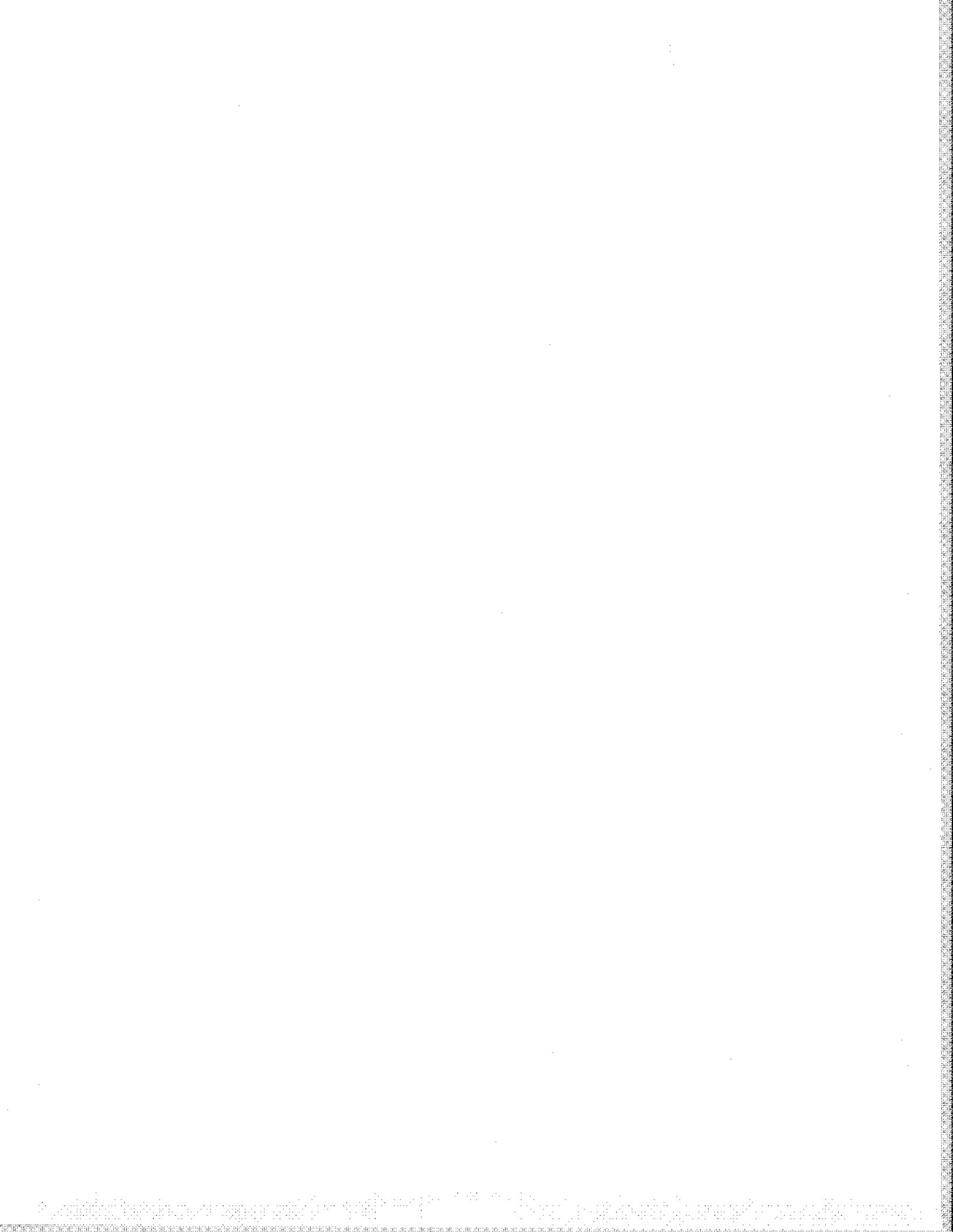


Attachment A - Part 1
1986 Settlement Agreement



COLORADO UTE INDIAN WATER RIGHTS

FINAL SETTLEMENT AGREEMENT

December 10, 1986

STATE OF COLORADO
UTE MOUNTAIN UTE INDIAN TRIBE
SOUTHERN UTE INDIAN TRIBE
UNITED STATES DEPARTMENT OF THE INTERIOR
UNITED STATES DEPARTMENT OF JUSTICE
ANIMAS-LA PLATA WATER CONSERVANCY DISTRICT
DOLORES WATER CONSERVANCY DISTRICT
FLORIDA WATER CONSERVANCY DISTRICT
MANCOS WATER CONSERVANCY DISTRICT
SOUTHWESTERN WATER CONSERVATION DISTRICT
CITY OF DURANGO
TOWN OF PAGOSA SPRINGS
FLORIDA FARMERS DITCH COMPANY
FLORIDA CANAL COMPANY
FAIRFIELD COMMUNITIES, INC.

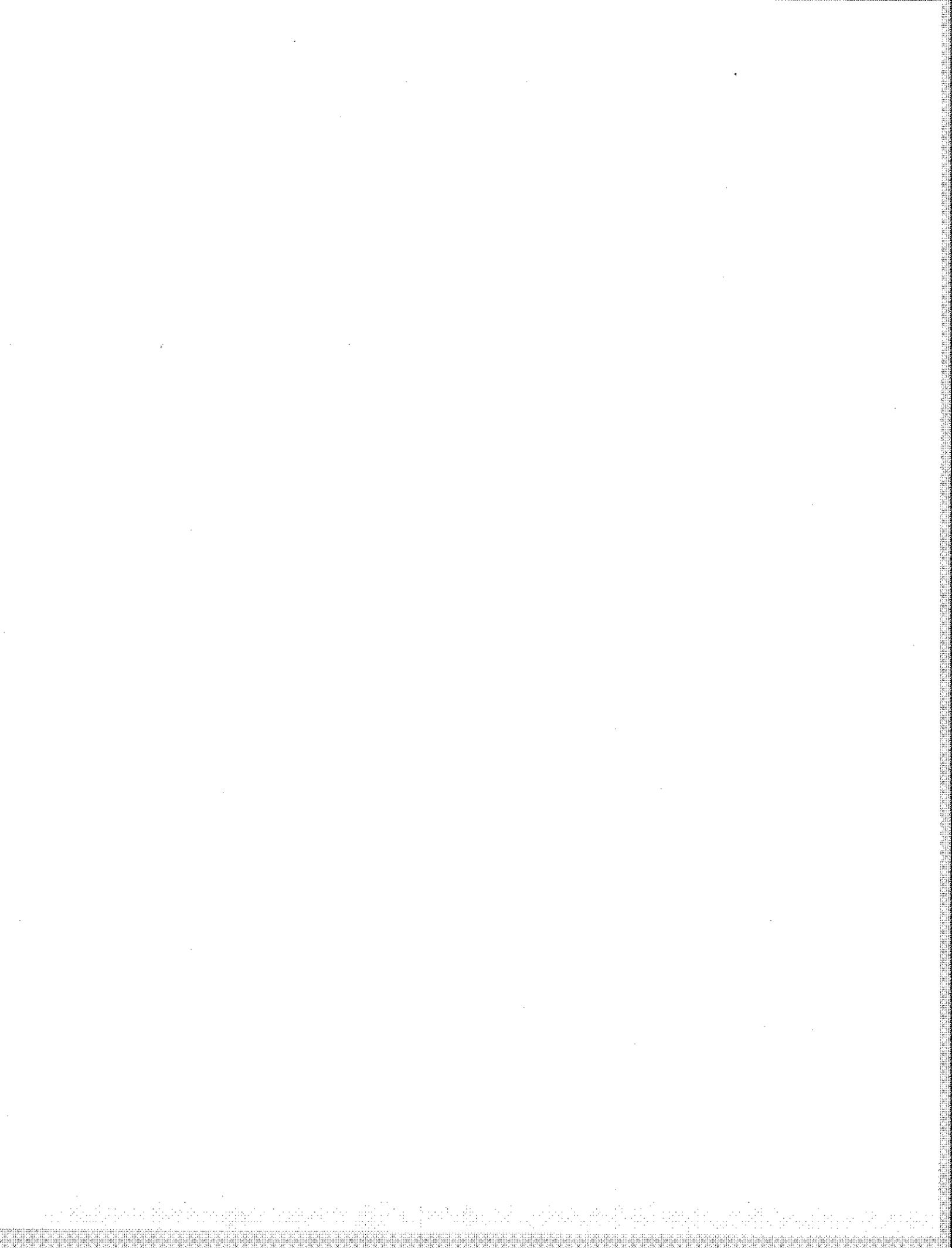


TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I. GENERAL PURPOSES	1
ARTICLE II. DEFINITIONS	2
ARTICLE III. QUANTIFICATION AND DETERMINATION	6
Section A. Ute Mountain Ute Indian Tribe	6
Subsection 1. Dolores Project	6
Subsection 2. Animas-La Plata Project	15
Subsection 3. Other Sources	25
Subsection B. Southern Ute Indian Tribe	26
Subsection 1. Animas-La Plata Project	27
Subsection 2. Pine River	36
Subsection 3. Other Sources	36
Section C. Further Quantification	46
Subsection 1. Existing Uses	46
Subsection 2. Future Domestic and Livestock Tributary Ground Water Uses	47
Section D. Disputes	48
ARTICLE IV. ADMINISTRATION	49
Section A. Introduction	49
Section B. Surface Diversions	50
Section C. Dam and Reservoir Safety	52
Section D. Individual Domestic and Livestock Wells	53
Section E. Aquifer Protection and Water Well and Pump Installation	54
Section F. Change of Reserved Water Right	55
Subsection 1. Change of Non-project Reserved Water Right	55
Subsection 2. Change of Project Reserved Water Right	57
Section G. State Adjudicated Water Rights	58

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE V. LEASING AND OFF-RESERVATION USE	59
Section A. Leasing	59
Section B. Water Use Outside the Boundaries of the Reservations	59
ARTICLE VI. FINALITY OF SETTLEMENT	61
Section A. Judicial Approval	61
Subsection 1. Congressional Legislation	62
Subsection 2. Colorado General Assembly Legislation	66
Section B. Tribal Development Funds	67
Section C. Remedies In The Event Contingencies Are Not Met	69
Subsection 1. Confirmation by the Colorado District Court for Water Division No. 7	69
Subsection 2. Enactment of Necessary Legislation	70
ARTICLE VII. GENERAL PROVISIONS	71
SIGNATURES	

COLORADO UTE INDIAN WATER RIGHTS
FINAL SETTLEMENT AGREEMENT

The United States, the State of Colorado, the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, and the additional governmental and private entities signatory hereto, acting through their respective representatives, hereby agree as follows:

I. GENERAL PURPOSES

The purposes of this Colorado Ute Indian Water Rights Final Settlement Agreement are to: (1) determine finally all rights of the Southern Ute and Ute Mountain Ute Indian Tribes, and of the persons claiming under the Tribes, to beneficially use water for, or to beneficially use water on, under, adjacent to or otherwise appurtenant to, the Southern Ute and Ute Mountain Ute Indian Reservations within the State of Colorado; (2) settle existing disputes and remove causes of future controversy between the Tribes and the State, between the Tribes and the United States, and between Indians of the Reservations or their successors and other persons, concerning the rights to beneficially use water in southwestern Colorado; (3) settle all claims by the Tribes and by

the United States on behalf of the Tribes in the water adjudication proceedings pending in the Colorado District Court for Water Division No. 7 pursuant to the Colorado Water Right Determination and Administration Act of 1969, title 37, article 92, C.R.S. (1973 and as amended); (4) to secure for the Tribes an opportunity to derive an economic benefit or generate revenue from the use of the project and non-project reserved water rights secured in this Agreement; (5) to enhance the Tribe's ability to meet their repayment obligations under this Agreement; and (6) to authorize the Tribes to sell, exchange, lease or otherwise temporarily dispose of their water.

II. DEFINITIONS

For purposes of this Agreement:

1. The term "Agreement" shall mean the Colorado Ute Indian Water Rights Final Settlement Agreement.

2. The term "Animas-La Plata Project" means the Animas-La Plata Project, Colorado-New Mexico, a participating project under the Colorado River Storage Project Act, 70 Stat. 105, 43 U.S.C. 620, as amended by the Colorado River Basin Project Act, 82 Stat. 885.

3. The term "Dolores Project" means the Dolores Project, Colorado, a participating project under the Colorado River Storage Project Act, 70 Stat. 105, 43 U.S.C. 620, as amended by the

Colorado River Basin Project Act, 82 Stat. 885.

4. The term "net acres" means the acres, exclusive of lands necessary for roads, buildings, or farm practices, which the Tribes have a right to irrigate pursuant to this Agreement.

5. The term "per annum" means per water year, with a water year commencing on October 1 each year and running through the next succeeding September 30th.

6. The term "Secretary" means the Secretary of the Interior.

7. The term "State Engineer" means the State Engineer of the State of Colorado, as described in title 37, article 80, C.R.S. (1973 & 1986 Supp.), and his agents and employees.

8. The term "State" means the State of Colorado.

9. The term "Tribal lands" means lands owned by the Tribes or Tribal members or lands held in trust or other restricted status by the United States for the benefit of the Tribes or individual Indians.

10. The terms "Tribe" or "Tribes" mean the Ute Mountain Ute Indian Tribe and/or the Southern Ute Indian Tribe, as the context requires, whose Indian reserved water rights are quantified and secured by this Agreement.

11. The term "tributary ground water" means "underground water" as that term is defined and used in section 37-92-103(11), C.R.S. (1973 & 1986 Supp.).

12. The term "project reserved water right" means an Indian reserved water right secured to the Tribes by this Agreement to water supplied either from the Animas-La Plata Project or from the Dolores Project and held in trust by the United States on behalf of the Tribes.

13. The term "non-project reserved water right" means an Indian reserved water right secured to the Tribes by this Agreement other than the rights to water supplied from the Animas-La Plata and Dolores Projects and held in trust by the United States on behalf of the Tribes, and other than water secured to the Southern Ute Indian Tribe from the Florida Project or the Pine River.

14. The term "Tribal permit" means a permit issued by the appropriate Tribal government to authorize the utilization of water allocated to the Tribes under the terms of this Agreement.

15. The term "cfs" means cubic feet per second.

16. The term "combined Highline-Towaoc Canal" means the Highline Ditch as improved and, if necessary, extended, or any other canal or ditch constructed for the purpose of delivering agricultural irrigation and fish and wildlife development water from the Dolores Project to the Ute Mountain Ute Indian Reservation, including the laterals to be constructed by the Bureau of Reclamation pursuant to the DPR.

17. The term "DPR" means the Definite Plan Report dated

September, 1979, for the Animas-La Plata Project or the Definite Plan Report dated April, 1977, and its supplement, dated April 1981, for the Dolores Project, as the context requires.

18. The term "consumptive use" means that quantity of water diverted from the hydrologic stream system and not returned to the hydrologic stream system by either surface flow or percolation.

19. The term "Florida Project" means the Florida Project, Colorado, a participating project under the Colorado River Storage Project Act, 70 Stat. 105, 43 U.S.C. 620, as amended by the Colorado River Basin Project Act, 82 Stat. 885.

20. The term "Vallecito Reservoir" means the Vallecito Reservoir, Colorado, which is located on the Pine River and which is a feature of the Pine River Project, Colorado, which project was constructed under the provisions of section 4 of the Act of June 25, 1910 (36 Stat. 835), and of subsection B, section 4 of the Act of December 5, 1934 (43 Stat. 701).

21. The term "OM&R" means operation, maintenance and replacement.

22. The term "parties" means the signatories to this Agreement.

23. The term "Towaoc Pipeline" means the pipeline to be constructed from the City of Cortez water treatment plant to the Town of Towaoc on the Ute Mountain Ute Indian Reservation, which

pipeline is intended to carry the Ute Mountain Ute Indian Tribes's municipal and industrial water supply from the Dolores Project to the Town of Towaoc.

III. QUANTIFICATION AND DETERMINATION

A. UTE MOUNTAIN UTE INDIAN TRIBE

The Ute Mountain Ute Indian Tribe shall be entitled to the rights described below to beneficially use water from the following sources:

1. Dolores Project

a. The Tribe shall receive a project reserved water right to stored water from the Dolores Project. This project reserved water right shall have an 1868 priority date, shall for all time be subordinated to all water rights decreed and senior to the Dolores Project, and shall share for all time on a pro rata basis the priority of the Dolores Project, which has an adjudication date of March 22, 1963, and an appropriation date of September 10, 1940, C.A. 967, District Court, Montezuma County, Colorado.

b. The project reserved water right shall entitle the Tribe to receive and beneficially use, on that part of the Ute Mountain Ute Indian Reservation within the State or

within the boundaries of the Dolores Water Conservancy District, the following allocations of water from the Project, as measured at McPhee Dam and Reservoir:

(i) a maximum of 1,000 acre-feet per annum of municipal and industrial water;

(ii) a maximum of 23,300 acre-feet per annum of agricultural irrigation water; and

(iii) a maximum of 800 acre-feet per annum for fish and wildlife development.

