on November 1, 1988.

### **Litigation**

Despite the Indian water rights settlement, A-LP took another sharp and unexpected turn. In 1990, the U.S. Fish and Wildlife Service (FWS) released a draft biological opinion that the A-LP would adversely impact an endangered species, the Colorado squawfish. The biological opinion provided no reasonable and prudent alternatives to construction as per Section 7 of the Endangered Species Act of 1973. By prohibiting further depletions of the San Juan River, the biological opinion essentially put a stop to the A-LP. Later that year, Reclamation Commissioner Dennis Underwood arranged discussions between the FWS and project beneficiaries to draft a reasonable and prudent alternative plan to allow the project to move forward. Finally, on October 25, 1991, FWS issued its final biological opinion which essentially stated that some project

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<sup>26</sup> *Congressional Record*, 134 (October 3, 1988), 27880-1.

<sup>27</sup> *Ibid.*

features could be built but that the project could deplete no more than 57,100 acre feet of water.<sup>28</sup>

The final biological opinion gave the project new life and, in fact, the groundbreaking on the project began the day after it was issued. By February 1992, however, a lawsuit initiated by environmental groups put a stop to construction. Subsequently, Reclamation resumed work on environmental studies. This new round of environmental studies was designed to supplement the 1980 final environmental statement by addressing areas where the law had changed or new information had been made available, but it was not intended to overturn previous findings. As Assistant Regional Director Rick Gold stated, “The decision has been made to build the project, and we’re not reversing that decision.” Nevertheless, construction activities would not resume until environmental problems and concerns had been ironed out.<sup>29</sup>

In the three years Reclamation took to complete the supplemental environmental statement, interested parties vigorously debated the merits of the project. Environmentalists criticized the tremendous impact the project would have on stream flow and on the surrounding landscape. Some argued that the project simply failed to comply with several environmental laws, including the Endangered Species Act and the National Environmental Policy Act. National groups like the Sierra Club and local organizations like Friends of the Animas River, founded in 1993 to keep the river in biological harmony and protect it from users and special interest groups, stridently opposed the project.

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<sup>28</sup> Commissioner of Reclamation to Regional Director, October 1991, in Animas-La Plata Project Collection, M 092, Box 2, folder 9; Frank E. (Sam) Maynes, “Report: On the Animas-La Plata Project,” *Colorado Water Rights* 11, No. 1 (Spring 1992): 1, 3, 6.

<sup>29</sup> Amy Malick, “New Study Won’t Kill A-LP,” *Durango Herald*, April 17, 1992.

The environmental laws successfully stalled any attempt to insert construction funding in appropriations bills or otherwise get the project off the ground. Southern Ute attorney Sam Maynes argued that these environmental laws threatened Indian water rights. He believed the Interior department's designation of the Animas River as critical habitat for endangered fish did not adequately acknowledge the rights of Indians to their water. Maynes therefore urged the Department of the Interior to reverse the designation and allow A-LP and the Navajo Indian Irrigation Project to move forward. Proponents feared that if the government failed to execute the terms of the settlement, the Indian tribes would have no choice but to address their grievances in the courts.<sup>30</sup>

Proponents of A-LP harshly criticized what they believed to be obstructionist tactics of environmentalists and their allies. Ben Campbell blamed the delay on what he called "a few elite and select high dollar special interest groups—'beltway environmentalists'—and their ensconced cronies in the Department of the Interior and the EPA." The perception that Campbell wished to convey was that environmentalists had been unyielding and unwilling to compromise. Rather, in his view, they refused to consider any "reasonable" A-LP plan. In fact, Campbell attributed nefarious motives to environmentalists who he said were interested in merely blocking the project, not saving fish.<sup>31</sup>

The problem with Campbell's assessment is that the damning evidence against A-LP was not environmental. While the major impediments to moving the project forward

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<sup>30</sup> Electa Draper, "Tribes Claim Feds Endanger Water Rights," *Durango Herald*, July 11, 1994.

