

# **Chapter 1**

## ***Introduction, Purpose Of, and Need For The Project***

---

---

### **1.1 INTRODUCTION**

The Department of the Interior (Interior), through the Bureau of Reclamation (Reclamation) and in cooperation with the United States Environmental Protection Agency (EPA) and the Ute Mountain Ute Tribe and the Southern Ute Indian Tribe (Colorado Ute Tribes), has prepared this Final Supplemental Environmental Impact Statement (FSEIS). This FSEIS is prepared under the provisions of Public Law (P.L.) 93-638, the Indian Self-Determination and Education Assistance Act. It evaluates the potential impacts of implementing the Colorado Ute Indian Water Rights Settlement Act of 1988 (P.L. 100-585) (Settlement Act). The Settlement Act (see Attachment A in Volume 2 of this FSEIS), through construction of the Animas-La Plata Project (ALP Project), intended to provide the Colorado Ute Tribes an assured long-term water supply in order to satisfy the Colorado Ute Tribes' senior water rights claims. Reclamation is now proposing to develop a modified ALP Project in southwestern Colorado and northwestern New Mexico for the purpose of finally implementing the Settlement Act. **Map 1-1** shows the ALP Project area.

The ALP Project has been the subject of public interest and environmental review since it was authorized by the Colorado River Basin Project Act of 1968 (P.L. 90-537) and later incorporated into the Settlement Act. The ALP Project is a participating project under the Colorado River Storage Project Act and utilizes part of the streamflows allocated to Colorado and New Mexico by the Colorado River Compact of 1922 (P.L. 84-485) and the Upper Colorado River Basin Compact of 1948. These two compacts allocate water for development in the Colorado River Basin.

Reclamation, in compliance with the National Environmental Policy Act (NEPA), prepared a Final Environmental Statement (INT FES 80-18) for the ALP Project (1980 FES) in 1980 (Reclamation 1980), a Draft Supplement to the 1980 Final Environmental Statement (DFS FES) in 1992 (Reclamation 1992), and a Final Supplement to the Final Environmental Statement in 1996 (1996 FS FES) (Reclamation 1996). The proposed ALP Project described in the 1996 FS FES continued to generate controversy. As a result, then Colorado Governor Roy Romer and Lt. Governor Gail Schoettler convened both supporters and opponents of the ALP Project in an attempt to address unresolved issues and gain consensus on an alternative to the original project (Romer-Schoettler process), which would satisfy the Indian water rights confirmed by the Settlement Act.

As a result of the Romer-Schoettler process, a new structural and non-structural alternative evolved in August 1997. Under the structural alternative, called the Animas-La Plata Reconciliation Plan, the initial stage of the project as described in the 1996 FS FES would be constructed, including a proposed reservoir at Ridges Basin (near the City of Durango) that would store water from the Animas River. The reservoir was sized to provide amounts of water in excess of the depletions currently allowed under the existing Biological Opinion issued by the U.S. Fish and Wildlife Service (Service) in compliance with the Endangered Species Act (ESA).<sup>1</sup> The non-structural alternative, referred to as the Animas River Citizen's Coalition Conceptual Alternative, focused on providing the Colorado Ute Tribes with funds to

---

<sup>1</sup> The Service prepared a Biological Opinion on the project in 1996 and updated that opinion in 2000 (Service 2000a). The 2000 Biological Opinion is included in Volume 2, Attachment G of this FSEIS. Information in this FSEIS is based on the 1999 Biological Assessment (Service 1999), informal consultation with the Service, and information and recommendations in the 2000 Biological Opinion.

purchase water from existing projects, and/or the acquisition of existing direct flow water rights, as well as the use and/or modification of existing federal facilities.

No consensus was reached on any of the alternatives developed during the Romer-Schoettler process. As a result, on August 11, 1998, the Secretary of Interior presented an Administration Proposal to implement the Settlement Act. The proposal calls for a down-sized dam and reservoir at Ridges Basin to supply municipal and industrial (M&I)<sup>2</sup> water to the Colorado Ute Tribes and other project beneficiaries (e.g., the Navajo Nation, the Animas-La Plata Water Conservancy District (ALPWCD), and the San Juan Water Commission (SJWC)). The proposal also contains a non-structural element as part of the settlement implementation. Further, under the Administrative Proposal, the ALP Project was sized to match the depletions permitted in the Reasonable and Prudent Alternatives (RPA) contained in the 1996 final Biological Opinion for the ALP Project. This opinion limited the average water depletions to 57,100 acre-feet/year (afy). See Chapter 4, Section 4.2.1.2 for further discussion of the Biological Opinion.

Because these proposals represent a significant modification of the ALP Project evaluated previously, additional environmental analysis is required. On January 4, 1999, Reclamation announced its intent to prepare a Draft SEIS (DSEIS) to the 1996 FSFES (*Federal Register* Volume 64, No. 1). The DSEIS analyzed various ways in which the Colorado Ute Tribal water rights may be settled. The DSEIS was released for public review and comment on January 14, 2000 following publication in the *Federal Register* of the Notice of Availability. Following release of the DSEIS, public hearings were held on February 15, 16, and 17, 2000 in Durango, Colorado; Farmington, New Mexico, and Denver, Colorado, respectively. The public comment period closed on April 17, 2000. Volumes 3a and 3b of this FSEIS include copies of all comments received during the public comment period and Reclamation's responses to those comments. A Record of Decision will be prepared following release of the FSEIS.