The project reserved water right shall not exceed the total of the above allocations.

c. During periods of water shortage, deliveries of project water, or deliveries of the supply of water available under the project priority, to the Tribe and to all others shall be as follows:

(i) municipal and industrial water allocations as quantified in the DPR shall first be fully satisfied;

(ii) agricultural irrigation water allocations and other allocations as quantified in the DPR, exclusive of stream fishery releases, shall share shortages on a pro rata basis even if changed to other beneficial uses; and

(iii) stream fishery releases to the Dolores River set forth in the DPR shall be made in accordance

with the operating agreement between the Dolores Water Conservancy District and the United States Bureau of Reclamation's Contracting Officer as specified by the repayment contract between the District and the United States.

The sharing of shortages in the project's water supply shall govern the actual amount of agricultural irrigation water and water for fish and wildlife development delivered to the Tribe whether or not the average supply of 22,900 acre-feet per annum of agricultural irrigation water and of 800 acre-feet per annum of fish and wildlife development water, as contemplated by the DPR, is actually achieved.

d. In proceedings pursuant to Article IV, Section F, the computations concerning the Tribe's historic beneficial use of water shall be based upon:

(i) actual historic monthly deliveries of the available annual supply, made pursuant to the DPR, measured at the McPhee Dam and Reservoir or, if there has not yet been full use of water, then the Tribe shall be deemed to have historically made beneficial use of any unused portion of each year's available water based upon the following monthly percentage distribution of the available water:

<u>Month</u>	<u>Agricultural Irrigation Water</u>	<u>M&I Water</u>	<u>Fish and Wildlife Development Water</u>
October	4%	6%	12.5%
November	0	5	0
December	0	3	0
January	0	3	0
February	0	3	0
March	0	5	0
April	2	8	37.5
May	15	13	0
June	25	16	12.5
July	28	16	12.5
August	16	13	12.5
September	10	9	12.5
Totals	100%	100%	100.0 %

(ii) actual historic consumptive use or, if there has not yet been full use of water, then the Tribe shall be deemed to have historically consumed 50 percent of the unused portion of the water available to the Tribe from its annual municipal and industrial water allocation, 78.5 percent of the unused portion of the water available to the Tribe from its annual agricultural irrigation water allocation, and 100 percent of the unused portion of the water available to the Tribe from its annual fish and wildlife development allocation; or

(iii) any agreement which may be entered into among the State, the Tribe, the Dolores Water Conservancy District and the United States Bureau of Reclamation which modifies (i) and (ii) above.

e. The project reserved water right shall

always be consistent with:

(i) The DPR, except as modified by this Agreement;

(ii) The allocations, shortage provisions, delivery schedules, and consumptive use calculations described in this subsection;

(iii) Bureau of Reclamation procedures, which shall include, among other things, NEPA compliance and assurance that other project water users are not injured by any change in the use of project water.

f. The project reserved water right may be changed pursuant to the change in reserved water right procedures set forth in Article IV, section F; provided, however, that the project reserved water right shall not entitle the Tribe to any other reserved water right from the Mancos or Dolores Rivers, except, in the event of the failure of the project, the Tribe may convert the project reserved water right to a separate reserved storage or reserved direct flow water right from these rivers with the consent of the State Attorney General, the Mancos Water Conservancy District, and the Dolores Water Conservancy District, so that the Tribe and all other project beneficiaries will be placed in the same position in attempting to put their water rights to use.

g. Based upon the parties' expectation that

the combined Highline-Towaoc Canal will be completed, subject to Congressional appropriations, the final settlement of the Tribe's reserved water rights claims on the Mancos and Dolores Rivers as described in this Agreement shall be subject to the following conditions:

(i) If the Dolores Project is completed so as to enable the delivery of water to the Reservation through the combined Highline-Towaoc Canal on or before May 1, 1994, then: (a) the settlement of the Tribe's pending reserved and appropriative water rights claims on both the Mancos River and the Dolores River contained in this Agreement shall become final; (b) the Tribe shall be entitled to the full project reserved water right as described in this subsection; and (c) the Tribe shall not be entitled to claim any additional reserved water rights, either on the Mancos River or on the Dolores River.

(ii) If the combined Highline-Towaoc Canal is not completed so as to enable the delivery of water to the Reservation by May 1, 1994, then by January 1, 1995, the Tribe, in consultation with the United States as trustee, must elect either: (a) to retain the project reserved water right by accepting any portion of the Tribes' allocations of water, excluding municipal and industrial water, for delivery directly from McPhee Reservoir; or (b) to commence litigation or renegotiation of its pending reserved water rights claims on the Mancos

River. If the Tribe, in consultation with the United States as trustee for the Tribe, has not elected to commence litigation or renegotiation of its pending claims on the Mancos River by notification to the parties by January 1, 1995, as provided below, then: (a) the Tribe shall be deemed to have elected to retain the project reserved water right by accepting delivery of its allocations of water directly from McPhee Reservoir, (b) the settlement of the Tribe's pending reserved and appropriative water rights claims on both the Mancos River and the Dolores River contained in this Agreement shall become final; and (c) the Tribe shall not be entitled to claim any additional reserved water rights either on the Mancos River or on the Dolores River. If the Tribe elects to commence litigation or renegotiation of its pending reserved water rights claims on the Mancos River, then: (a) the Tribe shall retain its project reserved water right to 1000 acre feet of municipal and industrial water; (b) the Tribe shall relinquish and forfeit the remainder of the project reserved water right from the Dolores Project as described in this subsection and all other pending reserved and appropriative water rights claims on the Dolores River; and (c) the Tribe shall not be entitled to claim any additional reserved water rights on the Dolores River; provided, however, that if the combined Highline-Towaoc Canal is at any time thereafter completed so as to enable the delivery of water to the Reservation or if the Tribe elects any time there-

after to receive an allocation of water from McPhee Reservoir, in addition to the 1,000 acre feet of municipal and industrial water, then: (a) the Tribe shall be entitled to the full project reserved water right as described in this subsection; (b) the Tribe shall not be entitled to claim any other reserved water rights on either the Mancos River or the Dolores River, and (c) the Tribe shall relinquish any then pending reserved water rights claims or any benefits it may have obtained by litigating or negotiating its reserved water rights claims on the Mancos River, including all reserved water rights which may have been decreed. Notice of the Tribe's election shall be made as follows: to the United States, through the Secretary of the Interior and the Attorney General; to the Tribes, through the respective Tribal Chairman; to the State, through the Attorney General; and to all other parties, through their respective offices.

h. Subject to Congressional appropriations, nothing in this section shall reduce or limit the present authorization of the United States to complete the construction of the Dolores Project in general conformity with the DPR, including the Towaoc drains, if needed.

i. Under no circumstances shall anything in this Agreement be construed as an admission, or be used by any party as evidence that the Tribe is or is not legally entitled to reserved water rights on the Dolores River. The project reserved

water right shall have no precedential or presumptive value in the event the terms of this Agreement do not become final.

j. Repayment of that portion of the construction costs allocable to the Tribe's agricultural irrigation water allocation for which the Tribe is responsible shall be deferred pursuant to the Leavitt Act. Pursuant to the federal legislation required by Article VI, Section A, subsection 1.b:

(a) repayment of the construction costs of the joint use facilities that are allocable to the Tribe's municipal and industrial water allocation shall be deferred, and interest thereon shall not accrue, until the water is used or temporarily disposed of by the Tribe; and (b) the reimbursable OM&R costs allocable to the Tribe's municipal and industrial water allocation shall be borne by the United States, subject to Congressional appropriations, until the water is used or temporarily disposed of by the Tribe. As an increment of municipal and industrial water is put to use or otherwise temporarily disposed of, prospective repayment of that increment's pro rata share of the allocable costs shall commence. If the Tribe does not take delivery of its agricultural irrigation or fish and wildlife development water through the combined Highline-Towaoc Canal, then the Tribe shall: (a) continue to remain responsible for such portion of the OM&R costs of the combined Highline-Towaoc Canal as will ensure that all other project users under the combined Highline-Towaoc Canal bear no

greater OM&R costs than would have otherwise been the case; and (b) ensure that deliveries to, and carriage losses of, all other project water users under the combined Highline-Towaoc Canal are not adversely affected. Similarly, the District shall ensure that if non-Indian water users do not take delivery of their agricultural irrigation water through the combined Highline-Towaoc Canal there will not be an increase in the OM&R costs or a reduction in deliveries to the Tribe.

2. Animas-La Plata Project

a. The Tribe shall receive a project reserved water right to water supplied from the Animas-La Plata Project. This project reserved water right shall have an 1868 priority date, shall be subordinated to all water rights decreed and senior to the Animas-La Plata Project, and shall share on a pro rata basis the priority of the Animas-La Plata Project, which has an adjudication date of March 21, 1966, and an appropriation date of September 2, 1938, C.A. 1751-B, District Court, La Plata County, Colorado.

b. The project reserved water right shall entitle the Tribe to receive and beneficially use, on that part of the Ute Mountain Ute Reservation within the State or within the boundaries of the Animas-La Plata Water Conservancy District, the following allocations of water from the Animas-La Plata

Project, as measured at Ridges Basin Dam and Reservoir or at the point on the Animas River where diversions are made to the Durango Pumping Plant or, for La Plata River water, at the point on the La Plata River where water is diverted for project purposes:

(i) a maximum of 6,000 acre-feet per annum of municipal and industrial water; and

(ii) a maximum of 26,300 acre-feet per annum of agricultural irrigation water.

The project reserved water right shall not exceed the total of the above allocations; provided, however, that nothing herein shall limit the Tribe's right to receive an additional 900 acre-feet per annum of agricultural irrigation water in accordance with the DPR.

Pending completion of the construction of the Ute Mountain Pumping Plant, the reach of the Dry Side Canal beyond the turn out to the Dry Side Lateral, and the laterals on the Ute Mountain Ute Reservation, the Tribe's allocations of water will be delivered to the Tribe at Ridges Basin Reservoir or at the point on the Animas River where diversions are made to the Durango Pumping Plant. When the Tribe takes delivery of its municipal and industrial water allocation at these locations, the timing of the deliveries of its annual municipal and industrial water allocation may be at the Tribe's discretion, so long as neither the

project supply nor other project users are adversely affected. The Tribe shall take monthly deliveries of its agricultural irrigation and municipal and industrial water allocations in the manner contemplated by the DPR; provided that the Tribe may take delivery of its agricultural irrigation and municipal and industrial water at its discretion so long as neither the project supply nor other project users are adversely affected.

c. During periods of water shortage, deliveries of project water, or deliveries of the supply of water available under the project priority, to the Tribe and to all others shall be as follows:

(i) the municipal and industrial water allocations as quantified in the DPR shall first be fully satisfied; and

(ii) the agricultural irrigation water allocations as quantified in the DPR shall share shortages on a pro rata basis even if changed to other beneficial uses.

The sharing of shortages in the project's water supply shall govern the actual amount of agricultural irrigation water delivered to the Tribe whether or not the average supply of 25,560 acre-feet per annum as contemplated by the DPR is actually achieved.

d. In proceedings pursuant to Article IV, Section F, the computations concerning the Tribe's historic beneficial use of water shall be based upon:

(i) actual historic monthly deliveries of the available annual supply, measured at Ridges Basin Reservoir or at the point on the Animas River where diversions are made to the Durango Pumping Plant, or if there has not yet been full use of water, then the Tribe shall be deemed to have historically made beneficial use of any unused portion of each year's available water based upon the following monthly percentage distributions of the available water:

<u>Month</u>	<u>Agricultural Irrigation Water</u>	<u>M&I Water</u>
October	2.0%	20.0%
November	0	0
December	0	0
January	0	0
February	0	0
March	0	0
April	1.0	20.0
May	11.0	20.0
June	26.0	0
July	31.0	0
August	18.0	20.0
September	11.0	20.0
Totals	100.0%	100.0%

(ii) actual historic use or, if there has not yet been full use of water, then the Tribe shall be deemed to have historically consumed 100 percent of the unused portion of the water available to the Tribe from its annual municipal and industrial allocation and 80.1 percent of the unused portion of the water available to the Tribe from its

annual agricultural irrigation allocation; or

(iii) any agreement which may be entered into among the State, the Tribes, the Animas-La Plata Water Conservancy District, and the United States Bureau of Reclamation which modifies (i) and (ii) above.

e. The project reserved water right shall always be consistent with:

(i) the allocations, shortage provisions, delivery schedules, and consumptive use calculations described in this subsection;

(ii) Bureau of Reclamation procedures, which shall include, among other things, NEPA compliance and assurance that all other project water users are not injured by any change in the use of project water;

(iii) The Animas-La Plata Project Compact, section 37-64-101, C.R.S. (1973); and

(iv) The La Plata River Compact, section 37-64-101, C.R.S. (1973).

f. The final settlement of the Tribe's reserved water rights claims on the Animas and La Plata Rivers as described in this Agreement shall be subject to the following conditions:

(i) If Ridges Basin Reservoir, Long Hollow Tunnel, and the Dry Side Canal to the turnout to the Dry

Side Lateral are completed so as to enable the delivery of water to the Tribe as described in this subsection on or before January 1, 2000, then: (a) the settlement of the Tribe's pending reserved and appropriative water rights claims on the Animas and La Plata Rivers contained in this Agreement shall become final; (b) the Tribe shall be entitled to the full project reserved water right as described in this subsection; and (c) the Tribe shall not be entitled to claim any additional reserved water rights either on the Animas River or on the La Plata River.

(ii) If Ridges Basin Reservoir, Long Hollow Tunnel, and the Dry Side Canal to the turnout to the Dry Side Lateral are not completed so as to enable the delivery of water to the Tribe as described in this subsection by January 1, 2000, then by January 1, 2005, the Tribe, in consultation with the United States as trustee, must elect either: (a) to retain the project reserved water right; or (b) to commence litigation or renegotiation of its pending reserved water rights claims on the Animas and La Plata Rivers. If the Tribe, in consultation with the United States as trustee, has not elected to commence litigation or renegotiation of its pending claims on the Animas and La Plata Rivers by notification to the parties by January 1, 2005, as provided below, then: (a) the Tribe shall be deemed to have elected to retain its project reserved water right; (b) the settlement of the Tribe's pending reserved and appropriative

water rights claims on the Animas and La Plata Rivers contained in this Agreement shall become final; and (c) the Tribe shall not be entitled to claim any additional reserved water rights either on the Animas River or on the La Plata River. If the Tribe elects to commence litigation or renegotiation of its pending reserved water rights claims on the Animas and La Plata Rivers then the Tribe shall relinquish and forfeit the project reserved water right from the Animas-La Plata Project as described in this subsection; provided, however, that if Ridges Basin Reservoir, Long Hollow Tunnel, and the Dry Side Canal to the turnout to the Dry Side Lateral are at any time thereafter completed so as to enable the delivery of water to the Tribe or if the Tribe elects at any time thereafter to receive an allocation of water from Ridges Basin Reservoir, then: (a) the Tribe shall be entitled to the full project reserved water right as described in this subsection; (b) the Tribe shall not be entitled to claim any other reserved water rights either on the Animas River or on the La Plata River; and (c) the Tribe shall relinquish any then pending reserved water rights claims or any benefits it may have obtained by litigating or renegotiating its reserved water rights claims on the Animas or La Plata Rivers, including all reserved water rights which may have been decreed. Notice of the Tribe's election shall be made as follows: to the United States, through the Secretary of the Interior and the Attorney General; to the

Tribes, through the respective Tribal Chairman; to the State, through the Attorney General; and to all other parties, through their respective offices.

g. Under no circumstances shall anything in this Agreement be construed as an admission, or be used by any party as evidence, that the Tribe is or is not legally entitled to reserved water rights on the Animas or La Plata Rivers. The project reserved water right shall have no precedential or presumptive value in the event the terms of this Agreement do not become final.

h. Repayment of that portion of the construction costs allocable to the Tribe's agricultural irrigation water allocation for which the Tribe is responsible shall be deferred pursuant to the Leavitt Act. Pursuant to the federal legislation required by Article VI, Section A, subsection 1.b, reimbursable OM&R costs allocable to the Tribe's agricultural irrigation water allocation shall be borne by the United States, subject to Congressional appropriations, until the water is used or temporarily disposed of by the Tribe. Pursuant to the federal legislation required by Article VI, Section A, subsection 1.b:

- (a) repayment of the construction costs allocable to the Tribe's municipal and industrial water allocation shall be deferred, and interest thereon shall not accrue, until the water is used or temporarily disposed of by the Tribe; and
- (b) the reimbursable

OM&R costs allocable to the Tribe's municipal and industrial water allocation shall be borne by the United States, subject to Congressional appropriations, until the water is used or temporarily disposed of by the Tribe. As an increment of water is put either to municipal and industrial use or to agricultural irrigation use or temporarily disposed of by the Tribe, prospective repayment of that increment's pro rata share of the allocable costs shall commence. The OM&R costs allocable to the Tribe which are to be borne by the United States shall include any OM&R costs for which the Tribe is responsible pursuant to paragraph i. below, until water is used or temporarily disposed of by the Tribe under that paragraph.

i. If the Tribe does not take delivery of its Animas-La Plata Project allocations from the Ridges Basis Pumping Plant through the Long Hollow Tunnel and the Dry Side Canal, even though those facilities have been constructed with the capacities contemplated by the DPR, then the Tribe shall: (a) continue to remain responsible for such portion of the OM&R costs of the Ridges Basin Pumping Plant, the Long Hollow Tunnel and the Dry Side Canal so as to ensure that all other project users bear no greater OM&R costs than would have otherwise been the case; and (b) ensure that deliveries to, and carriage losses of, all other project users are not adversely affected. On or before November 1, 1988, the Tribe may elect to have the United

States Bureau of Reclamation reduce the capacity of the Ridges Basin Pumping Plant, the Long Hollow Tunnel and the Dry Side Canal, and any associated delivery facilities, from the capacities contemplated by the DPR; provided that any additional capital costs to other water users occasioned by such election must be equitably apportioned. If such an election is made, then the Tribe shall: (a) be required to take delivery of its municipal and industrial water allocation and its agricultural irrigation water allocation at the Ridges Basin Reservoir or at the point on the Animas River where diversions are made to the Durango Pumping Plant, or, for La Plata River water, at the point on the La Plata River where water is diverted for project purposes; (b) continue to remain responsible for such portion of the OM&R costs of the Ridges Basin Pumping Plant, the Long Hollow Tunnel and the Dry Side Canal as will ensure that all other project users bear no greater OM&R costs per acre-foot of water than would have been the case had the capacity of these facilities not been reduced; and (c) ensure that deliveries to, and carriage losses of, all other project users are not adversely affected. Whether or not the Tribe so elects, if water users other than the Ute Mountain Ute Indian Tribe do not take delivery of their project water through the Long Hollow Tunnel and the Dry Side Canal then there will not be an increase in the OM&R costs or a reduction in deliveries to the Tribe.

3. Other Sources

The Tribe shall receive:

a. A non-project reserved water right for direct flow diversions and/or storage of 21,000 acre-feet per annum from the Mancos River for the irrigation of 7,200 acres of Tribal lands within the Mancos River drainage basin. This right shall have an 1868 priority date, but shall be subordinated to all rights with an adjudication date prior to 1985. For measurement purposes, the delivery point for water under this right will be at the point where the Mancos River enters the Ute Mountain Ute Indian Reservation on the south line of section 2U, T34N, R18W, N.M.P.M., at a point below the confluence of the Mancos River and Weber Canyon. When water is put to use or temporarily disposed of by the Tribe, the Tribe agrees to operate and maintain a stream gauging station at this point and to allow the State Engineer access to this gauging station. Notwithstanding the provisions of Article IV, Section F of this Agreement, as long as the water is diverted south of the delivery point as surface flow and applied to beneficial use on Tribal lands within the Mancos River drainage, no change in place of use, as described in Article IV, Section F of this Agreement, shall be required.

b. A non-project reserved water right for direct flow diversions for 4,800 acre-feet per annum from the

Navajo Wash for the irrigation of 1,200 acres of Tribal lands within the Navajo Wash drainage basin at a maximum diversion rate of 15 cfs. This right shall have an 1868 priority date, but shall be subordinated to all rights with an adjudication date prior to 1985 and shall be subject to the decree and stipulation in Case No. 81 CW 126, Colorado District Court for Water Division No. 7. The Tribe's existing state appropriative water rights on Navajo Wash will be relinquished, upon confirmation by the Colorado District Court for Water Division No. 7 of the non-project reserved water right provided for in this paragraph.

c. A non-project reserved water right for direct flow diversions of 1600 acre-feet per annum from the main stem of the San Juan River within the southwestern part of the Ute Mountain Ute Indian Reservation in Colorado, for the irrigation of 640 acres of Tribal lands within the San Juan mainstem drainage basin at a maximum diversion rate of 10 cfs. This right shall have a priority date of 1868.

B. SOUTHERN UTE INDIAN TRIBE

The Southern Ute Indian Tribe shall be entitled to the rights described below to beneficially use water from the following sources:

1. Animas-La Plata Project

a. The Tribe shall receive a project reserved water right to water supplied from the Animas-La Plata Project. This right shall have an 1868 priority date, shall be subordinated to all water rights decreed and senior to the Animas-La Plata Project, and shall share on a pro rata basis the priority of the Animas-La Plata Project, which has an adjudication date of March 21, 1966, and an appropriation date of September 2, 1938, C.A. 1751-B, District Court, La Plata County, Colorado.

b. The project reserved water right shall entitle the Tribe to receive and beneficially use, on that part of the Southern Ute Reservation within the State or within the boundaries of the Animas-La Plata Water Conservancy District, the following allocations of water from the Animas-La Plata Project, as measured at Ridges Basin Dam and Reservoir or at the point on the Animas River where diversions are made to the Durango Pumping Plant, or, for La Plata River water, at the point on the La Plata River where water is diverted for project purposes:

(i) a maximum of 26,500 acre-feet per annum of municipal and industrial water; and

(ii) a maximum of 3,400 acre-feet per annum of agricultural irrigation water.

The project reserved water right shall not exceed the total of

the above allocations.

Pending completion of the Southern Ute Reservoir, the Tribe's municipal and industrial water allocation will be delivered to the Tribe at Ridges Basin Reservoir or at the point on the Animas River where diversions are made to the Durango Pumping Plant, or, for La Plata River water, at the point on the La Plata River where water is diverted for project purposes. The Tribe shall take monthly deliveries of its agricultural irrigation water allocation in the manner contemplated by the DPR; provided that the Tribe may take its agricultural irrigation water at its discretion so long as neither the project supply nor other project users are adversely affected.

c. During periods of water shortage, deliveries of project water, or deliveries of the supply of water available under the project priority, to the Tribe and to all others shall be as follows:

(i) the municipal and industrial water allocations as quantified in the DPR shall first be fully satisfied; and

(ii) the agricultural irrigation water allocations as quantified in the DPR shall share shortages on a pro rata basis even if changed to other beneficial uses.

The sharing of shortages in the project's water supply shall govern the actual amount of agricultural irrigation water delivered

to the Tribe whether or not the average supply of 3,300 acre-feet per annum as contemplated by the DPR is actually achieved.

d. In proceedings pursuant to Article IV, Section F, the computations concerning the Tribe's historic beneficial use of water shall be based upon:

(i) actual historic monthly deliveries of the available annual supply, measured at Ridges Basin Reservoir or at the point on the Animas River where diversions are made to the Durango Pumping Plant, or, if there has not yet been full use of water, then the Tribe shall be deemed to have historically made beneficial use of any unused portion of each year's available water based upon the following monthly percentage distributions of the available water:

<u>Month</u>	<u>Agricultural Irrigation Water</u>	<u>M&I Water</u>
October	0%	8%
November	0	8
December	0	8
January	0	8
February	0	8
March	0	8
April	0	8
May	9	8
June	29	9
July	32	9
August	18	9
September	12	9
Totals	100%	100%

(ii) actual historic use or, if there

has not yet been full use of water, then the Tribe shall be deemed to have historically consumed 90.5 percent of the unused portion of the water available to the Tribe from its annual municipal and industrial water allocation and 78.8 percent of the unused portion of the water available to the Tribe from its annual agricultural irrigation water allocations; or

(iii) any agreement which may be entered into among the State, the Tribes, the Animas-La Plata Water Conservancy District and the United States Bureau of Reclamation which modifies (i) and (ii) above.

e. The project reserved water right shall always be consistent with:

(i) the allocations, shortage provisions, delivery schedules, and consumptive use calculations described in this section;

(ii) Bureau of Reclamation procedures, which shall include, among other things, NEPA compliance and assurance that all other project water users are not injured by any change in the use of project water;

(iii) The Animas-La Plata Project Compact, section 37-64-101, C.R.S. (1973); and

(iv) The La Plata River Compact, section 37-64-101, C.R.S. (1973).

f. The final settlement of the Tribe's

reserved water rights claims on the Animas and La Plata Rivers as described in this Agreement shall be subject to the following conditions:

(i) If Ridges Basin Reservoir and the facilities necessary for the delivery of the Tribe's agricultural irrigation water are completed so as to enable the delivery of water to the Tribe as described in this subsection on or before January 1, 2000, then: (a) the settlement of the Tribe's pending reserved and appropriative water rights claims on the Animas and La Plata Rivers contained in this Agreement shall become final; (b) the Tribe shall be entitled to the full project reserved water right as described in this subsection; and (c) the Tribe shall not be entitled to claim any additional reserved water rights either on the Animas River or on the La Plata River.

(ii) If Ridges Basin Reservoir and the facilities necessary for the delivery of the Tribe's agricultural irrigation water are not completed so as to enable the delivery of water to the Tribe as described in this subsection by January 1, 2000, then by January 1, 2005, the Tribe, in consultation with the United States as trustee, must elect either; (a) to retain the project reserved water right; or (b) to commence litigation or renegotiation of its reserved water rights claims on the Animas and La Plata Rivers. If the Tribe, in consultation with the United States as trustee, has not elected to commence litiga-

tion or renegotiation of its pending claims on the Animas and La Plata Rivers by notification to the parties by January 1, 2005, as provided below, then: (a) the Tribe shall be deemed to have elected to retain its project reserved water right; (b) the settlement of the Tribe's pending reserved and appropriative water rights claims on the Animas and La Plata Rivers contained in this Agreement shall become final; and (c) the Tribe shall not be entitled to claim any additional reserved water rights either on the Animas River or on the La Plata River. If the Tribe elects to commence litigation or renegotiation of its pending reserved water rights claims on the Animas and La Plata Rivers, then the Tribe shall relinquish and forfeit the project reserved water right from the Animas-La Plata Project as described in this subsection; provided, however that if Ridges Basin Reservoir and the facilities necessary for the delivery of the Tribe's irrigation water are at any time thereafter completed so as to enable the delivery of water to the Tribe or if the Tribe elects at any time thereafter to receive an allocation of water from Ridges Basin Reservoir, then: (a) the Tribe shall be entitled to the full project reserved water right as described in this subsection; (b) the Tribe shall not be entitled to claim any other reserved water rights either on the Animas River or on the La Plata River; and (c) the Tribe shall relinquish any then pending reserved water rights claims or any benefits it may have obtained by litigating

or renegotiating its reserved water rights claims on the Animas or La Plata Rivers, including all reserved water rights which may have been decreed. Notice of the Tribe's election shall be made as follows: to the United States, through the Secretary of the Interior and the Attorney General; to the Tribes, through the respective Tribal Chairman; to the State, through the Attorney General; and to all other parties, through their respective offices.

g. Under no circumstances shall anything in this Agreement be construed as an admission, or be used by any party as evidence, that the Tribe is or is not legally entitled to reserved water rights on the Animas or La Plata Rivers. The project reserved water right shall have no precedential or presumptive value in the event the terms of this Agreement do not become final.

h. Repayment of that portion of the construction costs allocable to the Tribe's agricultural irrigation water allocation for which the Tribe is responsible shall be deferred pursuant to the Leavitt Act. Pursuant to the federal legislation required by Article VI, Section A, subsection 1.b, reimbursable OM&R costs allocable to the Tribe's agricultural irrigation water allocation shall be borne by the United States, subject to Congressional appropriations, until the water is used or temporarily disposed of by the Tribe. Pursuant to the federal

legislation required by Article VI, Section A, subsection 1.b:
(a) repayment of the construction costs allocable to the Tribe's municipal and industrial water allocation shall be deferred, and interest thereon shall not accrue, until the water is used or temporarily disposed of by the Tribe; and (b) the reimbursable OM&R costs allocable to the Tribe's municipal and industrial water allocation shall be borne by the United States, subject to Congressional appropriations, until the water is used or temporarily disposed of by the Tribe. As an increment of water is put either to municipal and industrial use or to agricultural irrigation use or temporarily disposed of by the Tribe, prospective repayment of that increment's pro rata share of the allocable costs shall commence. The OM&R costs allocable to the Tribe which are to be borne by the United States shall include any OM&R costs for which the Tribe is responsible pursuant to paragraph i. below, until the water is used or temporarily disposed of by the Tribe under that paragraph.

i. If the Tribe does not take delivery of its Animas-La Plata Project allocations from the Ridges Basin Pumping Plant through the Long Hollow Tunnel and the Dry Side Canal, even though those facilities have been constructed with the capacities contemplated by the DPR, then the Tribe shall: (a) continue to remain responsible for such portion of the OM&R costs of the Ridges Basin Pumping Plant, the Long Hollow Tunnel and the

Dry Side Canal so as to ensure that all other project users bear no greater OM&R costs than would have otherwise been the case; and (b) ensure that deliveries to, and carriage losses of, all other project users are not adversely affected. On or before November 1, 1988, the Tribe may elect to have the United States Bureau of Reclamation reduce the capacity of the Ridges Basin Pumping Plant, the Long Hollow Tunnel and the Dry Side Canal, and any associated delivery facilities, from the capacities contemplated by the DPR; provided that any additional capital costs to other water users occasioned by such election must be equitably apportioned. If such an election is made, then the Tribe shall: (a) be required to take delivery of its municipal and industrial water allocation and its agricultural irrigation water allocation at the Ridges Basin Reservoir or at the point on the Animas River where diversions are made to the Durango Pumping Plant; (b) continue to remain responsible for such portion of the OM&R costs of the Ridges Basin Pumping Plant, the Long Hollow Tunnel and the Dry Side Canal as will ensure that all other project users bear no greater OM&R costs per acre-foot of water than would have been the case had the capacity of these facilities not been reduced; and (c) ensure that deliveries to, and carriage losses of, all other project users are not adversely affected. Whether or not the Tribe so elects, if water users other than the Southern Ute Indian Tribe do not take delivery of their project water though

the Long Hollow Tunnel and the Dry Side Canal then there will not be an increase in the OM&R costs or a reduction in deliveries to the Tribe.

2. Pine River

The Tribe shall be entitled to retain its reserved water right from the Pine River with an 1868 priority date for 181.7 cfs, as set forth in the 1930 federal decree and the 1934 state decree, except as modified herein, and shall be entitled to a 1/6 interest in the Vallecito Reservoir, Reservoir No. 1, Appropriation Priority No. 1965-1, decreed in Civil Action No. 1848-B, La Plata County.

3. Other Sources

The Tribe shall be entitled to the rights to beneficially use water as quantified below, unless otherwise specified: (1) for agricultural irrigation purposes; (2) during an irrigation season of May 1 to September 30; (3) at the locations specified on the Tribal maps provided to the State of Colorado on December 5, 1985; and (4) on Tribal lands. Points of diversion will be identified by stream reach on maps to be attached to the consent decree provided for in Article VI, Section A of this Agreement.

All parcel numbers used in the following descriptions refer

to the numbers shown on the December 5, 1985, Tribal maps. Copies of these Tribal maps will be attached to and incorporated in the proposed stipulation and consent decree submitted to the Colorado District Court for Water Division No. 7 pursuant to the procedure described in Article VI, Section A.

a. Florida River

(i) The Tribe agrees to accept Florida Project water stored behind Lemon Dam in exchange for and in lieu of its reserved water rights claims for the lands within parcels 1, 2, 3 and 15. The Florida Water Conservancy District agrees to allocate 563 acre-feet per annum of project waters to the Tribe for these four parcels. The Tribe will be responsible for paying operation and maintenance charges assessed uniformly by the Florida Water Conservancy District on the Florida Project water. Repayment of that portion of the construction costs of the project which have been allocated to the 563 acre-feet of agricultural irrigation water for which the Tribe is responsible shall be deferred by the Secretary pursuant to the Leavitt Act and the Florida Water Conservancy District's current repayment obligation shall not change.