<sup>31</sup> "Animas La-Plata," *Congressional Record*, 141 (July 11, 1995), 9648; U.S. Senate Committee on Indian Affairs, Committee on Energy and Natural Resources, Subcommittee of Water and Power, *Colorado Ute Water Settlement Act Amendments*, Joint Hearing on S. 2508, 106<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 7, 2000, 58-59. Sam Maynes also made this charge by criticizing environmentalists for not being willing to participate in the development of a recovery implementation program for the fish. See Maynes, "Report: On the Animas-La Plata Project," 6.

involved environmental law, the principal reason in most people's minds to oppose the project were its extraordinary high costs and low comparable benefits. As planned the project was huge—two major dams, seven pumping plants, and 200 miles of canals and pipelines—and expensive: an estimated federal cost of \$481 million. The cost of operating the project and the energy consumed by pumping water uphill into the La Plata basin was enormous. By one estimate, the construction costs of the project amounted to \$7,467 per acre of irrigated land. In short, the project was, according to critics, “Jurassic Pork.”<sup>32</sup>

Inspector from the Department of the Interior essentially confirmed as much in 1994 when they audited the project and found it economically infeasible. Part of the problem was that not all M&I contracts had been signed to repay project costs. Those that had been were reportedly over \$100 million short of the projected M&I cost. Moreover, in July 1995 Reclamation released its own economic analysis of the project and concluded that the project would only return 36 cents for every tax dollar invested.<sup>33</sup>

Proponents argued that dubious economics could be dismissed in a project that promised to fulfill the nation's responsibility to the Ute tribes. In congressional debates over the future of A-LP, the main rationale for the project was to satisfy Indian water rights. Campbell was a particularly ardent advocate of the idea that a vote for A-LP was reparation for centuries of wronging Indian tribes and the lingering effects of Euro American imperialism. Congress had the responsibility to uphold the agreement that was signed by the tribes, states of Colorado and New Mexico, conservation districts, and

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<sup>32</sup> *Congressional Record* (July 29, 1996), 19664-5; Video produced by Concerned Citizens of Southwest Colorado, n.d., on file in Reclamation's Denver office library.

<sup>33</sup> *Congressional Record* (July 29, 1996), 19665.

federal agencies. To not do so would invite Indian tribes to take the matter to the courts and trigger years of litigation and court-related expenses.<sup>34</sup>

Animas-La Plata opponents also expressed a desire to satisfy Indian water rights but questioned the need to use a large irrigation project originally designed to supply water to farmers growing low-value forage crops. Critics like Senator Dianne Feinstein of California pointed out that only about 62,000 of a total 191,230 acre feet of water would go to the tribes anyway. Moreover, the project would not immediately satisfy water rights, since for the time being only about one-third of the project could be built, given endangered species concerns. Indian water rights claims would not be satisfied until the water could be delivered to the reservations. For that reason, Feinstein thought Reclamation should “examine alternatives that would fully meet the needs of the tribes in a timely way and at less cost.”<sup>35</sup>

The Bureau of Reclamation finally completed the supplemental environmental impact statement in 1995. The EPA promptly found the EIS to be unsatisfactory. In a letter to Commissioner Eluid Martinez, Richard Sanderson of the EPA’s Office of Federal Activities wrote, “We remain concerned that the Bureau of Reclamation’s present formulation of the Animas-La Plata project will result in unacceptable adverse environmental impacts that should be avoided.” Eager to reach a solution, Secretary of the Interior Bruce Babbitt began meeting with various interested parties in October 1996. Babbitt felt that the outcome of the Ute Indian settlement would be “a barometer of what other tribes might expect.” Hoping to sit down with other Native American tribes and reach settlements, he believed that if the government could not keep its promise to the

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<sup>34</sup> *Congressional Record*, 143 (July 15, 1997): 14417-18.

<sup>35</sup> *Congressional Record* (July 29, 1996), 19665-6.