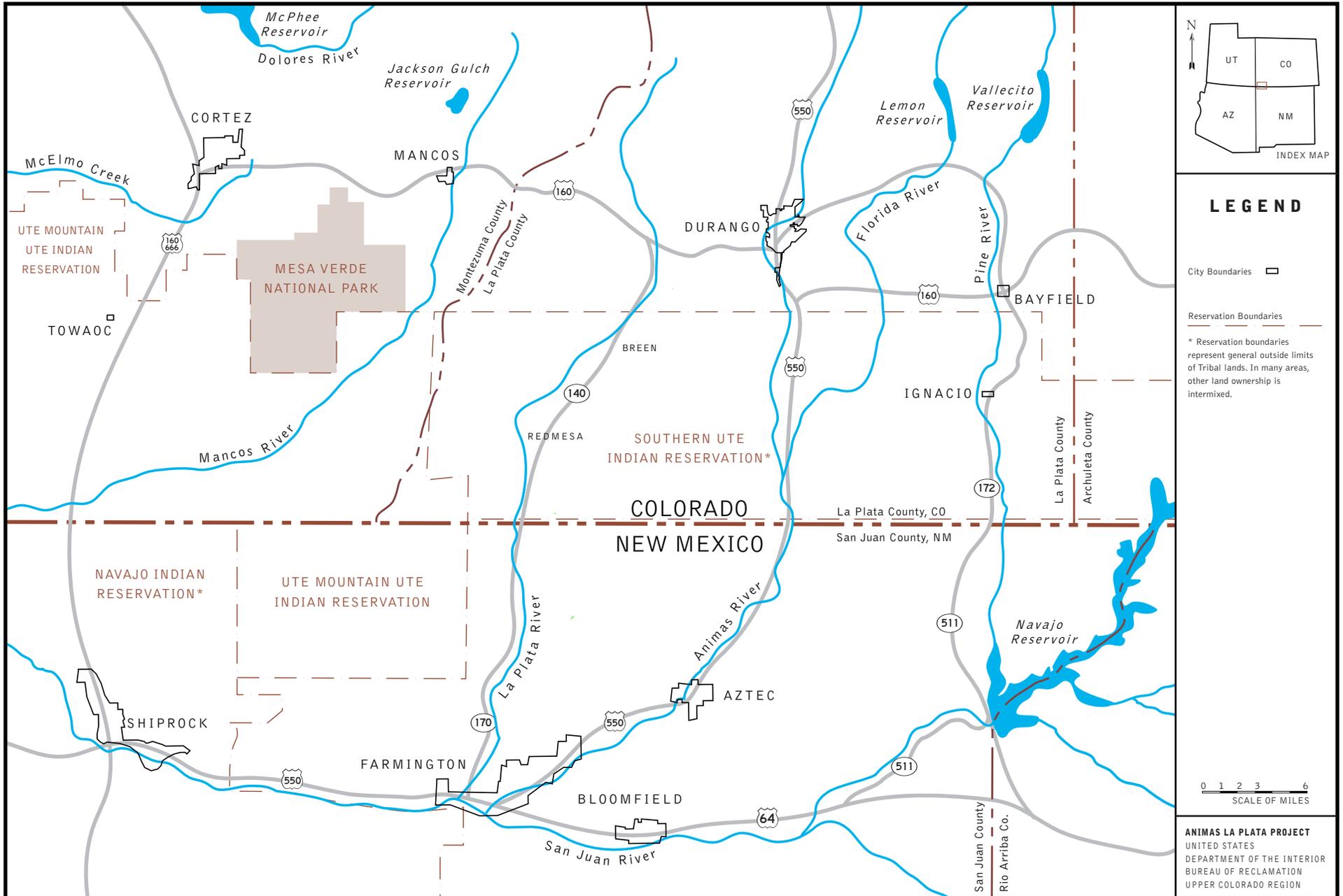
## 1.2 PROJECT HISTORY

The ALP Project was authorized by the Colorado River Basin Project Act of 1968 to be located in La Plata County in southwestern Colorado and in San Juan County in northwestern New Mexico. The ALP Project was designed to provide irrigation and M&I water supplies to the Colorado Ute Tribes and other project beneficiaries. A Colorado Ute Indian Water Rights Final Settlement Agreement (Settlement Agreement) (see Attachment A located in Volume 2 of this FSEIS) was signed on December 10, 1986, which quantified the Colorado Ute Tribes' water rights. The water rights allow the Colorado Ute Tribes to obtain water from several rivers and projects, including water supplied from the ALP Project. In 1988, Congress incorporated the ALP Project into the Settlement Act in order to settle Colorado Ute Tribal water rights claims.

As a result of an 1868 treaty entered into between the United States and the Colorado Ute Tribes, the Tribes acquired a large reservation encompassing much of southwestern Colorado. That reservation provides the Colorado Ute Tribes with significant reserved water rights on rivers and streams throughout the region. The Colorado Ute Tribes' water rights are senior to most non-Colorado Ute Indian water

---

<sup>2</sup> For purposes of this project, M&I refers to water for industries and cities, as well as for livestock and wildlife uses, recreation, and tourism development.



