

# INDIVIDUALS

IN20

**From:** "Kevin Russell Cook" <krcook@cyberport.com>  
**To:** <ALPDSEISComments@uc.usbr.gov>  
**Date:** Mon, Apr 17, 2000 5:55 PM  
**Subject:** ALP Comments

5:55 PM, on 4/17/00

Dear Mr. Schumacher: ALPDSEISComments@uc.usbr.gov

In these days of anti-dam sentiment and changing water law it seems truly incredible that our Secretary of the Interior, Mr. Bruce Babbitt has so heartily endorsed ALP ultra-lite. I do not believe we should commit 33,000 acre feet of water to 3,000 or so Ute Indians who, in light of the water currently available to them, have no need for it.

The Southwest is too dry to commit water for nothing but "development". Give them other economic considerations but do not commit this much water to bring more people to an area that will, in the foreseeable future, be really pinched for water.

Babbitt's proposal is a shortsighted commitment and use of irreplaceable water resources.

I have enclosed ( a Microsoft Word document ) that is a fair response to the letter Mr.. Babbitt sent to several prominent environmental groups who wrote to tell him his proposal was unsound. What kind of people are we if we do not keep our promises to these Indians! This was the gist of Mr.. Babbitt's letter.

Without immediate environmental damage even considered, this allocation of water is so unwise, I must ask, what kind of people would feel so absolutely bound to a promise that compromises the integrity of everyone else in this area for the sake of a group of people who have no need for water, save for speculative economic development? Go to court! Give these relatively well-to-do tribes money, economic assistance, but save the water for the thirsty.

I would be wiser to allocate three times as much money and water to Indians who have real needs, both for water and for development.

Alternative 10 please!

Kevin Russell Cook and Carolyn J. Johnson, M.D.  
Farmington, NM (505) 326-2641 (or email as above)

In just a few days, the period for comment on the latest edition of A-LP will close. I attended the last meeting the bureaucrats held here in Farmington, the purpose of which was to consider local citizen comment on the matter. But, the Clinton administration's Secretary of the Interior, Bruce Babbitt, is diligently backing his new "ultra-lite" version of A-LP. And, our local decision makers and water commission members had already climbed on-board Babbitt's bandwagon. So, I got the feeling the meeting was little more than a "dog and pony show". It was just a little hard to escape the suspicion that all the decisions have already been made. A-LP, the long and epic Four Corners battle, may have been won. If so, the element that has tipped the scales so decisively has been Indian water rights. But, I would like to caution all those who think *any victory for Indian water rights is a victory for Indians everywhere*, please think again.

The new A-LP has been designed mainly to provide for the settlement of Ute claims. In the not too distant future, it will be seen for exactly what it is, unwise and unjust. The great majority of Indians in our area have legitimate needs for water. And, they have a right to expect us to help with the delivery of that water. But, by the time we finally catch on to what A-LP really is, it will have become a cause for hard feelings against Indian people and their legitimate rights and needs.

How can I say that? Let's look a little closer at a few details. The two Ute tribes involved, the Southern Utes, and the Ute Mountain Utes, have very small populations. The Southern Ute's have exactly 1,307 enrolled members. About 120% of that number is equal to the number of enrolled Ute Mountain Utes. So, we are considering a population of roughly 3,000 Ute Indians. A fair estimate of the entire enrolled Navajo population would be somewhere just over a quarter of a million. The *in-town* population of Shiprock alone numbers about 7,500. You may make your own comparisons. So, are the needs of a very small group of people driving this project?

Well, certainly not the *needs*. Many knowledgeable people estimate the Southern Ute's to already have possession of nearly 100,000 acre-feet. Much of the water they currently have rights to is not being used at all. And much of what is being used is not used to satisfy the water needs of the Tribe's population. In fact, the Southern Utes lease large parcels of irrigated agricultural land to non-Indians. Only as long as we are fairly loose about what passes for *development*, can we safely say, the local Ute Tribes will use their allotted 33,000 acre-feet of A-LP water for *development*. The Utes as much as allow this. They say they need and want the new water for development. Yet, they will not commit to any specific plan for water use. In fact, they know well, economic development could come to them, and quite easily too, if they simply broker and sell their A-LP water. Here in our dry country, our Ute neighbors would be in a fine position to become "water lords and water brokers to the Southwest".