Ute tribe, then other Indian tribes would not trust it to do so for them. In these discussions, Babbitt came to believe that a surface storage reservoir would be the only way to satisfy the tribe's water rights.<sup>36</sup>

The plan that emerged from those talks was a greatly scaled-down project—dubbed “A-LP Lite.” Rather than multiple reservoirs, the new plan called for a 260,000 acre-foot reservoir in the Ridges Basin, a pumping plant, and an inlet conduit. The downsized project eliminated all irrigation and therefore cut out the non-Indian farmers from receiving project water. A-LP Lite would divert about a third of the original water planned for the project. The project would therefore have a reduced impact on the environment, save an estimated \$400 million from the original project, and still satisfy the United States' obligation to the Ute tribes.<sup>37</sup>

For two years the Clinton administration moved aggressively to finalize the settlement. In Congress, the project was debated repeatedly from 1997 through 2000. Congressman Campbell initially opposed A-LP Lite, but eventually found it to be an acceptable compromise. Environmentalists, meanwhile, flat-out rejected the A-LP Lite as new wine in an old bottle. Rather, they supported de-authorizing the original legislation and finding an alternative means to meet the Indian water rights claims. The problem was that decommissioning water projects is a rarity because politicians see it as a liability. Oregon Congressman Peter DeFazio introduced a bill in 1998 to de-authorize A-LP, but the measure did not pass.<sup>38</sup>

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<sup>36</sup> U.S. House of Representatives, Subcommittee on Water and Power of the Committee on Resources, *Hearing on H.R. 3478, The Colorado Ute Settlement Act Amendments of 1998 and H.R. 745, A Bill to Deauthorize the A-LP Federal Reclamation Project*, 105<sup>th</sup> Cong., 2<sup>nd</sup> sess., July 28, 1998, 28-29; *Colorado Ute Water Settlement Act Amendments*, 2000, 34.

<sup>37</sup> Hearings on H.R. 3478 and H.R. 745, 1-5.

<sup>38</sup> Hearings on H.R. 3478 and H.R. 745, 1-5, 10-11; *Colorado Ute Water Settlement Act Amendments*, 2000, 27-31.

The Ute tribal governments officially backed construction of A-LP Lite. That is not to say that tribal members unanimously supported the project. Some Ute critics had been vocal from an early date; in 1989 Southern Utes formed the Committee for Better Tribal Government, principally to fight the tribe's acquiescence in the settlement and A-LP, and later organized the Southern Ute Grassroots Organization aimed to reform tribal government and restore traditional values to the tribe. Still, the official position of the Ute Tribes had always been in favor of the project. At the congressional hearings, the Southern Ute Indian tribal chairman referred to the bill to decommission A-LP as "a direct slap in the face and dishonor to my tribal people" and promised to sue the United States government in court "for its breach of the 1986 agreement" if Congress passed it.<sup>39</sup>

Ultimately, the argument that the project represented the best solution to solve the Indian water rights controversy without renegotiating the terms or fighting them in court proved to be the popular one. The Department of the Interior completed a Final Supplemental EIS (FSEIS), which it filed with the EPA on July 14, 2000, followed by a Record of Decision on September 25, 2000. On December 21, 2000, Congress enacted Public Law 106-554, the Colorado Ute Settlement Act Amendments of 2000.

### **Construction**

In late 2001, with all the legal and political issues resolved, Reclamation initiated official construction of A-LP. Construction began on the Ridges Basin inlet conduit in June 2002 and on Ridges Basin Dam in November 2002.

Ironically, after years of wrangling, controversy continued to engulf the project. Conflict centered on cost estimates of the project. In 2002 Reclamation increased the construction cost estimate from \$338 to \$500 million, almost a 50 percent spike. Since in

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<sup>39</sup> Hearings on H.R. 3478 and H.R. 745, 26-27, 30-31.

the current budget climate additional money would not be poured into A-LP, the increased costs pushed the estimated completion date back to 2011.

According to Commissioner John Keys III, the original \$350 million estimate had been done by Harza engineers who simply “downsized” the estimate under the original authorization without doing additional field work. Reclamation did not adequately review the draft cost estimates, an oversight that may have been an unintended consequence of the so-called “reorganization” of Reclamation in the mid-1990s. The reorganization, Keys believed, did away with the mechanisms, guidelines, and personnel necessary to deal with large, complex construction projects. By the early 1990s, Reclamation had shifted almost entirely away from building projects to managing existing projects.<sup>40</sup>

The cost overruns embarrassed the Interior department and damaged Reclamation’s reputation. The evidence for this is best seen in a statement made by Senator Pete Domenici at the hearing investigating the reason for the cost overruns in 2004.