**MAP 1-1**  
**General ALP Project Area**

[Back page of Map 1-1]

rights in the region. In the absence of the Settlement Act, development of senior Colorado Ute Tribal water rights claims could adversely impact non-Colorado Ute Tribal water rights and users, including cities, municipalities, federal land management agencies, and recreation uses throughout southwestern Colorado and northwest New Mexico.

The Settlement Act requires delivery of ALP Project water to the Colorado Ute Tribes by January 1, 2000, to avoid future litigation or renegotiation of Tribal water rights claims. If a project is not approved, or implementation is delayed, the Colorado Ute Tribes have the option of commencing litigation or renegotiating their reserved water rights claims by January 1, 2005.

**Table 1-1** displays the provisions of the Settlement Act in terms of (1) the specific water right the Colorado Ute Tribes received; (2) the source of water to fulfill that right; and (3) the purpose to which the water would be put. The Settlement Act provides that when such water supplies are identified for a particular use, such use could be changed. Table 1-1 identifies water supplies for the Colorado Ute Tribes from the ALP Project, as well as three other Reclamation storage facilities, namely the Dolores, Florida, and Pine River Projects. The table also identifies water supplies for the Colorado Ute Tribes from the Navajo Wash; McElmo, Devil, Round Meadow, Cat and Stollsteimer Creeks; the Mancos, San Juan, Pine, and Piedra Rivers; and other sources. Development of water in McPhee Reservoir, a feature of the Dolores Project, and the construction of the Towaoc-Highline Canal were addressed in the Final Environmental Statement for the Dolores Project (INT FES 77-12) and the FSFES for the Dolores Project (FSFES 89-10).

The August 11, 1998 Administration Proposal for Final Implementation of the Colorado Ute Water Rights Settlement (Administration Proposal) was developed after a review of the Settlement Act requirements, the limitations imposed on depletion by the 1996 Biological Opinion, and a consideration of the alternatives generated during the Romer-Schoettler process. As a result, the Administration Proposal includes both structural and non-structural elements designed to achieve the fundamental purpose of securing the Colorado Ute Tribes an assured water supply in satisfaction of their water rights as determined by the 1986 Settlement Agreement and the 1988 Settlement Act to provide for identified M&I water needs in the ALP Project area. The Administration Proposal also addresses environmental and cost concerns relating to the ALP Project by restricting the project to construction of a defined number of facilities centered on a down-sized storage facility limited primarily to M&I water uses (no irrigation water would be allowed). Other previously contemplated project features (i.e., agriculture-related) would be deauthorized under the Administration Proposal. A substantial portion of the costs of the proposal are anticipated to be non-reimbursable to the United States. Costs of facilities, or portions of facilities, that would be utilized by non-Indian project beneficiaries are expected to be fully reimbursed by those parties.

The Administration Proposal for a project with both structural and non-structural components would:

- Provide for the construction of a reduced storage facility at Ridges Basin to supply a portion of the Colorado Ute Tribes' water supply described in the Settlement Act, and to provide limited M&I supplies for other ALP Project beneficiaries.
- Provide that water stored at Ridges Basin would be used primarily for M&I purposes with no irrigation uses authorized.

<b>Table 1-1 Provisions of the Colorado Ute Indian Water Rights Settlement Act<sup>a,b</sup></b>		
<b>The Ute Mountain Ute Tribe Received</b>	<b>From this Source of Water</b>	<b>For the Following Purpose</b>
Water rights to stored water in McPhee Reservoir of: 1,000 afy 23,300 afy 800 afy	Dolores Project Dolores Project Dolores Project	M&I use Agricultural irrigation Fish and wildlife development
Water rights of: 6,000 afy 26,300 afy 900 afy	ALP Project ALP Project ALP Project	M&I use Agricultural irrigation Additional agricultural irrigation per 1979 Definite Plan Report (Reclamation 1979)
Reserved water right for direct flow diversion and/or storage of 21,000 afy <sup>c</sup>	Mancos River	Irrigation of 7,200 acres in Mancos River drainage
Reserved water right for direct flow diversions of 4,800 afy (15 cubic feet per second (cfs) <sup>d</sup>	Navajo Wash	Irrigation of 1,200 acres in Navajo Wash drainage
Reserved water right for direct flow diversions of 1,600 afy (10 cfs) <sup>e</sup>	Mainstem of San Juan River	Irrigation of 640 acres of Tribal lands in San Juan River mainstem drainage
Reserved water rights of: 350 afy <sup>e</sup> 1,500 afy <sup>e</sup>	McElmo Creek Drainage Remainder of reservation	Beneficial use of tributary groundwater for future individual domestic and livestock wells
<b>The Southern Ute Indian Tribe Received</b>	<b>From this Source of Water</b>	<b>For the Following Purpose</b>
Water rights, delivered to Ridges Basin Reservoir or diversion point on Animas River, pending completion of Southern Ute Reservoir, of: 26,500 afy 3,400 afy	ALP Project ALP Project	M&I use Agricultural irrigation
Retention of its reserved water right with an 1868 priority date for 181.7 cfs <sup>f</sup> and 1/6 interest <sup>g</sup> in Vallecito Reservoir	Pine River	Existing uses
Water from other sources for agricultural irrigation from May 1 to September 30 at specified locations on Tribal lands as follows:		
Reserved water right of 1,090 afy <sup>e</sup>	Florida River	Agricultural irrigation