Personally, I am in favor of capitalism, rich Indians, and poor Indians becoming rich. The Utes argue that we owe them something for the land they ceded to us, and by gosh, they are right! Plain fact is though, water is scarce around here. And, in a very real way, just like with our air, every person who lives around here has a rightful stake in what there is of it. But, our water supply is limited. Part of the best solution is to settle with the two southernmost Ute tribes for something not so limited. Some other key to unlock economic development. Perhaps some money in a Ute administered development trust. Or, (this next suggestion may be even too conservative!) some direct payment to each Ute member to invest or use as he or she sees fit. As attractive as cash is, it just doesn't have the potential to make the Ute tribe's leaders the "power players" in our area the way water does. Consequently, this type of settlement, likely and correctly, would have to be forced by litigation through our courts.

Our own leaders have not led us in this direction. This is partly due to a short-sighted love of indiscriminate economic development, "big government projects", and the dollars that would accrue to developers ( meaning themselves ). Remember, it was only after it became clear that A-LP had political support problems, that the project became tied to the Ute treaty claims settlement process, and by emotional extension, to Indian water rights and to Native American economic development.

IN20-1 The Southern Ute Indian Tribe has existing water rights under the Pine River Project and the Ute Mountain Ute Tribe has been allocated water under the Dolores Project. However, the total water rights for the two Tribes are based on a U.S. Department of Justice water right claim that would require water in excess of what has been decreed. The ALP Project would satisfy the remaining water right claims of the Colorado Ute Tribes. Because of the sovereignty of the Tribes, they have a lawful right to choose how they would put their water to use.

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Our water commission ( Mayor Standley says, you must be pro A-LP to be appointed to this group) has told us, A-LP water will consume fewer San Juan County dollars than other solutions. But, they fail to take into account, the federal dollars that will fund A-LP is our money, too! They do not reckon the monetary cost to the U.S. taxpayer for the eternal pumping of Ute owned water into storage. Perhaps most importantly, they fail to count the loss of that water, forever, for less speculative, and more worthy area projects which address specific needs. Take for example, the people in and around Gallup. The city has a population of about 22,000, with even more folks in the rural areas around the city. They've just voiced a quite honest need for about 30,000 new acre-feet. This water would be used, not to stimulate growth and bring new people to the area, but to stop a clearly foreseen water shortage disaster. Without hesitation, we should commit resources to solving the water problems of the Gallup area, so often referred to as "Indian Country".

It is good to hold money or equities for speculation, but our water and its' future use is far too valuable. Water for the thirsty! There's a revolutionary idea! The facts as they plainly exist on the ground make this much clear: Ute treaty claims are genuine. They can and must be satisfied. However, they are really economic and compensatory claims. They should not be equated with and further confused with the water needs of a people. To some degree, we've been purposely led into that type of confusion by the folks who stand to benefit the most from A-LP. Where water is concerned, our first consideration should be the needs of *all* the people in the Four Corners. This is not where our water law has always been. Inevitably though, this is where water law will (and should) go in our dry Southwest.

Babbit's A-LP ultra-lite is one sausage of a political deal, cooked up by the usual gang: federal and local bureaucrats, politicians, mini-Donald Trumps, and appointed big shots. But, they couldn't get it done by themselves. They had to spike it by binding it to racial politics, and by enlisting the aid of two small, relatively "well-to-do" tribes. When the recipe is finally known and the real bill is placed on the table, other Indian claims to more legitimately needed water will be unfairly met with new doubts and added resistance.

Maybe Babbit's A-LP ultra-lite is a "done deal". Still, we owe to our own better natures and to a better society to comment on it. Until April 17, you should write:

Bureau of Reclamation  
Attention: Pat Schumacher  
835 E. 2<sup>nd</sup> Ave., Suite 300  
Durango, CO 81301-0640

Fax to: (970) 385-6539  
Email to: ALPDSEISComments@uc.usbr.gov

After that, you could write anyone in the U.S. Senate or the House who might be inclined to listen without prejudice.

Kevin Russell Cook  
Farmington, NM 87401

3503 Monterey Circle  
[krcook@cyberport.com](mailto:krcook@cyberport.com)  
326-2641

IN20-2 Refer to General Comment No. 2 for additional discussion on costs.

INDIVIDUALS

IN21

397

P.O. Box 861  
Boulder CO 80306

Mr. Pat Shumacher,  
Bureau of Reclamation  
815 E. Second Ave  
Suite 300  
Durango, CO 81301

If the Animas-La Plata project is completed, it would deplete 57,000 acre feet of water per year from the Animas River. It would be ~~to~~ extremely expensive and destructive to the environment. The water would go mostly to coal mines and power plants, not to the Indians. Alternative 6 should be adopted instead. Thank you very much.

Sincerely,  
Lester J. Coon  
Lester J. Coon

IN21-1 Comments noted.