It is understood that the full project supply may not be available in times of shortage, and that the Tribe will share the reduced supply pro rata with the other project users. The Tribe

will take its water subject to state water law, the District's repayment contract with the United States Bureau of Reclamation, and any of the ditch company's or the Florida Water Conservancy District's rules or guidelines.

The water may be used on parcels 1, 2, 3 and 15 as follows:

Parcel 1:

A maximum of 134 net acres are to be irrigated with this water, with a duty of water of 2 acre-feet per acre per year, for a maximum of 268 acre-feet per year. The flow rate of delivery is to be limited to 1 cfs per 80 acres, for a maximum of 1.68 cfs.

Parcel 2:

A maximum of 97 net acres are to be irrigated with this water, with a duty of water of 2 acre-feet per acre per year, for a maximum of 194 acre-feet per year. The flow rate of delivery is to be limited to 1 cfs per 80 acres, for a maximum of 1.21 cfs.

Parcel 3:

A maximum of 36.1 net acres are to be irrigated with a duty of water of 2.54 acre-feet per acre per year, for a maximum of 91.7 acre-feet per year. The flow rate of delivery is to be limited to 1 cfs per 80 acres, for a maximum of 0.45 cfs.

Parcel 15:

A maximum of 2.7 net acres are to be irrigated with a duty of water of 2.54 acre-feet per acre per year, for a maximum of 6.85 acre-feet per year. The flow rate of delivery is to be limited to 1 cfs per 80 acres, for a maximum of .04 cfs.

Diversions for parcels 1 and 2 will be made at the Florida Farmers Ditch headgate. It will be the responsibility of the various Florida ditch companies serving Florida mesa lands to improve their delivery systems in order that the water requested for parcels 1 and 2 under the above subparagraphs can be delivered to the edge of the parcels at no cost to the Tribe for such improvements. There is no delivery agreement for water to parcels 3 and 15.

The Tribe agrees to execute contract(s) simultaneously with submission of the proposed stipulation described in Article VI, section A, with the Florida Water Conservancy District and the United States Bureau of Reclamation governing its participation in the Florida Project, as described herein, as well as to execute contracts governing its receipt of the 2000 acre-feet of water previously allocated to the Tribe from the Florida Project.

(ii) The Tribe shall receive non-project reserved water rights for parcels 4, 5, 6, 9, 10, 11, 12, 13, and 14 as shown in Table 1. Water for these parcels shall have a

priority date of 1868 but shall be subordinated to all rights with an adjudication date prior to January 1, 1976.

TABLE 1
Parcels
in the Florida Basin

<u>Parcel</u>	<u>Net Acreage</u>	<u>Diversion Rate (cfs)</u>	<u>Annual Volume (acre-feet)</u>
4	103	1.29	206
5	86	1.08	172
6	21	0.26	42
9	38	0.48	76
10	29	0.36	58
11	25	0.31	50
12	105	1.31	210
13	57	0.71	114
14	81	1.01	162
TOTAL	<u>545</u>	<u>6.81</u>	<u>1090</u>

(iii) No water rights are recognized for parcels 7 and 8.

b. Stollsteimer Creek

The Tribe shall receive the following non-project reserved water rights, which will be used to irrigate 600 acres, which are within the 781 acres of arable land within the watershed identified on the Tribal maps:

(i) A non-project reserved water right with an 1868 priority date for storage of 1850 acre-feet per annum in Pargin Reservoir, Reservoir No. 24 (a/k/a Lake Capote),

with no refill right.

(ii) A non-project reserved water right with a 1986 priority date for one refill of Pargin Reservoir in the amount of 1,850 acre-feet. The Tribe owns an existing state storage reservoir right for 530.6 acre-feet of water in Pargin Reservoir, adjudicated on April 19, 1962 in Archuleta County District Court, with priority No. 24 in Case Nos. 73 and 308. The right will be relinquished upon confirmation by the Colorado District Court for Water Division No. 7 of the reserved rights described in this subparagraph and in subparagraph (i) above.

(iii) A non-project reserved water right for 2 cfs from Stollsteimer Creek. This right shall have a priority and use equivalent to, and be diverted and used at the same locations and for the same purposes as, the Cruther Ditch state appropriative right, adjudicated on November 13, 1912 in Archuleta County District Court, with priority No. 117 in Civil Action 73 and 308; however, this right shall be subordinated to all direct flow rights with an adjudication date prior to 1986 on Stollsteimer Creek. The Cruther Ditch state appropriative right shall not be considered to have been abandoned, but shall be relinquished upon confirmation by the Colorado District Court for Water Division No. 7 of the reserved water right described in this paragraph.

(iv) A non-project reserved water right

for 3.5 cfs from Stollsteimer Creek. This right shall have a priority and use equivalent to, and be diverted and used at the same locations and for the same purposes as, the Washington Flats Ditch state appropriative right adjudicated on June 25, 1928, in Archuleta County District Court, with priority No. 206 in Case No. 73 and 308. The Washington Flats Ditch state appropriative right shall be relinquished upon confirmation by the Colorado District Court for Water Division No. 7 of the reserved water right described in this paragraph.

The augmentation plan developed by Fairfield-Pagosa, as described in Case No. W958-72, Water Division No. 7, subordinates 8.5 cfs of the Linn and Clark water right to other Stollsteimer Creek state appropriative water rights, including the Washington Flats Ditch. The subordination of the Linn and Clark water right shall be maintained for the benefit of the Washington Flats Ditch direct-flow reserved water right in the event the present augmentation plan described in W958-72 is modified.

c. Piedra River

The Tribe shall receive a non-project reserved water right with an 1868 priority date for direct flow diversions of 1595 acre-feet per annum from the mainstem of the Piedra River for the irrigation of 535 net acres of land at a maximum flow rate of 1 cfs per 60 acres, for a maximum diversion rate of 8.9 cfs. A

portion of the water for parcel 4 will be diverted through the existing M.E. and M. Ditch. The parcels and acreages are as set out in the following Table 2. Lands requiring pumping shall have a duty of water of 2.54 acre-feet/acre, while lands proposed to be flood-irrigated shall have a duty of water of 3.0 acre-feet/acre.

TABLE 2
 Parcels
 along the Mainstem Piedra River

<u>Parcel</u>	<u>Net Acreage</u>	<u>Diversion Rate (cfs)</u>	<u>Annual Volume (acre-feet)</u>
1	289	4.81	867
2	40	0.67	110 (21.9 acres pumped)
3	162	2.69	486
4	44	0.73	132
TOTAL	<u>535</u>	<u>8.90</u>	<u>1595</u>

d. Devil Creek

The Tribe shall receive a non-project reserved water right with an 1868 priority date subordinated to all rights with an adjudication date prior to 1976 for direct flow diversions of 183 acre-feet per annum from Devil Creek for the irrigation of 61 net acres of land. The duty of water shall be 3 acre-feet/acre.

e. San Juan River

The Tribe shall receive a non-project reserved water right with an 1868 priority date for direct flow diversion of 1530 acre-feet per annum from the San Juan River for the irrigation of 510 net acres of land at a maximum flow rate of 1 cfs per 60 acres, for a maximum total diversion rate of 8.5 cfs, which will be limited to 4 cfs in September.

The Tribe is currently using a portion of the 1962 Carr Ditch right, 73CA309, a right owned by a non-Indian and shared with other non-Indian users, to irrigate these lands. The Tribe agrees to make the necessary modifications of, and reductions to, the existing Carr Ditch right in the amount of approximately 480 acre-feet per annum of water and to relinquish all claim to water taken from the Carr Ditch and used to irrigate approximately 140 acres of Tribal land, in the Colorado District Court for Water Division No. 7. The State agrees to support the Tribe in its efforts.

The duty of water shall be 2.54 acre-feet per acre for lands requiring pumping, and 3.0 acre-feet per acre for lands proposed to be flood irrigated. The parcels and acreage are as set out in the following Table 3.

TABLE 3

<u>Parcel</u>	<u>Net Acreage</u>	<u>Diversion Rate (cfs)</u>	<u>Annual Volume (acre-feet)</u>
1	23	0.38	69
2	29	0.48	87
3	120	2.00	360
4	<u>338</u>	<u>5.64</u>	1014 (86.4 acres pumped)
TOTAL	510	8.50	<u>1530</u>

f. Round Meadow Creek

The Tribe shall receive a non-project reserved water right with an 1868 priority date for direct flow diversions of 975 acre-feet per annum from Round Meadow Creek for the irrigation of 325 net acres of land at a maximum flow rate of 1 cfs per 60 acres for a maximum total diversion rate of 5.4 cfs. The duty of water shall be 3 acre-feet/acre. The diversion point shall be on Round Meadow Creek.

g. Cat Creek

The Tribe shall receive a non-project reserved water right with an 1868 priority date for direct flow diversions of 1372 acre-feet per annum from Cat Creek for the irrigation of 482 net acres of land, at a maximum flow rate of 1 cfs per 60 acres, for a maximum total diversion rate of 8.0 cfs. The duty of water shall be 3 acre-feet/acre for the 318 acres proposed to be

flood-irrigated, and 2.54 acre-feet/acre for the 164 acres which require pumping.

h. Navajo River

No reserved water rights are recognized for the Navajo River.

C. FURTHER QUANTIFICATION

1. Existing Uses

a. Any existing beneficial use of surface water or ground water for which the Tribes claim a reserved water right, other than those provided for in this Article and other than existing uses of water from the Pine River, shall be identified and inventoried as to location, quantity, use, and other reasonably necessary information by June 15, 1987, or such other date upon which the State, the Tribes, and the United States shall mutually agree.

b. All parties to this Agreement will have the right to review the resulting inventory, including the parameters of the uses identified, which shall be subject to the mutual agreement of the parties. The parties shall not unreasonably withhold their agreement.

c. Uses identified and agreed upon shall be included in the proposed stipulation for inclusion in the consent decree and submitted to the Colorado District Court for Water Division No. 7 by the parties as additions to the reserved water rights awarded to the Tribes pursuant to this Agreement.

2. Future Domestic and Livestock Tributary Ground Water Uses

a. A non-project reserved water right for the beneficial use of tributary ground water with an 1868 priority date from future individual domestic and livestock wells on the Ute Mountain Ute Reservation shall be recognized in the amount of 350 acre-feet per annum in the McElmo Creek drainage basin and water tributary thereto and 1,500 acre-feet per annum in the remainder of the Reservation.

b. A non-project reserved water right with an 1868 priority date for the beneficial use of tributary ground water from future individual domestic and livestock wells on the Southern Ute Reservation shall be recognized in the amount of 2,000 acre-feet per annum; provided that in the La Plata River drainage such individual domestic and livestock wells shall be limited as follows:

(i) the well will be the only well on a residential site and shall be used solely for in-household pur-

poses for one single-family dwelling; or

(ii) the well will be the only well on a 35 acre site, shall not exceed 15 gallons per minute of production, and shall be used for ordinary household purposes, fire protection, the watering of poultry, domestic animals, and livestock on farms and ranches, the irrigation of not over one acre of home gardens and lawns, and for not more than three single-family dwellings.

This provision will not preclude the United States, the Tribe and the State from agreeing on an alternative allocation plan prior to June 15, 1987 or such other date upon which the State, the Tribes and the United States shall mutually agree.

c. The further parameters of the future individual domestic and livestock water uses, which may include place of use, diversion and depletion amounts, and metering and gauging requirements, shall be identified by the Tribes by June 15, 1987, or such other date upon which the State, the Tribes and the United States shall mutually agree, and shall be subject to the reasonable mutual agreement of the State and the affected Tribe.

D. DISPUTES

The parties shall present to the Colorado District Court for Water Division No. 7 all disputes over whether water is being

beneficially used in accordance with Article III of this Agreement.

IV. ADMINISTRATION

A. INTRODUCTION

The State, the Tribes, and the United States acknowledge the hydrologic relationship between surface and underground use of water and among the Tribes' project and non-project reserved water rights, the water rights used by non-Indians within Colorado, and the waters used outside the State. Accordingly, the parties recognize the need for a cooperative and coordinated administration of water rights arising under state law and the project and non-project reserved water rights secured to the Tribes by this Agreement, and intend to provide for such administration with this Article IV. The purpose of this Article is to establish the means by which the project and non-project water rights confirmed in Article III shall be administered. Administration by the State Engineer shall ensure that the water rights of all users, including the Tribes, are fully protected. The Tribes agree to coordinate their administrative responsibilities under this Agreement with the Secretary when those administrative responsibilities affect the water rights of allottees. The Tribes agree to allow the State Engineer access to Reservation

lands solely for the purpose of performing his administrative duties under this Agreement.

B. SURFACE DIVERSIONS

The State Engineer, in a manner consistent with the agreements contained herein, shall have primary administrative responsibility over all waters apportioned to the Tribes at the points of diversion located on each river. The Tribes shall have primary administrative responsibility over all the waters within the Tribes' canal distribution systems.

When water is put to use under this Agreement, the Tribes agree to install and maintain headgates on the diversion points from the rivers and to install and maintain necessary totalizing or accumulating meters, gauges, or other measuring devices on these headgates, to inspect the recorders on a weekly basis, and to report to the State Engineer the reading of these meters as often as needed to ensure compliance with this Agreement. The Tribes agree to allow reasonable inspection of headgates by the State Engineer upon request. The Tribes further agree to keep their diversion, transportation, and storage facilities in good repair.

The Tribes agree to annually provide the State Engineer with: (1) aerial photos or remote sensing images of the lands irrigated; or (2) Bureau of Indian Affairs Crop Reports, showing

the lands irrigated. If these aerial photos, remote sensing images, or crop reports are unsatisfactory, the Tribes agree to allow the State Engineer access to Tribal lands to inventory the number and location of irrigated acres. The Tribes may elect to allow the State Engineer to conduct an annual examination of the irrigated lands so that the State Engineer can inventory the number and location of irrigated acres in substitution for the images and reports. At least once in every five-year period the Tribes shall provide the State Engineer with aerial photos or remote sensing images, satisfactory to the State Engineer, or shall allow the State Engineer access to Tribal lands to inventory the location and number of irrigated acres.

The Tribes agree that when there is an administrative call on the waters of the rivers and a demonstrated likelihood of shortage exists, the Tribes will permit the State Engineer to monitor the Tribes' diversions of water within the priority system to ensure that the waters are being beneficially used in compliance with the terms of this Agreement.

The parties shall present to the Colorado District Court for Water Division No. 7 all disputes over whether waters are being used in accordance with the terms of this section, provided that disputes involving solely Tribal members or lessees of the Tribes over the use of water within the Tribes' canal distribution system may be resolved in a Tribal forum.

Notwithstanding anything in this section to the contrary, the Tribes' responsibilities for the maintenance and repair of United States Bureau of Reclamation Project facilities and reporting obligations for project waters shall remain identical to that of other project water users.

Nothing in this section shall commit or obligate the United States to expend funds which have not been appropriated and budgeted. Nothing in this section shall commit or obligate the State to expend funds which have not been appropriated and budgeted.

C. DAMS AND RESERVOIR SAFETY

The Tribes agree to construct, maintain and operate existing or future storage reservoirs, together with inlet, outlet, and spillway structures or other necessary water works facilities in a manner which will protect downstream persons and property. The Tribes agree to inspect such dams using qualified, experienced personnel as often as appropriate for the protection of public health and safety and agree to allow state inspection of the dam and storage reservoirs for the purpose of ensuring public health and safety. The Tribes agree to cooperate with the State Engineer to ensure that dams and reservoirs remain safe and do not endanger public health and safety. In the event either finds that a dam or reservoir is unsafe and presents an immediate dan-

ger to public health and safety, the Tribes and the State Engineer agree to cooperate and to take all necessary actions to prevent the danger to public health and safety and to render the structure safe. Disputes over conditions of such reservoirs and the need for other remedial actions shall be decided by a court of competent jurisdiction.

Nothing in this provision shall be construed to alter the federal dam safety program.

Nothing in this section shall commit or obligate the United States to expend funds which have not been appropriated and budgeted. Nothing in this section shall commit or obligate the State to expend funds which have not been appropriated and budgeted.

D. INDIVIDUAL DOMESTIC AND LIVESTOCK WELLS

The Tribes agree to provide the State Engineer with the following information in a Tribal permit 30 days before the Tribes intend to permit the drilling of a well for individual domestic or livestock purposes as set forth in Article III, Section C, subsection 2: the aquifer or, if the aquifer is unknown, the depth from which the water is proposed to be withdrawn, the location of the proposed well, the name of the owner of the land on which the well will be located, the estimated average annual amount of water applied for in acre-feet, and the

estimated maximum pumping rate in gallons per minute. Thirty (30) days after the receipt of a Tribal permit to drill a well, the State shall issue well permits for individual domestic and livestock wells with the parameters and up to the amounts specified in Article III, Section C, subsection 2.