<b>Table 1-1 (continued)</b> <b>Provisions of the Colorado Ute Indian Water Rights Settlement Act<sup>a,b</sup></b>		
<b>The Ute Mountain Ute Tribe Received</b>	<b>From this Source of Water</b>	<b>For the Following Purpose</b>
Reserved water rights of: 1,850 afy storage <sup>h</sup> 2 cfs <sup>i</sup> 3.5 cfs <sup>e</sup>	Stollsteimer Creek Stollsteimer Creek Stollsteimer Creek	Agricultural irrigation
Reserved water right for direct flow diversions of 1,595 afy <sup>e</sup>	Piedra River	Irrigation of 535 acres
Reserved water rights of: 183 afy <sup>j</sup> 1,530 afy <sup>e</sup> 975 afy <sup>e</sup> 1,372 afy <sup>e</sup>	Devil Creek San Juan River Round Meadow Creek Cat Creek	Irrigation of 81 acres Irrigation of 510 acres Irrigation of 325 acres Irrigation of 482 acres
Water right of 2,000 afy <sup>e</sup>	In reservation	Beneficial use of tributary groundwater for future individual domestic and livestock wells

<sup>a</sup>The Southern Ute Indian Tribe and the Ute Mountain Ute Tribe also have rights to 2013 afy and 1080 afy respectively that they have used under their historical irrigated acreage that is not included in the Colorado Ute Indian Water Rights Final Settlement Agreement.

<sup>b</sup>Numbers shown in this table are for diversion and storage amounts. Allowable depletions are not shown.

<sup>c</sup>This right has an 1868 priority date, but is subordinated to all rights with an adjudication date prior to 1985. In order for the Tribe to utilize any significant water from this right, a storage reservoir would be required to store any excess water that is not utilized by water right holder with priority dates prior to 1985. The depletion allowance for this water right is not included in the biological baseline for the San Juan River and Section 7 consultation on the use of the water may be required before the water could be put to use.

<sup>d</sup>This right has an 1868 priority date, but is subordinated to all rights with an adjudication date prior to 1985. The depletion allowance for this water right is not included in the biological baseline for the San Juan River and Section 7 consultation on the use of the water may be required before the water could be put to use.

<sup>e</sup>The depletion allowance for this water right is not included in the biological baseline for the San Juan River and Section 7 consultation on the use of the water may be required before the water could be put to use.

<sup>f</sup>As set forth in the 1930 federal decree and the 1934 state decree, except as modified by the Colorado Ute Indian Water Rights Final Settlement Agreement.

<sup>g</sup>As per Reservoir No. 1, Appropriation Priority No. 1965 - 1, decreed in Civil Action No. 1848-B, La Plata County.

<sup>h</sup>Storage right at Pargin Reservoir. 2<sup>nd</sup> refill right subordinated to 1986. The depletion allowance for this water right is not included in the biological baseline for the San Juan River and Section 7 consultation on the use of the water may be required before the water could be put to use.

<sup>i</sup>This right has an 1868 priority date, but is subordinated to all rights with an adjudication date prior to 1986. The depletion allowance for this water right is not included in the biological baseline for the San Juan River and Section 7 consultation on the use of the water may be required before the water could be put to use.

<sup>j</sup>This right has an 1868 priority date, but is subordinated to all rights with an adjudication date prior to 1976. The depletion allowance for this water right is not included in the biological baseline for the San Juan River and Section 7 consultation on the use of the water may be required before the water could be put to use.

- ❑ Establish a water acquisition fund that could be used by the Colorado Ute Tribes for a variety of economic development purposes, including the acquisition of existing water rights. The water supply from the facility at Ridges Basin, coupled with the water acquisition fund and its potential for securing additional water rights for the Colorado Ute Tribes, would satisfy all outstanding Colorado Ute Tribal water rights claims on the Animas and La Plata rivers.
- ❑ Comply with all applicable laws, including ESA and NEPA, and comply with the Service’s determination that depletions from the San Juan River Basin cannot exceed an average 57,100 afy as outlined in the 1996 Biological Opinion for the ALP Project. Depletion limitations also assist in protecting the interests of downstream tribes and others with substantial water rights claims.

**Table 1-2** displays the allocation of water among the Colorado Ute Tribes and other project beneficiaries that would be provided by the structural components of the Administration Proposal. Under the allocations shown below, the Colorado Ute Tribes are still approximately 13,000 afy short of the total quantity of depletion recognized in the Settlement Agreement. The Administration Proposal, therefore, also includes a non-structural element that would establish and utilize a water acquisition fund, which the Colorado Ute Tribes could use over time to acquire water rights on a willing buyer/willing seller basis. The water acquisition fund was developed to acquire 13,000 afy of depletion in addition to the depletions shown in Table 1-2, or for other uses that they may choose.