I have been advocating for the last 3 years, trying to put more work in the Bureau. ... [But] I am not very impressed and I do not know if I am going to continue down that path. I do not know that the Bureau is going to be growing. If they cannot do this, you know, I am going to go with the Corps of Engineers. And I do not look for projects of this magnitude for a while that I am any part of, going to the Bureau of Reclamation unless they convince me that they have had a material change in the way they do business.<sup>41</sup>

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<sup>40</sup> John W. Keys III, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Brit Allan Story, senior historian, Bureau of Reclamation, from 1994 to 2006, in Denver, Colorado; Boise, Idaho; Washington, D.C.; and Moab, Utah, 329; United States Senate, Subcommittee of the Committee on Appropriations, Special Hearing, 108<sup>th</sup> Cong, 2<sup>nd</sup> sess., March 24, 2004 (Washington, D.C.: Government Printing Office, 2005), 4-21.

<sup>41</sup> *Ibid.*

Since, according to Keys, the faulty A-LP cost estimate was not an isolated error, Reclamation implemented an initiative to set up an independent review of any cost estimate over \$10 million.<sup>42</sup>

The process of working with tribes and project sponsors and changing construction schedules was long and complex, but eventually work resumed on the project. In 2005 Reclamation held a ceremony for placement of Zone 1 material at the dam site.

In late 2009 the project is more than two-thirds completed. Since 2002, the federal government has awarded approximately \$395 million for completion of Ridges Basin Dam and Reservoir (renamed Lake Nighthorse, after Congressman Ben Nighthorse Campbell who perhaps more than anyone has been responsible for the ultimate authorization and construction of the project), Ridges Basin Inlet Conduit, and the Durango Pumping Plant.<sup>43</sup>

### **Conclusion**

A-LP took a long, circuitous route on the way to becoming one of the most controversial water projects conceived by the Bureau of Reclamation. The project sustained a drawn-out fight lasting more than fifty years. At the congressional hearings held in 1998, over a decade before the project would be completed, Jim Isgar of the Animas-La Plata Water Conservation District said his father had worked twenty years for authorization in 1968 and another twenty years for the Indian water rights settlement in 1988. Isgar said he has since taken up the cause from his father.

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<sup>42</sup> Keys, *Oral History Interview*, 334-35.

<sup>43</sup> For current statistics on A-LP, see U.S. Department of the Interior, Bureau of Reclamation, *2008 Annual Report*, 31-32, at <http://www.usbr.gov/library/BRannualreports.html>.

The remarkable thing about A-LP is that it was built. As the wrangling over the project continued, the price tag continued to rise. Usually, delays in building projects give opponents the edge, but even so, this project eventually received public funding. The reason, of course, is not because the project made economic sense or even because an unsolvable water crisis made the project essential, but because it had been tied to Indian water rights claims. Initial authorization of A-LP was due to a combination of strong local support for the project, the power and influence of Wayne Aspinall, and impeccable timing as part of the last large water bill to move through Congress. A-LP remained alive, however, only after proponents repackaged it as an Indian water project that would resolve long-standing promises to the Ute Mountain Ute and Southern Ute tribes and avoid the possibility of a lengthy court fight. This enabled proponents to continue arguing the virtues of A-LP long after they had stopped advocating on behalf of the other defunct upper basin water projects authorized in 1968.

Critics of A-LP objected to the way the water project masqueraded as an Indian water project when in fact it had been designed to benefit a narrow group of private irrigation interests in the La Plata River basin. To them, the careful crafting of the project as an Indian project was done principally to push the project through Congress during a time when practically no large, expensive water projects received authorization or funding. This is not to say that critics of A-LP opposed an Indian water rights settlement, only that they believed a settlement could be reached by some other means.

A-LP is a good example of the difficulties in reaching a compromise over the best use of the West's scarce water resources. When Campbell introduced the Settlement Act in 1988 he stated that "the most outstanding feature of the project is its ability to resolve

the differences of many different constituencies in a peaceful, cooperative manner.”<sup>44</sup> In fact, that statement proved to be a mirage. Even A-LP Lite, which eliminated non-Indian lands from the project but still cost over a half a billion dollars, never received a broad consensus. A-LP was anything but peaceful: it divided communities, tribes, and other water users over competing visions of water development in southern Colorado and northern New Mexico.

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<sup>44</sup> *Congressional Record*, 134 (October 3, 1988), 27880.

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