The parties shall present to the Colorado District Court for Water Division No. 7 all disputes arising under this section.

Nothing in this section shall commit or obligate the United States to expend funds which have not been appropriated and budgeted. Nothing in this section shall commit or obligate the State to expend funds which have not been appropriated and budgeted.

E. AQUIFER PROTECTION AND WATER WELL AND PUMP INSTALLATION

The Tribes agree to drill, maintain, and/or abandon wells in a manner consistent with public health and safety and applicable laws or regulations. Well completion reports and well drilling logs shall be completed and filed with the State Engineer within 30 days of completion of the well.

Disputes arising under this section shall be decided by a court of competent jurisdiction.

Nothing in this section shall commit or obligate the United States to expend funds which have not been appropriated and bud-

geted. Nothing in this section shall commit or obligate the State to expend funds which have not been appropriated and budgeted.

F. CHANGE OF RESERVED WATER RIGHT

1. Change of Non-project Reserved Water Rights

The Tribes may change their non-project reserved water rights from the types of use, places of use, amounts, times of use or location of points of diversion set forth in Article III, Section A, subsection 3 and Article III, Section B, subsection 3 of this Agreement. No change shall be allowed unless the Tribes and the United States first file an application for a change of water rights in the Colorado District Court for Water Division No. 7 and the court grants such change. Changes of water rights may be to any beneficial use.

A change of water right shall be granted by the district court if the change does not increase the Tribe's consumptive use or injure other water rights. In determining the consumptive use of Tribal water rights and injury to other water rights for the change of a water right within the boundaries of a reservation or from within the boundaries to outside the boundaries of a reservation, the Tribes shall be deemed, notwithstanding the provisions of Article V, Section B, a., to have historically diverted

and beneficially used their water in the full amounts, in the manner and for the purposes set forth in Article III, Section A, subsection 3 and Article III, Section B, subsection 3. For subsequent changes of water rights, once a water right has been changed from within the boundaries to outside the boundaries of a reservation, consumptive use shall be determined based upon actual historic use.

The Tribes and the United States further agree that for a change of a surface diversion of agricultural irrigation water to a ground water diversion, they will provide the State Engineer with a Tribal permit containing the following information before the Tribes file an application for a change of water right in Colorado District Court for Water Division No. 7: the aquifer or, if the aquifer is unknown, depth from which the water is proposed to be withdrawn, the location of the proposed well, the name of the owner of the land on which the well will be located, the estimated average annual amount of water applied for in acre-feet, the estimated maximum pumping rate in gallons per minute, the proposed use, and a description of the land proposed to be irrigated or the use to which the water will be put and the location of that use. Within thirty (30) days after receipt of a Tribal permit to drill a well, the State Engineer shall issue a well permit for the proposed well if the change does not increase the Tribe's consumptive use or injure other water users. In

determining the consumptive use of water and injury to other water users, the Tribes shall be deemed to have diverted and beneficially used their water in the full amounts, and manner, and for the purposes contemplated by this Agreement.

For changes of water rights which contemplate that the water rights defined herein or water under those rights may be used outside the boundaries of the Reservations, the parties shall be bound by Article V, Section B.

The parties shall present to the Colorado District Court for Water Division No. 7 all disputes arising under this section.

Nothing in this section shall commit or obligate the United States to expend funds which have not been appropriated and budgeted. Nothing in this section shall commit or obligate the State to expend funds which have not been appropriated and budgeted.

2. Change of Project Reserved Water Rights

The Tribes and the United States may change their project reserved water rights from the types of use, places of use, amounts, times of use or location of points of diversion set forth in Article III, Section A, subsections 1 and 2 and Article III, Section B, subsection 1 of this Agreement. No change shall be allowed unless the Tribes and the United States file, to the same extent other project water users are required to file, an

application for a change of water rights in the Colorado District Court for Water Division No. 7 and the court grants such change. Changes of water rights may be to any beneficial use.

The change of water right shall be granted by the district court if the change does not increase the Tribe's consumptive use or injure other water rights. In determining the consumptive use of project reserved water rights and injury to other water rights, the provisions of Article III, Section A, subsection 1.d. and 2.d. and Article III, Section B, subsection 1.d shall govern, notwithstanding the provisions of Article V, Section B, a.

For changes of water rights which contemplate that the water rights defined herein or water under those rights may be used outside the boundaries of the Reservations, the parties shall be bound by Article V, Section B.

The parties shall present to the Colorado District Court for Water Division No. 7 all disputes arising under this section.

Nothing in this section shall commit or obligate the United States to expend funds which have not been appropriated and budgeted. Nothing in this section shall commit or obligate the State to expend funds which have not been appropriated and budgeted.

G. STATE ADJUDICATED WATER RIGHTS

The parties acknowledge that the administrative provisions

of this Article govern the Tribes' use of the project and non-project reserved water rights recognized herein, but that any and all other waters appropriated by the Tribes pursuant to the state adjudication or permitting process will be decreed, administered and regulated by the State pursuant to existing state law.

The State shall administer all rights to the use of surface or ground water within or outside the Reservation which are not a part of the Tribes' reserved water rights. The District Court for Water Division No. 7 shall have exclusive jurisdiction to resolve all disputes over uses of nonreserved water rights established under state law.

V. LEASING AND OFF-RESERVATION USE

A. LEASING

Pursuant to the legislation required by Article VI, Section A, subsections 1.a. and 1.c of this Agreement, the Tribes may, subject to the Federal legislation required by Article VI, Section A, subsection 1.b. of this Agreement, sell, exchange, lease, or otherwise temporarily dispose of their water within or, subject to Section B below, outside the boundaries of the Reservations.

B. WATER USE OUTSIDE THE BOUNDARIES OF THE RESERVATIONS

Solely as a compromise for the purposes of this settlement, the parties agree that the Tribes may, under this Agreement, use the project and non-project reserved water rights secured to the Tribes by this Agreement outside the boundaries of their reservations:

a. within the State subject only to the same requirements and conditions of:

(i) State law;

(ii) Federal law, excluding the doctrine of Indian reserved water rights and Federal reclamation law; and

(iii) interstate compacts

as apply to the exercise of water rights held by non-federal, non-Indian entities and

b. outside the State to the extent permitted by any:

(i) State law;

(ii) Federal law;

(iii) interstate compact; or

(iv) international treaty

that pertains to the Colorado River or its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation or quality of those waters;

provided, however, that nothing in this Agreement shall be con-

strued to establish, address, or prejudice whether, or the extent to which, or to prevent any party from litigating whether, or the extent to which, any of the aforementioned laws do or do not permit, govern or apply to the use of the Tribes' water outside the State.

VI. FINALITY OF SETTLEMENT

A. JUDICIAL APPROVAL

On or before August 31, 1987, or such other date upon which the State, the Tribes and the United States shall mutually agree, the parties shall present to the Colorado District Court for Water Division No. 7 a proposed stipulation reflecting the terms of this Agreement, which shall not be implemented until the entry of the Final Consent Decree.

Nothing in this final agreement or consent decree shall be construed as an enlargement of the subject matter jurisdiction of the District Court for Water Division No. 7. Article IV Section C, Article VI Sections A.1, A.2, and B, and Article VII Section G shall be excluded from the proposed stipulation to be presented to the District Court for Water Division No. 7; provided that any waiver of tribal water right claims contained within Article VI Section A.1.e. shall be included in such proposed stipulation. Such exclusion shall not delete or alter the terms or the effect

of the excluded sections of the Agreement.

Upon the submission of such proposed stipulation the parties shall request the Court to give appropriate notice and hold the necessary hearings to consider and rule upon any objections to the proposed stipulation submitted. Upon the entry of a Final Consent Decree as provided below reflecting the proposed stipulation, the Tribes, and the United States as trustee for the Tribes, shall waive any and all claims to water rights within the State of Colorado not expressly identified in the Final Consent Decree, established by existing state or federal court decree, or otherwise recognized under state law, including any and all claims to water rights or injury to water rights, for the benefit of the Tribes or any individual claiming the right to use water under the Tribes, from any source of surface water or waters tributary thereto, arising under any laws of the United States or of the State. The Final Consent Decree shall not be executed or become final until the State, the Tribes, and the United States jointly certify that the legislative enactments necessary to implement this Agreement, as enumerated below, have been obtained to their satisfaction.

Execution and entry of the Final Consent Decree shall be contingent upon the enactment of the legislation described below.

1. Congressional Legislation

Required enactment by the Congress shall consist of legislation that:

a. provides relief from the prohibition of 25 U.S.C. 177;

b. provides that:

(i) the repayment of the construction costs allocable to the Tribes' municipal and industrial water allocation from the Dolores and Animas-La Plata Projects shall be deferred, and interest thereon shall not accrue, until the water is used;

(ii) the United States is authorized to bear the reimbursable OM&R costs allocable to the Tribes' municipal and industrial water allocation from the Dolores and Animas-La Plata Projects until the water is used; and

(iii) the United States is authorized to bear the reimbursable OM&R costs allocable to the Tribes' agricultural irrigation water allocation from the Animas-La Plata Project until the water is used.

As an increment of water is leased or otherwise used, prospective repayment of that increment's pro rata share of the allocable costs shall commence.

c. assures that the Tribes and their lessees are not restricted by application of federal reclamation laws

from using, selling, exchanging, leasing or otherwise temporarily disposing of their water;

d. authorizes and appropriates the federal share of the \$60.5 million Tribal Development Fund provided for in Article VI, Section B below;

e. provides that performance by the United States of the actions required by the aforementioned legislative provisions will be conditioned on the Tribes executing waivers and releases of all claims concerning water rights whether in rem or against any party to this Agreement other than those which may arise under the terms of this Agreement;

provided that the waivers of such claims, if any, relative to the Animas and La Plata Rivers shall not be effective until Phase I of the Animas-La Plata Project as defined in the June 30, 1986 Binding Agreement for Animas-La Plata Project Cost-Sharing, is complete or the Tribes elect to retain their project reserved water rights as described in Article III, Section A, subsection 2.f(ii) or Article III, Section B, subsection 1.f(ii); except that waivers of such claims, if any, for monetary damages against the State shall be effective as soon as the State appropriates and disburses the funds described in Article VI, Section A, subsection 2;

provided further that the waivers of such claims relative to the Mancos River shall not be effective until

the combined Highline-Towaoc Canal is completed so as to enable the delivery of water to the Ute Mountain Ute Indian Reservation, or the Ute Mountain Ute Tribe elects to exercise the project reserved water right by taking the Tribe's allocation of water directly from McPhee Reservoir; except that waivers of such claims, if any, for monetary damages against the State shall be effective as soon as the State appropriates the funds described in Article VI, Section A, subsection 2;

provided further that in the event that either Tribe obtains a judgment for monetary damages against the United States, the State, or any other parties, the United States or the State or the affected party shall be entitled to apply as an offset against the judgment the money actually provided by that party to the Tribe as Tribal Development Funds and any interest or any other moneys generated by this fund under this Agreement and its implementing legislation;

provided further that nothing in this paragraph e. shall be deemed to create or give validity to any claim by the Tribes against the United States, the State, or any other parties to this settlement, or in any way constitute an acknowledgment of the validity of any claims by the Tribes against the United States, the State, or any other party to the settlement;

provided further that neither Tribe may assert any claim against the United States, the State or any other party

arising out of:

- (i) the negotiation of this Agreement;
- (ii) the adoption of the specific terms of this Agreement; or
- (iii) allegations concerning the lack of authority of either Tribe or the other parties to enter into this Agreement.

f. authorizes the Tribes, to waive the claims referred to in the preceding paragraph; and

g. provides that, in exercising his authority to administer water rights on the Reservations, the Secretary, on behalf of the United States, is authorized and directed to comply with the administrative procedures governing the water rights confirmed in this Agreement to the extent provided in Article IV.

The parties contemplate that other enactments, as mutually agreed upon and needed but not enumerated herein, may be drafted by the parties and proposed to the Congress.

2. Colorado General Assembly Legislation

Required enactments by the Colorado General Assembly shall consist of legislation that:

- a. authorizes and appropriates \$5 million to be deposited by the State to the Tribal Development Funds no

later than 30 days following the deposit of the first installment of federal monies to said Development Funds.

b. authorizes such amount as needed, estimated at \$6 million, to be expended by the State for construction of the Towaoc Pipeline and a domestic water distribution system for the Ute Mountain Ute Tribe as a credit to the Ute Mountain Ute Development Fund, with said construction to be initiated within 1 year of the execution of this Final Settlement Agreement, and completed within 1 year of the initiation of construction; and

c. authorizes and appropriates \$5.6 million to be provided by the State to the Secretary for Ridges Basin Dam on a schedule acceptable to the State and the Secretary beginning in the first year of construction of said dam.

B. TRIBAL DEVELOPMENT FUNDS

Tribal Development Funds shall be established for the Tribes, with \$20.0 million for the Southern Ute Indian Tribe and \$40.5 million for the Ute Mountain Ute Indian Tribe, said funds to be created as follows:

1. \$5.0 million to be deposited by the State, contingent upon appropriation by the Colorado General Assembly, to the Tribal Development Funds no later than 30 days following the deposit of the first installment of Federal monies to said Devel-

opment Funds.

2. Such amount as needed, estimated at \$6.0 million, to be expended by the State for construction of the Towaoc Pipeline and a domestic water distribution system for the Ute Mountain Ute Indian Tribe as a credit to the Ute Mountain Ute Development Fund. Said construction will be initiated within one year of the execution of this Agreement, and shall be completed within one year of the initiation of construction.

3. \$49.5 million to be provided by the Secretary, contingent upon appropriations, to the Tribal Development Funds in three annual installments beginning in the first year for which the Congress of the United States appropriates such monies, as follows: \$19.5 million in year 1; \$15 million in year 2; and \$15 million in year 3. The Secretary will annually deposit any appropriated monies to the Development Funds within 30 days following the availability of such annual appropriation by the Congress to the Secretary.

4. The Tribal Development Funds shall be allocated between the Tribes as provided for in the following table.

Development Fund Allocations

(Millions of Dollars)

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Total</u>
<u>Ute Mtn Ute</u>				
Federal	12.0	10	10	32.0
State	2.5	-	-	2.5
Towaoc				
Pipeline	6.0	-	-	6.0
Subtotal	<u>20.5</u>	<u>10</u>	<u>10</u>	<u>40.5</u>
<u>Southern Ute</u>				
Federal	7.5	5	5	17.5
State	2.5	-	-	2.5
Subtotal	<u>10.0</u>	<u>5</u>	<u>5</u>	<u>20.0</u>
TOTAL	30.5	15	15	60.5

C. REMEDIES IN THE EVENT CONTINGENCIES ARE NOT MET

1. Confirmation by the Colorado District Court for Water Division No. 7.

In the event that the Colorado District Court for Water Division No. 7 fails to recognize the water rights described in Article III of this Agreement, or otherwise departs in any material way from implementing the substance of the proposed stipulation, either Tribe or the United States shall have the opportunity to void this Agreement in its entirety upon 60 days' notice to the Attorney General of the State. On the same grounds the Colorado Attorney General may void the Agreement upon 60 days' notice to the United States Attorney General and the chair-

men of both Tribes. On the same grounds other parties materially and adversely affected by a change in the substance of the decree entered by the court shall have the opportunity to void this Agreement insofar as this Agreement affects their interest, upon 60 days notice to the State, the Tribes and the United States.

Notice shall be made as follows: To the United States, through the Secretary of the Interior and the Attorney General; to the Tribes, through the respective Tribal Chairmen; to the State, through the Attorney General; to all other parties, through their respective offices.

2. Enactment of Necessary Legislation

In the event necessary legislation, or any part thereof, is not enacted by the end of the 100th Congress, or such other date upon which the parties shall mutually agree, the United States, either Tribe or the State shall have the right to void this Agreement in its entirety upon 60 days' notice. On the same grounds other parties materially and adversely affected by a change in the substance of the necessary legislation shall have the opportunity to void this Agreement insofar as this Agreement affects their interest, upon 60 days notice to the State, the Tribes, the United States and all other parties. Notice shall be made as follows: To the United States, through the Secretary of the Interior and the Attorney General; to the Tribes, through the

respective Tribal Chairmen; to the State, through the Attorney General; to all other parties, through their respective offices.