<b>Water Recipient</b>	<b>Depletion from the San Juan River Basin (afy)</b>
Southern Ute Indian Tribe	19,980
Ute Mountain Ute Tribe	19,980
Navajo Nation	2,340
Animas-La Plata Water Conservancy District	2,600
San Juan Water Commission	10,400
<b>Subtotal</b>	<b>55,300</b>
Allowance for Reservoir Evaporation	1,800
<b>Total Depletion</b>	<b>57,100</b>

Because of the importance of the 57,100 afy average annual depletion as allowed under the Section 7 Biological Opinion for the ALP Project, depletion values are generally displayed throughout the report. It is a general practice to use a depletion factor of 50 percent for M&I water use (50 percent of the water diverted from a river system for an M&I use is returned back to the river system as a return flow). Depending on how the water is used, the depletion factor can vary. The depletion factor for municipal and domestic uses generally average somewhat less than 50 percent and the depletion factor for industrial uses generally average somewhat more than 50 percent. See Section 2.1.1.3.1 for additional information on depletion factor.

Preliminary cost estimates indicate that a fund of \$40 million would be provided as a settlement amount (water acquisition fund) to the Colorado Ute Tribes to be used on a discretionary basis to purchase land

to satisfy non-structural water rights or for economic development. To provide flexibility in the use of the water acquisition fund, authorization would allow some or all of the funds to be redirected for on-farm development, water delivery infrastructure, and other water-related economic development.

The public had an opportunity to provide input into the ALP Project proposal following release of the Notice of Intent (NOI) to Prepare a DSEIS, published in the January 4, 1999 *Federal Register*. Public scoping meetings were held on February 2, 3, and 4, 1999 in Durango, Colorado; Farmington, New Mexico; and Denver, Colorado, respectively. (Further discussion of public involvement activities is included in Chapter 6, Section 6.2.) Based on both written and oral input received during the scoping process, Reclamation added two alternatives to the list of alternatives originally envisioned for analysis in the DSEIS, bringing to 10 the number of alternatives considered, including both structural and non-structural components. Subsequently, 2 of the 10 alternatives were further refined. All of the alternatives are discussed in detail in Chapter 2, Section 2.3, Evaluation of Alternatives, of the FSEIS.

The DSEIS was released for public review and comment on January 14, 2000 following publication of the Notice of Availability in the *Federal Register*. As mentioned previously in Section 1.1, Reclamation conducted public hearings on the ALP Project DSEIS on February 15, 16, and 17, 2000 in Durango, Colorado; Farmington, New Mexico; and Denver, Colorado, respectively. Notice of a 30-day extension of the public comment period was published in the *Federal Register* on March 9, 2000; the public comment period closed on April 17, 2000. Further information on the public hearings is also included in Section 6.2.

### **1.3 PURPOSE OF AND NEED FOR THE PROJECT**

The purpose of and need for the proposed federal action is:

*“... to implement the Settlement Act by providing the Ute Tribes an assured long-term water supply and water acquisition fund in order to satisfy the Tribes’ senior water rights claims as quantified in the Settlement Act, and to provide for identified M&I water needs in the Project area.” [Federal Register Notice, January 4, 1999]*

Providing the Colorado Ute Tribes with an assured long-term water supply is necessary to protect existing water users from senior water rights claims. The Colorado Ute Tribes will use this assured water supply to satisfy future M&I water demands on their reservations and to provide water for regional M&I needs. In addition to providing an assured water supply as a settlement of the Colorado Ute Tribes’ senior water rights, the ALP Project as proposed provides a dependable long-term water supply for neighboring Indian and non-Indian community water needs, including the Navajo Nation at and near Shiprock, New Mexico, the ALPWCD and the SJWC.

It should be noted that the non-federal parties of the Settlement Agreement, working with their congressional representatives, have introduced proposed legislation (H.R. 3112 and S. 2508) in response to the Administration Proposal and the ongoing NEPA process. The project purpose and need reflects the reality that the pending legislation will likely result in a modification to the Settlement Act which will eliminate the irrigation component and provide substitute benefits to the Colorado Ute Indian Tribes that are equivalent to those that the Tribes would have received under the Settlement Act. See Chapter 2, Section 2.1.1 for further discussion of this issue.

Based on the Supreme Court's decision in *Winters v. United States*, 207 U.S. 564 (1908), when Congress or the President establishes an Indian Reservation, there is reserved the amount of water necessary in order to accomplish the purposes of the reservation. Under the Winters doctrine, the priority date to which the reservation is entitled is no later than the date of creation of the reservation. One of the unique aspects of Indian reserved water rights is that they are not subject to the beneficial use requirements ("use or lose") of state water law. Indian water rights, therefore, may not be diminished for failing to meet a beneficial use standard under state law. As a general rule, Indian water rights are very senior and because these rights are premised on sufficient water being reserved to insure full utilization of the purposes of the reservation, both presently and in the future, Indian water rights are usually sizeable in quantity.

The Colorado Ute Tribes reserved water rights arise from an 1868 treaty with the United States. 15 stat. 619. This treaty states that the land which is now part of the reservation was "set apart for the absolute and undisturbed use and occupation" by the Ute Tribes. Art. XIII. Additionally, the treaty provides for the basic tools, facilities and livestock needed to become self-sustaining. Based on these broad purposes, the tribes are entitled to make a claim for water in the Animas and La Plata basins. With the reservations containing over 25,000 acres of arable lands in the immediate vicinity (13,780 acres of which were to be irrigated by the original ALP Project), a sizable claim could be made on behalf of the tribes. In return for not asserting a potentially sizeable claim, the Ute tribes will receive a much smaller amount of "wet water" for settling their Winters rights.

