

**SUBMIT OPTION SUBMITTAL FORM BY:**

1. EMAIL TO: [COLORADORIVERBASINSTUDY@USBR.GOV](mailto:COLORADORIVERBASINSTUDY@USBR.GOV)
2. U.S. MAIL TO: BUREAU OF RECLAMATION, ATTENTION MS. PAM ADAMS, LC-2721, P.O. BOX 61470, BOULDER CITY, NV 89006-1470
3. FACSIMILE TO: 702-293-8418

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## Option Submittal Form

**Contact Information (optional):**

**Keep my contact information private.**

Contact Name: _____	Title: _____
Affiliation: _____	
Address: _____	
Telephone: _____	E-mail Address: _____

Date Option Submitted: 02/01/2012

**Option Name:**

Establishment of a "Safety Net" to Ensure the Ute Indian Tribe's Reserved Water Rights are Protected from Over-allocation of the State of Utah's Apportionment of Colorado River Water

**Description of Option:**

The Ute Indian Tribe (Tribe) of the Uintah and Ouray Reservation (Reservation) is presently engaged in meetings with a Federal Implementation Team, and will subsequently conduct meetings with the State, in order to reach an agreement as to a clarification and common interpretation of the Ute Indian Water Compact before obtaining final ratification of the Compact by the Tribe and the State, pursuant to the 1992 Ute Indian Rights Settlement Act. The Compact recognizes the Tribe's federally reserved water rights within the Upper Colorado River Basin, amounting to 480,594 Acre-Feet (AF) of diversions and 258,943 AF of depletions. This amount is included within the State of Utah's apportionment of the Colorado River, which amounts to some 1,368,500 AF (23% of the Upper Basin apportionment). Utah's current use of Colorado River water, estimated at approximately 1,007,500 AF, is 361,500 AF less than its entitlement (by depletion). The State reports that all the remaining water from its total allocation is covered under prior applications approved by the State. Thus, it is highly likely that the future use of Colorado River water within Utah will increase to the point that Utah's entire entitlement will be used. However, the State acknowledges that with the ratification of the Ute Indian Water Compact, the Tribe's Colorado River water rights, specifically to the Green River, will be recognized and the State Engineer will distribute Green River rights in accordance with the respective priority dates of the water rights. The Tribe will have the senior priority rights to Green River water.

Currently, the Ute Tribe does not use the entire amount of water reserved under its Compact, partially because much of its water was transferred to the Green River from other Reservation streams, where its use on Tribal lands is currently physically impossible. Such transfers were made under past agreements with the U.S. and State of Utah, in part to allow development of non-Indian trans-basin diversions. Although the Tribe retains rights to unused water, it is concerned that the State of Utah views its unused, unallocated water rights as surplus supply to be used by non-Indians to fulfill the State's apportionment of Colorado River water. Tribal water is reserved to ensure the long term sustainability of the Reservation for generations to come, and is not lost by nonuse. Utah must not allocate its full share of Colorado River water without first recognizing the Tribe's reserved water rights. Both current and future Tribal water use must be reserved from Utah's Colorado River apportionment. Failure to do so risks over-allocating this valuable water supply.

The State and Tribe should protect against over-allocation by entering into agreements for any non-Indian water use allocated from the Tribe's reserved quantity. That is, the State must agree to payment for any non-Indian water use made possible by allocating the Ute Tribe's unused, unallocated water right that impacts or infringes upon the Tribe's water right. Any non-Indian water right application made after the total non-Indian allocation exceeds 1,109,557 AF (the difference between Utah's allocation – 1,368,500 AF – and the Ute Tribe's depletion right – 258,943) must be denied unless agreement is reached between the State and Tribe. Exceptions are those other Utah Tribes with similar reserved water rights. Ute Tribe water rights may be available for leasing to fulfill

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Utah's full apportionment.

The Ute Tribe requests that the Study consider the above in developing options to meet future demands within the Colorado River Basin. Reclamation's Study should establish a "safety net" that reserves the total Ute Tribal water right from Utah's apportionment, and must not treat unused, unallocated Tribal water as surplus supply to be developed by the State of Utah. The Study should consider leasing agreements for any future demands in Utah fulfilled by allocating currently unused Tribal water rights.

**Location:** Describe location(s) where option could be implemented and other areas that the option would affect, if applicable. Attach a map, if applicable.

The Reservation is located in northeast Utah, and includes most of the Duchesne River drainage, a portion of the Green River Basin below Flaming Gorge Reservoir, and a portion of the White River Basin from the Utah-Colorado border to its confluence with the Green River.