VII. GENERAL PROVISIONS

A. Nothing in this Agreement shall be deemed:

1. To preclude the Tribes or their members, or the United States on its own behalf or on behalf of the Tribe or tribal members, from seeking additional water rights by appropriation in accordance with and pursuant to state law or from acquiring existing state law water rights by purchase, relinquishment, or other operation of law.

2. To limit in any way the rights of the parties or any other person to litigate any issues or questions not resolved by this agreement.

3. To authorize the taking of a water right which is vested under State or Federal law other than as prescribed by Section C of this Article.

4. To alter the effect of any subordination agreement pertaining to relative priorities of water rights previously entered into between or among the United States and/or either Tribe and any other water user.

B. The parties expressly reserve all rights not granted, recognized, or relinquished in this Agreement.

C. Whenever a reserved water right is recognized

herein for use on a parcel of tribal land that is already irrigated under an existing state decreed right owned by the Tribe, individual tribal members, or by the United States for the benefit of the Tribe or individual tribal members, the state decreed right shall be deemed relinquished unless otherwise expressly agreed.

D. The agreement contained herein has been arrived at in the process of good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding other than one for approval or interpretation of this Agreement pursuant to or following the entry of a Final Consent Decree.

E. The law of the State relating to abandonment shall not apply to any of the project or non-project reserved water rights recognized in this Agreement, even if used or temporarily disposed of by the Tribes outside the boundaries of their reservations, nor shall those reserved water rights be forfeited or lost under state law by nonuse.

F. The Secretary agrees not to request assignment of the Dolores Water Conservancy District's water rights pursuant to article V(c) of Contract 7-07-40-W0470, dated September 23, 1977, as amended February 25, 1986, unless the District should

undertake some action that would jeopardize the project or the government's right of repayment.

G. To the extent permitted by existing law, the United States Bureau of Reclamation shall give preference to the Tribes to design and/or construct Dolores or Animas-La Plata Project facilities, so long as the implementation of such preference does not detrimentally affect the project construction schedule.

H. This Agreement may only be modified with the joint consent of the parties.

I. This Agreement may be executed in any number of counterparts, all of which together shall constitute one original Agreement.

J. Any entitlement to water of any individual member of the Tribes shall be satisfied from the water rights confirmed in this Agreement.

K. Nothing in this Agreement shall commit or obligate the United States to expend funds which have not been appropriated and budgeted.

L. Nothing in this Agreement shall commit or obligate the State to expend funds which have not been appropriated and budgeted.

This Agreement is effective this _____ day of December, 1986.

COLORADO UTE INDIAN WATER RIGHTS

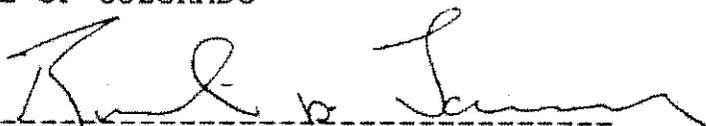
FINAL SETTLEMENT AGREEMENT

Signature Page

Dated this 10th day of December, 1986

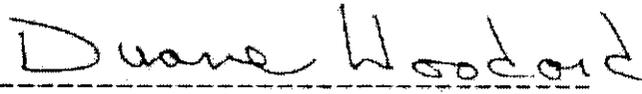
STATE OF COLORADO

By



RICHARD D. LAMM, Governor

By



DUANE WOODARD, Attorney General

COLORADO UTE INDIAN WATER RIGHTS

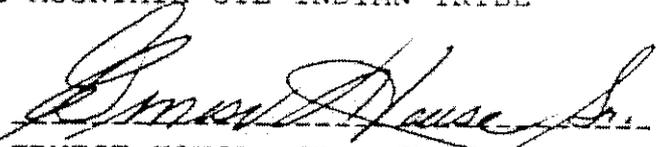
FINAL SETTLEMENT AGREEMENT

Signature Page

Dated this 10 day of December, 1986

UTE MOUNTAIN UTE INDIAN TRIBE

By


ERNEST HOUSE, SR., Chairman

COLORADO UTE INDIAN WATER RIGHTS

FINAL SETTLEMENT AGREEMENT

Signature Page

Dated this 10th day of December, 1986

SOUTHERN UTE INDIAN TRIBE

By Chris A. Baker
CHRIS A. BAKER, Chairman

By Clement J. Frost
CLEMENT J. FROST, Vice-Chairman

By Leonard C. Burch
LEONARD C. BURCH, Council Member

By Orian L. Box
ORIAN BOX, Council Member

By Vida B. Peabody
VIDA B. PEABODY, Council Member

By Guy Pinnecoose Jr
GUY PINNECOOSE, JR., Council Member

By Lillian I. Seibel
LILLIAN I. SEIBEL, Council Member

COLORADO UTE INDIAN WATER RIGHTS

FINAL SETTLEMENT AGREEMENT

Signature Page

Dated this 10 day of December, 1986

UNITED STATES DEPARTMENT OF THE INTERIOR

By

Cliff Bennett

COLORADO UTE INDIAN WATER RIGHTS

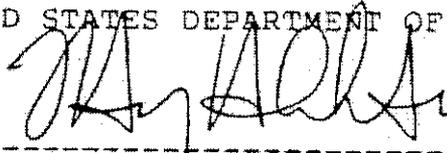
FINAL SETTLEMENT AGREEMENT

Signature Page

Dated this 10th day of December, 1986

UNITED STATES DEPARTMENT OF JUSTICE

By



COLORADO UTE INDIAN WATER RIGHTS

FINAL SETTLEMENT AGREEMENT

Signature Page

Dated this 10 day of December, 1986

ANIMAS-LA PLATA WATER CONSERVANCY
DISTRICT

By *John E. Murphy*
JOHN MURPHY, President

Attest: (Seal)

By *Edward T. Searle*
EDWARD T. SEARLE, Secretary

COLORADO UTE INDIAN WATER RIGHTS
FINAL SETTLEMENT AGREEMENT

Signature Page

Dated this 10th day of December, 1986

DOLORRES WATER CONSERVANCY DISTRICT

By Bruce C. McAfee
BRUCE C. McAFEE, President

Attest: (Seal)

David D. Herrick
BY DAVID D. HERRICK, Secretary

COLORADO UTE INDIAN WATER RIGHTS

FINAL SETTLEMENT AGREEMENT

Signature Page

Dated this 18th day of December, 1986

FLORIDA WATER CONSERVANCY DISTRICT

By Lloyd N. Hess
LOYD N. HESS, President

Attest: (Seal)

By Terry Palmer
TERRY PALMER, Secretary

COLORADO UTE INDIAN WATER RIGHTS

FINAL SETTLEMENT AGREEMENT

Signature Page

Dated this 10th day of December, 1986

MANCOS WATER CONSERVANCY DISTRICT

By Thomas K. Colbert
THOMAS K. COLBERT, President

Attest: (Seal)

By Roland Alexander
Secretary

COLORADO UTE INDIAN WATER RIGHTS

FINAL SETTLEMENT AGREEMENT

Signature Page

Dated this 10th day of December, 1986

SOUTHWESTERN WATER CONSERVATION DISTRICT

By *Frederick V. Kroeger*
FREDERICK V. KROEGER, President

Attest: (Seal)

By *Edward T. Searle*
EDWARD T. SEARLE, Secretary - *Acting*

COLORADO UTE INDIAN WATER RIGHTS

FINAL SETTLEMENT AGREEMENT

Signature Page

Dated this 3rd day of February, 1987

CITY OF DURANGO

By *Leonel Silva*
LEONEL SILVA, Mayor

Attest: (Seal)



By *Pauline M. Redman*
PAULINE REDMAN, City Clerk

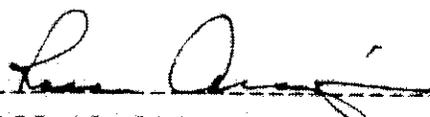
COLORADO UTE INDIAN WATER RIGHTS

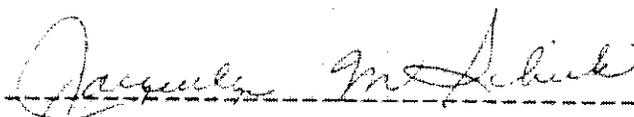
FINAL SETTLEMENT AGREEMENT

Signature Page

Dated this 9th day of January, 1987

TOWN OF PAGOSA SPRINGS

By 
ROSS ARAGON, Mayor

By 
JACQUELYNE M. SCHICK
Town Clerk

COLORADO UTE INDIAN WATER RIGHTS

FINAL SETTLEMENT AGREEMENT

Signature Page

Dated this 18th day of December, 1986

FLORIDA FARMERS DITCH COMPANY

By James W. Cole
JAMES COLE, President

Attest: (Seal)

By Hazel Brown
HAZEL BROWN, Secretary

COLORADO UTE INDIAN WATER RIGHTS

FINAL SETTLEMENT AGREEMENT

Signature Page

Dated this 18th day of December, 1986

FLORIDA CANAL COMPANY

By Richard C Ballantine
RICHARD BALLANTINE, President

Attest: (Seal)

By T. G. Eggleston
T. G. EGGLESTON, Secretary

COLORADO UTE INDIAN WATER RIGHTS

FINAL SETTLEMENT AGREEMENT

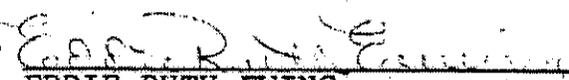
Signature Page

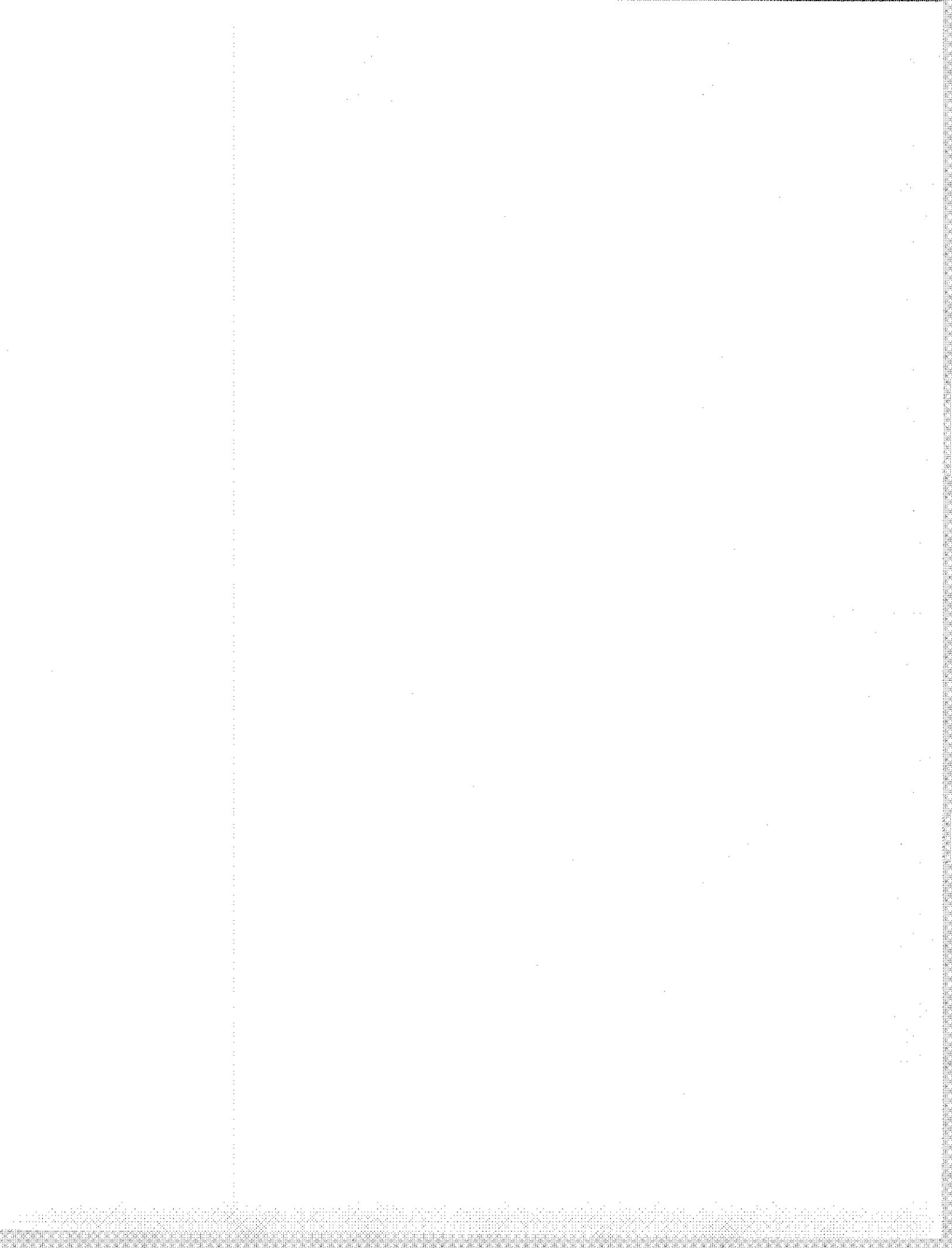
Dated this ^{10th}~~13th~~ day of ~~November~~^{DECEMBER}, 1986

FAIRFIELD COMMUNITIES, INC.

By 
TERRY L. FLORA,
Senior Vice President

Attest: (Seal)

By 
EDDIE RUTH EWING,
Secretary



Attachment A - Part 2

1988 Settlement Act



Public Law 100-585
100th Congress

An Act

To facilitate and implement the settlement of Colorado Ute Indian reserved water rights claims in southwest Colorado, and for other purposes.

Nov. 3, 1988
[H.R. 2642]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Colorado Ute Indian Water Rights Settlement Act of 1988".

Colorado Ute
Indian Water
Rights
Settlement Act
of 1988.

SEC. 2. FINDINGS.

The Congress finds that—

(1) The Federal reserved water rights claims of the Ute Mountain Ute Indian Tribe and the Southern Ute Indian Tribe are the subject of existing and prospective lawsuits involving the United States, the State of Colorado, and numerous parties in southwestern Colorado.

(2) These lawsuits will prove expensive and time consuming to the Indian and non-Indian communities of southwestern Colorado.

(3) The major parties to the lawsuits and others interested in the settlement of the water rights claims of the Ute Mountain Ute Indian Tribe and the Southern Ute Indian Tribe have worked diligently to settle these claims, resulting in the June 30, 1986, Binding Agreement for Animas-La Plata Project Cost Sharing which was executed in compliance with the cost sharing requirements of chapter IV of Public Law 99-88 (99 Stat. 293), and the December 10, 1986, Colorado Ute Indian Water Rights Final Settlement Agreement.

(4) The Ute Mountain Ute Indian Tribe and the Southern Ute Indian Tribe, by resolution of their respective tribal councils, which are the duly recognized governing bodies of each Tribe, have approved the December 10, 1986, Agreement and sought Federal implementation of its terms.

(5) This Act is required to implement portions of the above two agreements.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) The term "Agreement" means the Colorado Ute Indian Water Rights Final Settlement Agreement dated December 10, 1986, among the State of Colorado, the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, the United States, and other participating parties.

(2) The term "Animas-La Plata Project" means the Animas-La Plata Project, Colorado and New Mexico, a participating project under the Act of April 11, 1956 (70 Stat. 105; 43 U.S.C. 620; commonly referred to as the "Colorado River Storage

Project Act") and the Colorado River Basin Project Act (82 Stat. 885; 43 U.S.C. 1501 et seq.).

(3) The term "Dolores Project" means the Dolores Project, Colorado, a participating project under the Act of April 11, 1956 (70 Stat. 105; 43 U.S.C. 620; commonly referred to as the "Colorado River Storage Project Act"), the Colorado River Basin Project Act (82 Stat. 885; 43 U.S.C. 1501 et seq.), and as further authorized by the Colorado River Basin Salinity Control Act (98 Stat. 2933; 43 U.S.C. 1591).

(4) The term "final consent decree" means the consent decree contemplated to be entered after the date of enactment of this Act in the District Court, Water Division No. 7, State of Colorado, which will implement certain provisions of the Agreement.

(5) The term "Secretary" means the Secretary of the Interior.

(6) The terms "Tribe" and "Tribes" mean the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, or both Tribes, as the context may require.

(7) The term "water year" means a year commencing on October 1 each year and running through the following September 30.

SEC. 4. PROVISION OF WATER TO TRIBES.