Because the Animas La Plata project is a settlement of the Colorado Ute Tribes Winters rights, the ultimate use of the water is left to tribal discretion in accordance with federal law. As of this time the tribes have not conclusively specified to what end uses they will put their water. Because NEPA requires the federal government to take a hard look at the potential environmental consequences of any proposed action, Reclamation, in conjunction with input from the tribes, developed potential water use scenarios on how the tribes could put their water to use in order to effectively evaluate the potential environmental effects of settling the water rights claims of the Colorado Ute Tribes and providing for identified M&I uses in the project area. We believe this approach fulfills the requirements of NEPA while not impinging upon the sovereignty of the Colorado Ute Tribes.

## **1.4 OBJECTIVES OF THIS FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT**

This FSEIS has been prepared to meet the procedural requirements of NEPA, following the regulations established by the Council on Environmental Quality (CEQ) (40 Code of Federal Regulations (CFR) Parts 1500 to 1508) (Regulations). Those regulations provide the legal and regulatory guidelines for preparation of an environmental impact statement (EIS). This FSEIS incorporates by reference the 1996 FSFES and the 1980 FES to eliminate duplication and repetitive discussions of the same issues, and also incorporates information from the 1996 FSFES and 1980 FES (40 CFR 1508.28 and 1500.4(j)).

The purpose of this FSEIS is to supplement the 1996 FSFES and 1980 FES for the ALP Project. The CEQ Regulations state that federal agencies shall prepare supplements to final EIS documents when:

- Substantial changes have been made in the proposed action that are relevant to environmental concerns (40 CFR 1502.9(c)(1)(I)); and

- Significant new circumstances or information relevant to environmental concerns have a bearing on the proposed action or impacts (40 CFR 1502.9 (c)(1)(ii)).

This FSEIS evaluates 10 separate alternatives, including 9 action alternatives that include several structural and non-structural components, and a no action alternative. **Table 1-3** lists the names of each of the 10 alternatives. The 10 alternatives were evaluated in light of the project purpose and need and their relative environmental impacts. Following the evaluation process, two of the alternatives, Alternatives 4 and 6, were refined and then subjected to a full environmental analysis in this FSEIS. Subsequently, Refined Alternative 4 was identified as the preferred alternative.

<b>Table 1-3 List of ALP Project Alternatives</b>	
<b>Number</b>	<b>Title</b>
1	Administration Proposal
2	Administration Proposal with Recreation Element Added
3	Administration Proposal with San Juan River Basin Recovery Implementation Program (SJRBRIP) Element Added
4	Administration Proposal with SJRBRIP and Recreation Element Added
5	Animas-La Plata Reconciliation Plan
6	Animas River Citizen’s Coalition Conceptual Alternative
7	1996 Final Supplement to the Final Environmental Statement Recommended Action
8	Administration Proposal with an Alternative Water Supply for Non-Colorado Ute Indian Entities
9	Citizens’ Progressive Alliance Alternative
10	No Action Alternative

Reclamation reviewed the information and environmental analyses of the project contained in the 1996 FSFES and the 1980 FES. The following changes, circumstances, and information trigger CEQ requirements for preparation of a supplement to the 1996 FSFES and 1980 FES:

- The project alternatives include structural and non-structural components, which are different than the structural alternatives proposed in the 1996 FSFES and 1980 FES.
- The project water allocations would be restricted to M&I uses only, removing the irrigation water uses proposed in the 1996 FSFES and 1980 FES.
- A number of design refinements and changes to project features and operation have been proposed since the 1996 FSFES and 1980 FES.
- Other new information relevant to environmental concerns has emerged since the 1996 FSFES and the 1980 FES, including completion of a seven-year research program as part of the San Juan River Basin Recovery Implementation Program (SJRBRIP), and other resource studies and evaluations.

A Section 404(b)(1) Evaluation is included as Attachment B-1 to this FSEIS, in compliance with the EPA's Section 404(b)(1) requirements under 40 CFR Part 230. This 404(b)(1) Evaluation is in support of Reclamation's intention to seek Clean Water Act (CWA) compliance through Section 404(r) provisions which exempt Reclamation from the requirements to obtain a CWA Section 404 Permit from the U.S. Army Corps of Engineers for construction activities resulting in a discharge of dredged or fill material into waters of the United States. A letter of concurrence on 404(r) from EPA is also included in Attachment B-3.

This FSEIS also evaluates the potential environmental impacts associated with the construction and operation of the structural and non-structural components of the various project alternatives and the future uses to which ALP Project water may be put. The Administration Proposal does not include any M&I delivery facilities. As a result, the proposal is very specific when it addresses the impacts associated with non-conveyance structural components, and is less specific when it evaluates potential future water uses. These separate components are described in further detail below.

#### **1.4.1 Structural Components**

This FSEIS identifies the storage reservoirs, pumping plant, and conveyance facilities that comprise the ALP Project's structural components relevant for each alternative. These are defined in detail, their environmental settings and potential environmental impacts are evaluated, and mitigation measures are proposed in Chapter 3, Affected Environment and Environmental Consequences.

#### **1.4.2 Non-Structural Components**

This FSEIS considers two scenarios under which a fund would be established for the purchase of water rights and lands within the vicinity of the Southern Ute Indian and Ute Mountain Ute Reservations. One, as part of the Administration Proposal, would create a water acquisition fund, which the Colorado Ute Tribes could use over time to acquire water rights for 13,000 afy depletion on a willing buyer/willing seller basis. The fund, when coupled with the water made available from the modified ALP Project, would be considered sufficient to allow the Colorado Ute Tribes the quantity of water specified in the Settlement Act.