**Quantity and Timing:** Roughly quantify the range of the potential amount of water that the option could provide over the next 50 years and in what timeframe that amount could be available. If option could be implemented in phases, include quantity estimates associated with each phase. If known, specify any important seasonal (e.g., more water could be available in winter) and/or frequency (e.g., more water could likely be available during above-average hydrologic years) considerations. If known, describe any key assumptions made in order to quantify the potential amount.

The Tribe requests reservation of all Tribal water rights from Utah's apportionment of the Colorado River. Any non-Indian water right application made after the total non-Indian allocation exceeds 1,109,557 AF (the difference between Utah's allocation – 1,368,500 AF – and the Ute Tribe's depletion right – 258,943) must be denied unless agreement is reached between the State and Tribe.

## Additional Information

**Technical Feasibility:** Describe the maturity and feasibility of the concept/technology being proposed, and what research and/or technological development might first be needed.

The Tribe anticipates no technical constraints to this option.

**Costs:** Provide cost and funding information, if available, including capital, operations, maintenance, repair, replacement, and any other costs and sources of funds (e.g., public, private, or both public and private). Identify what is and is not included in the provided cost numbers and provide references used for cost justification.

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Methodologies for calculating unit costs (e.g., \$/acre-foot or \$/million gallons) vary widely; therefore, do not provide unit costs without also providing the assumed capital and annual costs for the option, and the methodology used to calculate unit costs.

Tribal leases will be the only cost associated with this option. Leasing costs will be determined by fair market value.

**Permitting:** List the permits and/or approvals required and status of any permits and/or approvals received.

Tribal approval will be required for any non-Indian water allocated from the Tribe's reserved quantity.

**Legal / Public Policy Considerations:** Describe legal/public policy considerations associated with the option. Describe any agreements necessary for implementation and any potential water rights issues, if known.

The explicit establishment of a "Safety Net" for the Ute Indian Tribe, as described above, is consistent with settled law regarding the Secretary's obligation and responsibility to at all times protect the Tribe's water rights. It is also consistent with Reclamation's Indian Trust Asset Policy (August 31, 1994), to wit: "The proper discharge of the Secretary's trust responsibility requires, without limitation, that the Trustee, with a high degree of care, skill, and loyalty: Protect and preserve Indian Trust Assets from loss, damage, unlawful alienation, waste, and depletion." Further, the Department has established procedures implementing this policy that require "[a]ny effect [on Indian trust resources] must be explicitly addressed in the planning/decision documents . . . ." See Comments Submitted on Behalf of the Southern Ute Indian Tribe.

**Implementation Risk / Uncertainty:** Describe any aspects of the option that involves risk or uncertainty related to implementing the option.

Protecting the Tribe's reserved water will prevent over-allocation of Colorado River water, which will decrease risk and uncertainty. There is a serious risk for the Secretary as it relates to his obligation to satisfy his trust responsibilities to the Ute Tribe if this Option is not adopted by Reclamation in its Study and outcomes for future supply and demand on the Colorado River Basin. Failure to adopt this option certainly increases the uncertainty to the Tribe regarding its right to fully develop its reserved Tribal water rights over the next 50 years.

**Reliability:** Describe the anticipated reliability of the option and any known risks to supply or demand, such as: drought risk, water contamination risk, risk of infrastructure failure, etc.

Protecting the Tribe's reserved water will prevent over-allocation of Colorado River water, which will improve supply reliability within the State of Utah, especially given the senior nature of Tribal water rights.

**Water Quality:** Identify key water quality implications (salinity and other constituents) associated with the option in all of the locations the option may affect.

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No impacts to water quality are anticipated.

**Energy Needs:** Describe, and quantify if known, the energy needs associated with the option. Include any energy required to obtain, treat, and deliver the water to the defined location at the defined quality.

Energy Required	Source(s) of Energy
Not applicable.	

**Hydroelectric Energy Generation:** Describe, and quantify if known, any anticipated increases or decreases in hydroelectric energy generation as a result of the option.

Location of Generation	Impact to Generation
Not applicable.	

**Recreation:** Describe any anticipated positive or negative effects on recreation.

Location(s)	Anticipate Benefits or Impacts
Not applicable.	

**Environment:** Describe any anticipated positive or negative effects on ecosystems within or outside of the Colorado River Basin.

Location(s)	Anticipated Benefits or Impacts
Not applicable.	

**Socioeconomics:** Describe anticipated positive or negative socioeconomic (social and economic factors) effects.

Protecting the Tribe's reserved water will prevent over-allocation of Colorado River water, which will increase supply reliability and decrease supply uncertainty within Utah. Tribal water leases will provide meaningful income and employment for the Ute Tribe.

**Other Information:** Provide other information as appropriate, including potential secondary benefits or considerations. Attach supporting documentation or references, if applicable.

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