(a) **WATER FROM THE ANIMAS-LA PLATA AND DOLORES PROJECTS.**—The Secretary is authorized to supply water to the Tribes from the Animas-La Plata and Dolores Projects in accordance with the Agreement: *Provided*, That nothing in this subsection or in the authorized purposes of the projects may be construed to permit or prohibit the sale, exchange, lease, use, or other disposal of such water by the Tribes. Any such sale, exchange, lease, use, or other disposal of water from these projects shall be governed solely by the other provisions of this Act and the Agreement as modified pursuant to section 11 of this Act.

(b) **APPLICATION OF FEDERAL RECLAMATION LAWS.**—Except as provided in section 5 of this Act, the water supplied to the Tribes from the Animas-La Plata Project and the Dolores Project shall be subject to Federal reclamation laws only to the extent needed to effectuate the terms and conditions contained in Article III, section A, subsections 1 and 2 and Article III, section B of subsection 1 of the Agreement.

SEC. 5. DISPOSAL OF WATER.

(a) **INDIAN INTERCOURSE ACT.**—The provisions of section 2116 of the Revised Statutes (25 U.S.C. 177) shall not apply to any water rights confirmed in the Agreement and the final consent decree: *Provided*, That nothing in this subsection shall be considered to amend, construe, supersede, or preempt any State law, Federal law, interstate compact, or international treaty that pertains to the Colorado River or its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.

(b) **RESTRICTION ON DISPOSAL OF WATERS INTO LOWER COLORADO RIVER BASIN.**—None of the waters from the Animas-La Plata or Dolores Projects may be sold, exchanged, leased, used, or otherwise disposed of into or in the Lower Colorado River Basin unless water within the Colorado River Basin held by non-Federal, non-Indian holders of that water pursuant to any water rights could be so sold.

exchanged, leased, used, or otherwise disposed of under State law, Federal law, interstate compacts, or international treaty pursuant to a final, nonappealable order of a Federal court or pursuant to an agreement of the seven States signatory to the Colorado River Compact.

(c) **USE OF WATER RIGHTS.**—(1) The use of the rights referred to in subsection (a) within the State of Colorado shall be governed solely as provided in the Agreement as modified pursuant to section 11 of this Act and this subsection. The Agreement is hereby modified to provide that a Tribe may voluntarily elect to sell, exchange, lease, use, or otherwise dispose of any portion of a water right confirmed in the Agreement and final consent decree off its reservation. If either the Southern Ute Indian Tribe or the Ute Mountain Ute Indian Tribe so elects, and as a condition precedent to such sale, exchange, lease, use, or other disposition, that portion of the Tribe's water right shall be changed to a Colorado State water right, but be such a State water right only during the use of that right off the reservation, and shall be fully subject to State laws, Federal laws, interstate compacts, and international treaties applicable to the Colorado River and its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.

Contracts.

(2) The characterizations in the Agreement of any water rights which may be used off the reservation of the respective Tribe as either "project reserved water right" or "nonproject reserved water right" are hereby expressly disapproved and any claim to water rights so characterized shall be extinguished when the final consent decree is entered.

(d) **RULES OF CONSTRUCTION.**—Nothing in this Act or in the Agreement shall—

(1) constitute authority for the sale, exchange, lease, use, or other disposal of any Federal reserved water right off the reservations;

(2) constitute authority for the sale, exchange, lease, use, or other disposal of any water held pursuant to a Colorado State water right, or of any Colorado State water right, outside the State of Colorado; or

(3) be deemed a congressional determination that any holders of water rights do or do not have authority under existing law to sell, exchange, lease, use, or otherwise dispose of such water or water rights outside the State of Colorado.

SEC. 6. REPAYMENT OF PROJECT COSTS.

Contracts.

(a) **MUNICIPAL AND INDUSTRIAL WATER.**—(1) The Secretary shall defer, without interest, the repayment of the construction costs allocable to each Tribe's municipal and industrial water allocation from the Animas-La Plata and Dolores Projects until water is first used either by the Tribe or pursuant to a water use contract with the Tribe. Until such water is first used either by a Tribe or pursuant to a water use contract with the Tribe, the Secretary shall bear the annual operation, maintenance, and replacement costs allocable to the Tribe's municipal and industrial water allocation from the Animas-La Plata and Dolores Projects, which costs shall not be reimbursable by the Tribe.

(2) As an increment of such water is first used by a Tribe or is first used pursuant to the terms of a water use contract with the Tribe, repayment of that increment's pro rata share of such allocable construction costs shall commence by the Tribe and the Tribe shall commence bearing that increment's pro rata share of the allocable annual operation, maintenance, and replacement costs.

(b) **AGRICULTURAL IRRIGATION WATER.**—(1) The Secretary shall defer, without interest, the repayment of the construction costs

within the capability of the land to repay, which are allocable to each Tribe's agricultural irrigation water allocation from the Animas-La Plata and Dolores Projects in accordance with the Act of July 1, 1932 (25 U.S.C. 386a; commonly referred to as the "Leavitt Act"), and section 4 of the Act of April 11, 1956 (70 Stat. 107; 43 U.S.C. 620c; commonly referred to as the "Colorado River Storage Project Act"). Such allocated construction costs which are beyond the capability of the land to repay shall be repaid as provided in subsection (g) of this section. Until such water is first used either by a Tribe or pursuant to a water use contract with the Tribe, the Secretary shall bear the annual operation, maintenance, and replacement costs allocable to the Tribe's agricultural irrigation allocation from the Animas-La Plata Project, which costs shall not be reimbursable by the Tribe.

Agriculture and
agricultural
commodities.

(2) As an increment of such water is first used by a Tribe or is first used pursuant to the terms of a water use contract with the Tribe, the Tribe shall commence bearing that increment's pro rata share of the allocable annual operation, maintenance, and replacement costs. During any period in which water is used by a tribal lessee on land owned by non-Indians, the Tribe shall bear that increment's pro rata share of the allocated agricultural irrigation construction costs within the capability of the land to repay as established in subsection (b)(1).

(c) ANNUAL COSTS WITH RESPECT TO RIDGES BASIN PUMPING PLANT.—(1) The Secretary shall bear any increased annual operation, maintenance, and replacement costs to Animas-La Plata Project water users occasioned by a decision of either Tribe not to take delivery of its Animas-La Plata Project water allocations from Ridges Basin Pumping Plant through the Long Hollow Tunnel and the Dry Side Canal pursuant to Article III, section A, subsection 2.i and Article III, section B, subsection 1.i of the Agreement until such water is first used either by a Tribe or pursuant to a water use contract with the Tribe. Such costs shall not be reimbursable by the Tribe.

(2) As an increment of its water from the Animas-La Plata Project is first used by a Tribe or is first used pursuant to the terms of a water use contract with the Tribe, the Tribe shall commence bearing that increment's pro rata share of such increased annual operation, maintenance, and replacement costs, if any.

(d) SECRETARIAL DEFERRAL.—The Secretary may further defer all or a part of the tribal construction cost obligations and bear all or a part of the tribal operation, maintenance, and replacement obligations described in this section in the event a Tribe demonstrates that it is unable to satisfy those obligations in whole or in part from the gross revenues which could be generated from a water use contract for the use of its water either from the Dolores or the Animas-La Plata Projects or from the Tribe's own use of such water.

(e) USE OF WATER.—For the purpose of this section, use of water shall be deemed to occur in any water year in which a Tribe actually uses water or during the term of any water use contract. A water use contract pursuant to which the only income to a Tribe is in the nature of a standby charge is deemed not to be a use of water for the purposes of this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated such funds as may be necessary for the Secretary to pay the annual operation, maintenance, and replacement costs as provided in this section.

(g) **COSTS IN EXCESS OF ABILITY OF THE IRRIGATORS TO REPAY.**—The portion of the costs of the Animas-La Plata Project in excess of the ability of the irrigators to repay shall be repaid from the Upper Colorado River Basin Fund pursuant to the Colorado River Storage Project Act and the Colorado River Basin Project Act.

(h) **DEFERRAL OF CERTAIN CONSTRUCTION COSTS.**—Repayment of the portion of the construction costs of the Florida Project which have been allocated to the 563 acre-feet of agricultural irrigation water for which the Southern Ute Tribe is responsible shall be deferred by the Secretary pursuant to the Act of July 1, 1932 (25 U.S.C. 386a; 47 Stat. 564) as provided in section 4(d) of the Act of April 11, 1956 (43 U.S.C. 620c; 70 Stat. 107), and the Florida Water Conservancy District's current repayment obligation shall not change.

SEC. 7. TRIBAL DEVELOPMENT FUNDS.

(a) **ESTABLISHMENT.**—There is hereby authorized to be appropriated the total amount of \$49,500,000 for three annual installment payments to the Tribal Development Funds which the Secretary is authorized and directed to establish for each Tribe. Subject to appropriation, and within 60 days of availability of the appropriation to the Secretary, the Secretary shall allocate and make payment to the Tribal Development Funds as follows:

Appropriation
authorization.

(1) To the Southern Ute Tribal Development Fund, in the first year, \$7,500,000; in the two succeeding years, \$5,000,000 and \$5,000,000, respectively.

(2) To the Ute Mountain Ute Tribal Development Fund, in the first year, \$12,000,000; in the two succeeding years, \$10,000,000 and \$10,000,000, respectively.

(b) **ADJUSTMENT.**—To the extent that any portion of such amount is contributed after the period described above or in amounts less than described above, the Tribes shall, subject to appropriation Acts, receive, in addition to the full contribution to the Tribal Development Funds, an adjustment representing the interest income as determined by the Secretary in his sole discretion that would have been earned on any unpaid amount had that amount been placed in the fund as set forth in section 7(a).

(c) **TRIBAL DEVELOPMENT.**—(1) The Secretary shall, in the absence of an approved tribal investment plan provided for in paragraph (2), invest the moneys in each Tribal Development Fund in accordance with the Act entitled "An Act to authorize the deposit and investment of Indian funds" approved June 24, 1938 (25 U.S.C. 162a). Separate accounts shall be maintained for each Tribe's development fund. The Secretary shall disburse, at the request of a Tribe, the principal and income in its development fund, or any part thereof, in accordance with an economic development plan approved under paragraph (3).

Securities.

(2) Each Tribe may submit a tribal investment plan for all or part of its Tribal Development Fund as an alternative to the investment provided for in paragraph (1). The Secretary shall approve such investment plan within 60 days of its submission if the Secretary finds the plan to be reasonable and sound. If the Secretary does not approve such investment plan, the Secretary shall set forth in writing and with particularity the reasons for such disapproval. If such investment plan is approved by the Secretary, the Tribal Development Fund shall be disbursed to the Tribe to be invested by the Tribe in accordance with the approved investment plan. The

Secretary may take such steps as he deems necessary to monitor compliance with the approved investment plan. The United States shall not be responsible for the review, approval, or audit of any individual investment under the plan. The United States shall not be directly or indirectly liable with respect to any such investment, including any act or omission of the Tribe in managing or investing such funds. The principal and income from tribal investments under an approved investment plan shall be subject to the provisions of this section and shall be expended in accordance with an economic development plan approved under paragraph (3).

(3) Each Tribe shall submit an economic development plan for all or any portion of its Tribal Development Fund to the Secretary. The Secretary shall approve such plan within 60 days of its submission if the Secretary finds that it is reasonably related to the economic development of the Tribe. If the Secretary does not approve such plan, the Secretary shall, at the time of decision, set forth in writing and with particularity the reasons for such disapproval. Each Tribe may alter the economic development plan, subject to the approval of the Secretary as set forth in this subsection. The Secretary shall not be directly or indirectly liable for any claim or cause of action arising from the approval of an economic development plan or from the use and expenditure by the Tribe of the principal of the funds and income accruing to the funds, or any portion thereof, following the approval by the Secretary of an economic development plan.

(d) PER CAPITA DISTRIBUTIONS.—Under no circumstances shall any part of the principal of the funds, or of the income accruing to such funds, or the revenue from any water use contract, be distributed to any member of either Tribe on a per capita basis.

(e) LIMITATION ON SETTING ASIDE FINAL CONSENT DECREE.—Neither the Tribes nor the United States shall have the right to set aside the final consent decree solely because subsection (c) is not satisfied or implemented.

SEC. 8. WAIVER OF CLAIMS.

(a) GENERAL AUTHORITY.—The Tribes are authorized to waive and release claims concerning or related to water rights as described in the Agreement.

(b) CONDITION ON PERFORMANCE BY SECRETARY.—Performance by the Secretary of his obligations under this Act and payment of the moneys authorized to be paid to the Tribes by this Act shall be required only when the Tribes execute a waiver and release as provided in the Agreement.

SEC. 9. ADMINISTRATION.

In exercising his authority to administer water rights on the Ute Mountain Ute and Southern Ute Indian Reservations, the Secretary, on behalf of the United States, shall comply with the administrative procedures governing the water rights confirmed in the Agreement and the Final Consent Decree to the extent provided in Article IV of the Agreement.

SEC. 10. INDIAN SELF-DETERMINATION ACT.

(a) IN GENERAL.—The design and construction functions of the Bureau of Reclamation with respect to the Dolores and Animas-La Plata Projects shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act (88 Stat. 2203; 25

U.S.C. 450 et seq.) to the same extent as if such functions were performed by the Bureau of Indian Affairs.

(b) APPLICATION.—This section shall not apply if the application of this section would detrimentally affect the construction schedules of the Dolores and Animas-La Plata Projects.

SEC. 11. MODIFICATION OF AGREEMENT; RULE OF CONSTRUCTION.

(a) MODIFICATION.—The Agreement shall be deemed to have been modified to conform to this Act.

(b) RULE OF CONSTRUCTION.—The Agreement shall be construed in a manner consistent with this Act. This Act is intended solely to permit settlement of existing and prospective litigation among the signatory parties to the Agreement. This Act is the result of a voluntary compromise agreement between the Southern Ute Indian Tribe, the Ute Mountain Ute Indian Tribe, the State of Colorado, local water districts and municipalities, and the United States. Accordingly, no provision of this Act, the Agreement, or the final consent decree shall be construed as altering or affecting the determination of any questions relating to the reserved water rights belonging to other Indian tribes.

SEC. 12. INDIVIDUAL MEMBERS OF TRIBES.

Any entitlement to reserved water of any individual member of either Tribe shall be satisfied from the water secured to that member's Tribe.

SEC. 13. EFFECTIVE DATE.

(a) Sections 4(b), 5, and 6 of this Act shall take effect on the date on which the final consent decree contemplated by the Agreement is entered by the District Court, Water Division No. 7, State of Colorado. Any moneys appropriated under section 7 of this Act shall be placed into the Ute Mountain Ute and Southern Ute Tribal Development Funds in the Treasury of the United States together with other parties' contributions to the Tribal Development Funds, but shall not be available for disbursement pursuant to section 7 until such time as the final consent decree is entered. If the final consent decree is not entered by December 31, 1991, the moneys so deposited shall be returned, together with a ratable share of accrued interest, to the respective contributors and the Ute Mountain Ute and Southern Ute Tribal Development Funds shall be terminated and the Agreement may be voided by any party to the Agreement. Upon such termination, the amount contributed thereto by the United States shall be deposited in the general fund of the Treasury.

(b) No provision of this Act shall be of any force or effect if the final consent decree is not executed and approved by the court.

SEC. 14. VOIDING OF AGREEMENT.

The United States shall not exercise its right to void the Agreement pursuant to Article VI, section C, subsection 2 thereof.

Approved November 3, 1988.

LEGISLATIVE HISTORY—H.R. 2642 (S. 1415):

HOUSE REPORTS: No. 100-932 (Comm. on Interior and Insular Affairs).