Second, as part of the non-structural component of Alternative 6, it is envisioned that a fund for land and water acquisition would be established that would supply 53,200 afy to the Colorado Ute Tribes. A dedicated fund would be created from federal and State of Colorado funds, for use at the sole discretion of the Colorado Ute Tribes to purchase water rights and land from willing sellers over a period of up to 30 years. It should be noted that the non-federal parties of the Settlement Agreement, working with their congressional representatives, have proposed legislation introduced (H.R. 3112 and S. 2508) in response to the Administration Proposal and the ongoing NEPA process. The legislation is expected to modify the Settlement Act and eliminate the irrigation component and provide funds for acquisition of water rights and water-related economic development.

This FSEIS inventories the available land and associated water rights in the McElmo Creek and Mancos, La Plata, Animas, Florida, and Pine River drainages in the vicinity of the two reservations. Land values, seniority of water rights, parcel sizes, and other factors were evaluated to develop a realistic picture of the potential acquisition of land and direct flow water rights. Representative areas were identified in order to develop an analysis of the range of likely non-structural component options that might be made by one or more of the water users in the future. Finally, as part of the non-structural analysis, the

potential was evaluated for securing water supplies from existing Reclamation storage facilities in the region through reoperation and/or modification.

### 1.4.3 Future Water Uses

The proposed allocation of ALP Project water that the entities would obtain from the structural portion of the project would be restricted to M&I applications. However, not all such uses are currently known. This FSEIS does identify non-binding uses to which project water may be put. Projections were made of a range of potential future M&I uses for the Colorado Ute Tribal portion of project water, as a basis for developing alternatives which would effectively provide water to meet these allocations. The scenarios for future water use are based on reasonable estimates of regional growth and projected needs by the Colorado Ute Tribes, within the 57,100 afy depletion limit. Chapter 2, Section 2.1.1 discusses these future water use scenarios, identifies likely sources of water to serve these future water uses, and presents likely conveyance options. Chapter 3 discusses the typical impacts that would occur from the construction and operation of these water uses and conveyance structures. The balance of the 57,100 afy depletion would be allocated for future M&I use by the Navajo Nation, the ALPWCD, and the SJWC.

The Tribal Water Use Study (Dornbusch 1999) (see Technical Appendix 1<sup>3</sup>) identified several non-binding uses that could be employed by the Southern Ute Indian Tribe and the Ute Mountain Ute Tribe. Further studies (Riley 1999; Bliesner 1999) refined regional M&I water uses in the San Juan River Basin in the event that the Colorado Ute Tribes elect to lease or sell a portion of their project water to other users, including users in New Mexico<sup>4</sup>. ALP Project water allocated to the ALPWCD and SJWC would be used for near-term, planned M&I growth. ALP Project water allocated to the Navajo Nation would be conveyed by a new pipeline that replaces the existing pipeline between Farmington and Shiprock.

## 1.5 RELATIONSHIP OF PROJECT TO OTHER ACTIVITIES OR CONNECTED ACTIONS

CEQ Regulations for implementing NEPA require the consideration of the relationship of the project, and its impacts, to other projects and activities, and their impacts, in the area. That relationship has helped determine the appropriate scope of this FSEIS. The relationship can be direct, indirect, or cumulative in nature. It extends to activities or projects that can be considered connected, cumulative, or related to the proposed ALP Project. **Connected actions**, as defined in 40 CFR 1508.25(a)(1), are those actions which are interrelated with the proposed federal action and should be discussed in the same EIS. **Cumulative actions**, as defined in 40 CFR 1508.25(a)(2), are those actions, when viewed with other proposed actions, have cumulatively significant impacts. Finally, **related actions**, as defined in 40 CFR 1508.25(a)(3), are those actions which, when viewed with other proposed actions, have similarities to the proposed action that provide a basis for evaluation together, such as common timing or geography.

Numerous projects were identified in the 1996 FSFES that could be connected, cumulative, and/or related to the proposed ALP Project (see pages I-11 through I-15 of the 1996 FSFES) and have been incorporated by reference into this FSEIS. One of these, the revised operation of Navajo Reservoir to

---

<sup>3</sup> Technical Appendices are available upon request. See Section 1.7 for further information regarding the Technical Appendices.

<sup>4</sup> Any use of Colorado Ute Indian settlement water in New Mexico or outside of Colorado would require changes be made to interstate compacts and/or state water regulations.

comply with the 1996 Biological Opinion, is a connected action. Additional analysis on the operation of Navajo Reservoir has taken place since the 1996 FSFES, and an updated discussion is included in Chapter 4, Other Impact Considerations, (also see Attachment C, Navajo Reservoir Operation). Several additional cumulative actions, namely, completion of the Navajo Indian Irrigation Project, the Jicarilla Apache Tribe Water Rights Settlement, the proposed Navajo-Gallup Water Supply Project, restoration of the Hogback Project, the San Juan Basin coalbed methane gas development, and construction of several Colorado/New Mexico transportation projects, are also discussed in Chapter 4.

## **1.6 ENVIRONMENTAL REVIEW AND CONSULTATION REQUIREMENTS**

Because the United States owns and operates the Navajo Reservoir and also has pervasive ESA and Tribal responsibilities in the San Juan River Basin, the FSEIS is designed to accommodate as much as possible these overlapping concerns. The laws and policies listed below summarize these responsibilities and how they are affected by the ALP Project.

- Fish and Wildlife Coordination Act
- National Historic Preservation Act
- Endangered Species Act
- Clean Water Act
- Reclamation policy regarding analysis and discussion of effects on Indian Trust Assets
- Executive Order 12898 on Environmental Justice in Minority Populations and Low Income Populations
- Executive Orders 11988 and 11990 on Floodplain Management and Protection of Wetlands
- Wild and Scenic Rivers Act
- Native American Graves Protection and Repatriation Act
- Other environmental review laws and executive orders, including that for metric application

Development and operation of the ALP Project would require various contracts and agreements which would be negotiated with the Colorado Ute Tribes, Colorado Water Conservation Board, ALPWCD, SJWC, and federal, state, and local agencies. Various permits and licenses would also need to be obtained from local, state, and federal regulatory agencies.

The permits for the approval, construction, and operation of the proposed ALP Project cover a wide spectrum of compliance activities. This FSEIS and associated planning have supported the basis for meeting the necessary permit conditions. The permits and licenses needed for construction and operation of the ALP Project, and the agencies or departments that administer them, are listed in Chapter 7, Permits, Approvals, and Regulatory Requirements.

## 1.7 ORGANIZATION OF DOCUMENT

This FSEIS has been organized as follows:

- ❑ *Chapter 1, Introduction, Purpose of and Need for the Project* introduces the ALP Project, as modified, which is being proposed to implement the provisions of the Settlement Act. The chapter also discusses the purpose of and need for the project, and discusses the objectives of this FSEIS.
- ❑ *Chapter 2, Development of Alternatives*, provides information related to the development and analysis of the project alternatives, including the nine action alternatives and the No Action Alternative. It also presents information on the non-binding future water uses mentioned in Section 1.4.3. A description of the technical and environmental evaluation processes used to compare all the alternatives is also included in Chapter 2, as are the results. Those components of the alternatives considered but eliminated from further consideration in this FSEIS are also identified. Chapter 2 concludes with a description of the two refined alternatives (Refined Alternatives 4 and 6) that were selected for full environmental evaluation in Chapter 3.
- ❑ *Chapter 3, Affected Environment and Environmental Consequences*, identifies the impacts that could occur to a wide array of resource areas as a result of development and operation of the proposed ALP Project. Each resource topic identifies the affected environment, potential environmental consequences (impacts), and proposed mitigation measures for Refined Alternative 4, Refined Alternative 6, and the No Action Alternative.
- ❑ *Chapter 4, Other Impact Considerations*, describes other impacts that could occur as a result of implementation of the ALP Project. Growth-inducing impacts are evaluated, as are impacts associated with the connected, cumulative, and related actions. Chapter 4 also addresses the relationship between short-term uses versus long-term productivity as well as irreversible and irretrievable commitments of resources. Finally, Chapter 4 provides an analysis of Indian Trust Assets and Environmental Justice as they relate to the Colorado Ute Tribes, the Jicarilla Apache Tribe, the Navajo Nation, and other Native American groups.
- ❑ *Chapter 5, Purpose and Need, Recommendations and Commitments*, explains the rationale for selecting the Preferred Alternative and provides a list of the environmental commitments Reclamation will undertake to avoid, reduce, or eliminate adverse environmental impacts associated with development and operation of the ALP Project.
- ❑ *Chapter 6, Consultation and Coordination*, presents a list of the agencies, tribes, and other interested or affected individuals and groups that were contacted, as well as a summary of the public involvement process for completing this FSEIS. It also discusses the consultation and coordination activities that were undertaken with those agencies with jurisdictional authority, interest, or expertise in the activities or issues addressed in the FSEIS.
- ❑ *Chapter 7, Permits, Approvals, and Regulatory Requirements*, provides a list of the various permits and approvals that would be required to construct and operate the ALP Project.
- ❑ *Chapter 8, List of Preparers*, includes a list of those persons within Reclamation, the Service, and other agencies, as well as consultant support, who prepared this FSEIS.

- *Chapter 9, References*, contains a list of references and other supporting materials.

It should be noted that throughout the FSEIS, reference is made to several attachments to this document. These attachments are listed with an alphabetical designation (e.g., Attachment “A”), and are included in Volume 2 of the FSEIS. In addition, reference is also made to technical appendices that are listed with a numerical designation (e.g., Technical Appendix “1”). These technical appendices are available upon request from Reclamation’s office in Durango, Colorado.

Finally, during preparation of this FSEIS, the 1996 FSFES has served as a critical source of information and in many instances, specific information from that document has been brought forward and incorporated by reference. Additionally, information developed during the Romer-Schoettler process has been incorporated. In those instances where text from the 1996 FSFES has been included in this FSEIS, the information has been set in italicized type to help the reader differentiate the information from new analysis that has been conducted. The 1996 FSFES is available for review at Reclamation’s offices in Durango, Colorado, Salt Lake City, Utah, and Grand Junction, Colorado. An Executive Summary of the 1996 FSFES can be provided upon request.