SENATE REPORTS: No. 100-355 accompanying S. 1415 (Select Comm. on Indian Affairs and Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 134 (1988):

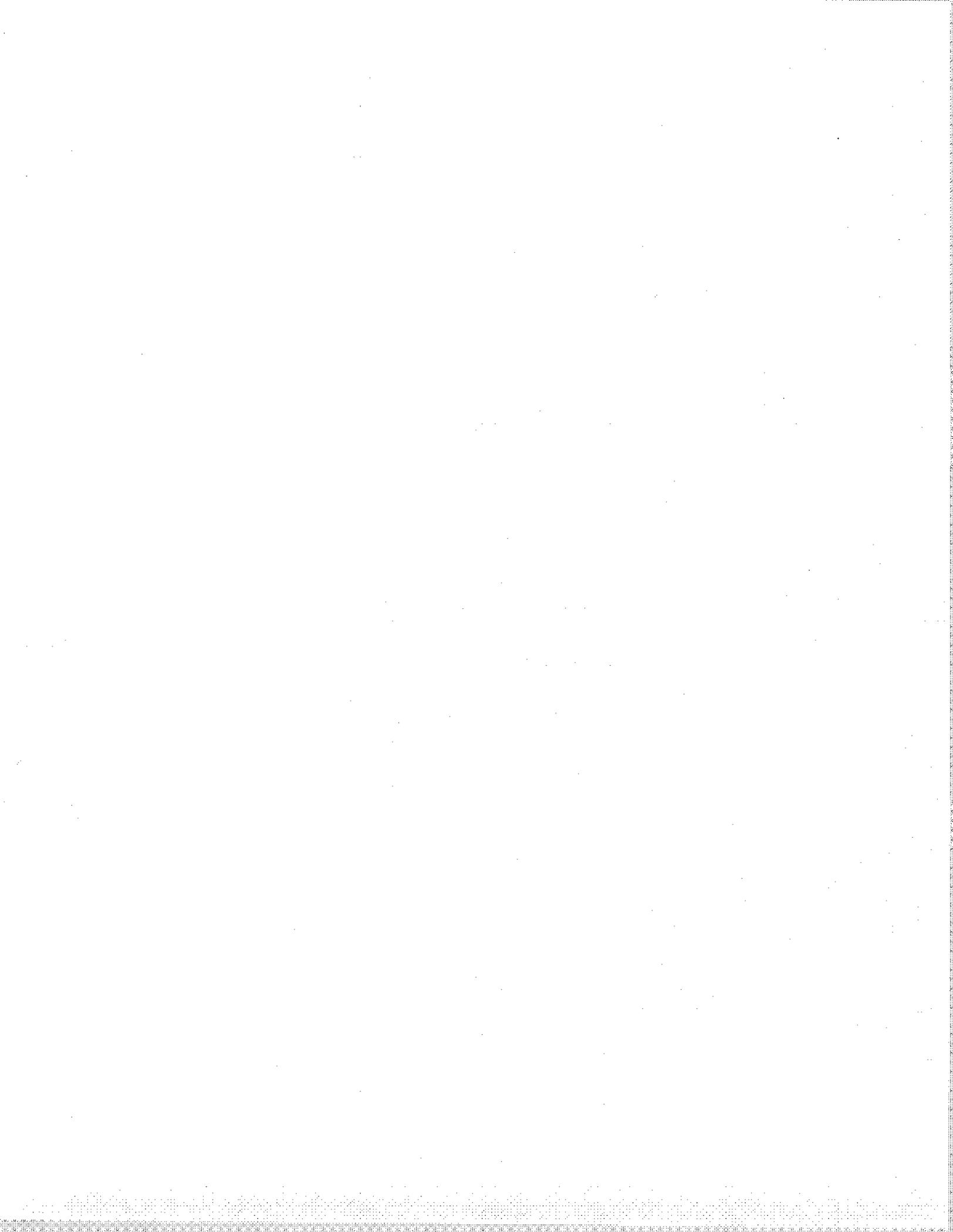
Oct. 3, considered and passed House.

Oct. 13, considered and passed Senate.



Attachment A - Part 3

Solicitor's Opinion





United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 10 1999

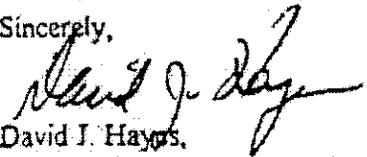
Mr. Phil Doe
Chairman, Citizens' Progressive Alliance
7140 South Depew
Littleton, CO 80128

Dear Mr. Doe:

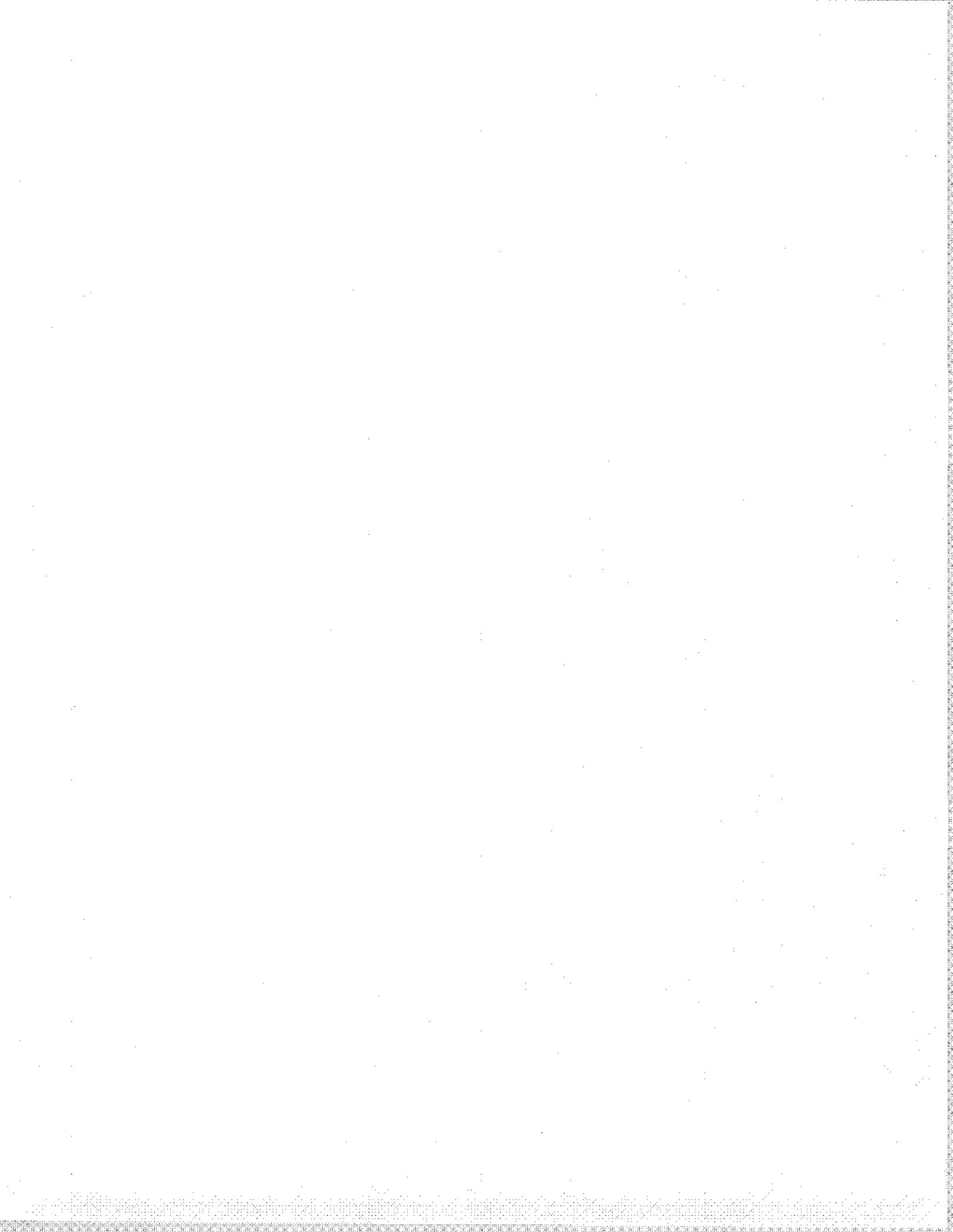
This letter is in response to your request that the Department of the Interior evaluate the validity of the Southern Ute Tribe's water rights, specifically whether the Tribe has reserved water rights with an 1868 priority date or whether such rights were extinguished by the Act of June 15, 1880. Your request was made during the public scoping meetings associated with the NEPA analysis being conducted on the Administration proposal and various alternatives for final implementation of the Colorado Ute Water Rights Settlement.

The Solicitor has evaluated your request and, for the reasons explained in the attached opinion, finds no justification to question the Tribe's 1868 priority date for water rights in the Animas and LaPlata rivers. Since it is the position of the Department that the Southern Ute and Ute Mountain Ute Tribes never lost their 1868 reserved water rights, we will continue to move forward with the ongoing NEPA analysis.

Sincerely,


David J. Hayys,
Acting Deputy Secretary

cc: Clement Frost, Chairman, Southern Ute Tribe
Ernest House, Chairman, Ute Mountain Ute Tribe
Kevin Gover, Assistant Secretary for Indian Affairs
Patricia Beneke, Assistant Secretary for Water & Science
Jamie Clark, Director, Fish & Wildlife Service
Hilda Manuel, Deputy Commissioner, Bureau of Indian Affairs
Eluid Martinez, Commissioner, Bureau of Reclamation
Charles Calhoun, Regional Director, Bureau of Reclamation





United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

SEP - 9 1999

MEMORANDUM

TO: Acting Deputy Secretary

FROM: Solicitor

RE: Southern Ute Tribe's Water Rights Priority Date

You have requested that this Office evaluate the validity of the Southern Ute Tribe's water rights claims, as a result of issues raised during the NEPA process associated with the Administration proposal for final implementation of the Colorado Ute Water Rights Settlement. Specifically, you requested an analysis of whether the Tribe has reserved water rights with an 1868 priority date or whether such rights were extinguished by the Act of June 15, 1880. For the reasons explained below, we conclude that the Southern Ute Tribe's water rights have a priority date of 1868.

As a threshold matter, it is important to note that the Southern Ute Tribe's 1868 priority date was judicially established through approval of Consent Decrees on December 19, 1991, by Colorado District Court, Water Division 7. Under the 1986 Settlement Agreement, as implemented by Congress through the 1988 Settlement Act, all tribal water rights claims in the Animas and LaPlata rivers, including the priority date of those water rights, were properly before the Court in 1991 and included in the order of the Court accepting the Consent Decree. Accordingly, further judicial review on the propriety of the 1868 priority date is now barred by the doctrine of res judicata. Danielson v. Vickroy, 627 P.2d 752, 761 (Colo. 1981) (an issue is res judicata if it was before the court in proceedings which resulted in a decree.). Thus, even if we were to find a basis upon which to question the validity of the Tribe's priority date, which for reasons explained below we do not, the time to raise this issue has long since passed.

Notwithstanding the jurisdictional bar to raising such an issue at this time, the Southern Ute Tribe never lost its 1868 priority date. The Tribe's reserved water rights arise from its 1868 Treaty with the United States which established the Ute Reservation in southwestern Colorado. It is well-settled that establishment of an Indian reservation carries with it an implied reservation of the amount of water necessary to fulfill the purposes of the reservation with a priority date no later than the date of creation of the reservation. See Winters v. United States, 207 U.S. 564, 576-77 (1908); see also Arizona v. California, 373 U.S. 546, 599-601 (1963); United States v. Winans, 198 U.S. 371 (1905).

No congressional action has done anything to change the priority date of the Tribe's water rights. Two statutes did, however, substantially affect the Tribe's land ownership. In 1880, Congress passed an act to allot the Southern Ute reservation. See Act of June 15, 1880, ch. 223, 21 Stat. 199 (1880). Under this Act, all "surplus" lands of the Reservation (lands not allotted) were deemed to be public lands of the United States, available for entry by non-Indians. Then in 1934, the Indian Reorganization Act (IRA), 25 U.S.C. § 463 et seq. (1994), officially ended the allotment era and authorized the Secretary to restore unclaimed "surplus" lands of any Indian reservation to tribal ownership. Restoration of the present Southern Ute Reservation occurred on September 14, 1938. See 3 Fed. Reg. 1425 (1938).

The 1880 Act did not extinguish the Tribe's rights in "surplus" lands and did nothing to affect the Tribe's water rights for unclaimed "surplus" lands later restored to tribal ownership under the IRA. Termination or diminution of treaty rights "will not be lightly inferred," Solem v. Bartlett, 465 U.S. 463, 470 (1984), and requires express legislation or a clear inference of congressional intent gleaned from surrounding circumstances and legislative history. Bryan v. Iasca Cty., 426 U.S. 373, 392-93 (1975). The 1880 Act did not contain clear congressional intent to change the boundaries of the Tribe's reservation and did not provide the Tribe with full compensation for the land ceded, the combination of which might have indicated that the reservation had been diminished. See Solem v. Bartlett, 465 U.S. at 469-70. Similarly, the 1880 Act's complete silence on the issue of water rights must be interpreted as leaving in place, not terminating, these valuable rights. Although much tribal land did, in fact, become divested from tribal ownership, the overwhelming majority of land which now makes up the Southern Ute Indian Reservation was retained in federal ownership and never conveyed to non-Indian parties.

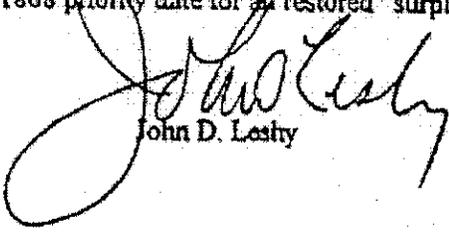
Because lands declared "surplus" by the 1880 Act could be sold only under certain conditions, including for the benefit of the Ute bands, the Tribes retained an interest in the unsold land. This interest included all property rights not specifically divested. As the Department has noted previously, during the time between allotment in 1880 and restoration of unclaimed lands in 1938, the United States became a "trustee in possession" for the disposal of the ceded land and the Tribe retained an equitable interest until it received payment for the land. Restoration to Tribal Ownership - Ute Lands, I Dep't of Interior, Op. Solicitor 832, 836-37 (1938). The promise of payment created a trust between the United States and the Tribe. See Minnesota v. Hitchcock, 185 U.S. 373, 394-95 (1902); Ash Sheep Co. v. United States, 252 U.S. 159, 164-66 (1920).

The decision of the Supreme Court in United States v. Southern Ute Tribe, 402 U.S. 159 (1971) has been put forth as a reason why the Southern Ute's water rights were extinguished. However, this Supreme Court decision is not relevant to the current inquiry. Southern Ute discussed the *res judicata* effect of the Tribe's claims in front of the Indian Claims Commission (ICC). The ICC claims at issue, however, concerned "surplus" lands which had passed into private ownership or were reserved for other federal purposes, not, as is the case here, unclaimed lands which were later restored to tribal ownership. Some have suggested that the Southern Ute decision also affected the water rights claims of the Ute Mountain Ute Tribe. However, the western half of the pre-1880 reservation, which is today's Ute Mountain Ute Reservation, was never allotted. See Southern Ute, 402 U.S. at 171. Neither the 1880 Act nor any subsequent congressional action affected the Ute Mountain Ute's water rights which also retain an 1868 treaty date priority.

All cases which have addressed the issue conclude that the original treaty-date priority to water applies to unclaimed "surplus" lands which are restored to tribal ownership. See United States v. Anderson, 736 F.2d 1358 (9th Cir. 1984); In re Big Horn River System, 753 P.2d 76 (Wyo. 1988) (Big Horn I), *aff'd without opinion by an equally divided court*; and In re Big Horn River System, 899 P.2d 848 (Wyo. 1995) (Big Horn IV). Anderson developed a three-prong test for extinguishment of a Winters right; namely, there must be: 1) cessation of the reservation, 2) opening of that land to homesteading, and 3) conveyance into private ownership. Anderson, 736 F.2d at 1363. While the Ninth Circuit held that no Indian reserved water rights exist "on those reservation lands which have been declared public domain, opened to homesteading, and subsequently conveyed into private ownership," *id.* at 1363 (emphasis added), it left in place the district court's decision which awarded a treaty-date priority for water rights to "lands opened for homesteading which were never claimed." *Id.* at 1361 (emphasis added). In the case of the Utes, the land restored to the Southern Ute Indian Reservation was never conveyed into private ownership. Since the land was never conveyed into private ownership, the 1868 priority date was never affected.

The Wyoming Supreme Court reached the same conclusion when it found a treaty-date priority for "all the reacquired lands on the ceded portion of the [Wind River] reservation." 753 P.2d at 114 (Big Horn I). Similarly, Big Horn IV held that a treaty-date priority for reserved water rights extends to "restored, retroceded, undisposed of, and reacquired lands owned by the Tribes; fee lands held by Indian allottees; and lands held by Indian and non-Indian successors to allottees." 899 P.2d at 855.

The Department notes that Big Horn IV also held that the reservation purpose and reserved water rights "no longer existed for lands acquired by others after they had been ceded to the United States for disposition." Id. at 854 (emphasis added). This reasoning, which comports with Anderson's three-prong test, was used by the Court to conclude that non-Indian settlers, under the Homestead Act and other land-entry statutes, did not have a treaty-date priority. This holding, however, does nothing to alter the fact that lands ceded by the Southern Ute Tribe, which were opened to settlement but unclaimed by settlers and later restored to tribal ownership, retain water rights with a treaty-date priority. Anderson, Big Horn I, and Big Horn IV stand for the proposition, and the Department concludes, that the Tribe retains its original 1868 priority date for all restored "surplus" lands.



John D. Lesby