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# INDIVIDUALS

IN22

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**From:** "LeeAnn Craig" <lacraig@hotmail.com>  
**To:** <ALPDSEISComments@uc.usbr.gov>  
**Date:** 2/8/00 2:53PM  
**Subject:** ALP

Please do not continue with plans for the Animas La Plata project as it now stands. The plan is irresponsible, prohibitively expensive, destructive, and completely unnecessary. If anything, alternative 6 is the lesser of the evil choices presented to us. How much more of the environment is going to be destroyed for the gain of just a few people? Please do everything you can to stop this travesty.

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Get Your Private, Free Email at <http://www.hotmail.com>

IN22-1 Comment noted.

# INDIVIDUALS

IN23

March 3, 2000

Mr. Pat Schumacher  
Four Corners Division Manager  
Four Corners Division of the Western Colorado Area Office  
835 East Second Avenue, Suite 300  
Durango, CO 81301-5475

Re: Animas-LaPlata Project DSEIS.

Gentlepeople:

I should like to submit comment during this 60-day public review period regarding the above-mentioned DSEIS.

All the alternatives presented, except the No Action alternative, hinge on complying with the Indian Water Rights Settlement Act of 1988, based on the Indian Water Rights Settlement Agreement of 1986, without the full benefits to non-Indians that were contained in the original Animas-LaPlata Project.

Since the quantification of Indian water rights in the Settlement Agreement provided water to the tribes in excess of any rights suggested by the Winters Doctrine, it appears that non-Indian proponents of A-LP who participated in the Settlement Agreement were willing to be over-generous to the Indians in order to get their own hoped-for benefits from A-LP. THE SETTLEMENT AGREEMENT WAS BASED ON CONSTRUCTION OF THE FULL ANIMAS-LAPLATA PROJECT. CUTTING THE PROPOSED BENEFITS TO NON-INDIANS FROM THE A-LP PROJECT SHOULD, THEREFORE, MAKE THE SETTLEMENT AGREEMENT NULL AND VOID.

To state my position extremely briefly, the only honest and fair alternative in your DSEIS is No. 10—the No Action Alternative – which should prevail until the actual water rights of the Ute tribes are settled in court.



Roy Craig  
LaBoca Ranch, Box 335  
Ignacio, CO 81137

IN23-1 Refer to General Comment No. 14 for a discussion of Colorado Ute Tribal water rights.

IN23-2 Comment noted.

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# INDIVIDUALS

IN24

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**From:** "Cummings, Annie" <Annie.Cummings@ppcc.ccoes.edu>  
**To:** "alpdseiscomments@uc.usbr.gov" <alpdseiscomments@uc.usbr.gov>  
**Date:** 2/9/00 2:26PM  
**Subject:** Las Animas Plata Project

Dear Pat Shumacher:

To be honest, I thought our society had learned how damaging and environmentally insensitive damming natural rivers can be. Please do not support this project, there are other good alternatives from which we can choose to solve some of these water issues. I certainly don't want my money spend on such a environmentally unfriendly manner. Thank you for your time,

Annie Cummings  
Department Chair  
Natural Resource Technology  
Pikes Peak Community College  
5675 S. Academy Blvd., Campus Box 17  
Colorado Springs, CO 80906  
719-540-7384  
annie.cummings@ppcc.ccoes.edu  
<mailto:annie.cummings@ppcc.ccoes.edu>

IN24-1 Refer to General Comment No. 15 for a discussion of dams on the Animas River.

INDIVIDUALS

IN25

80  
Bus. Ind. Relcam. — 6 April 2000  
Durango, CO

Dear Sirs:

I've been following the development of the Animas-Salida water project idea and can't believe that Government could fall for such a boon-doggie.

The Indians need help that's for sure. The alternative to the A-L project called the "Citizens Alternative" makes much more sense — for the Indians and for the State. The greed-head oligarchs are hiding the hard truths of what they are up to from public scrutiny.

I urge you to do the right thing by adopting "Alternative 6"

Sincerely yours,

Roger E. Davis

Dr. Roger E. Davis  
184 McShimming Road  
Aspen, CO 81611

IN25-1 Comments noted. Reclamation's evaluation found that the Citizen's Alternative would be more environmentally impactful, and would provide less assurance of a reliable, adequate water supply for the Colorado Ute Tribes than the Preferred Alternative.

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IN26

**From:** James Decker <decker\_J@FORTLEWIS.EDU>  
**To:** <ALPDSEISComments@uc.usbr.gov>  
**Date:** 2/19/00 12:27PM  
**Subject:** Final revised comment on DEIS

Statement on the Animas-LaPlata Project: Draft Supplemental Environmental Statement, February 15, 2000.

James C. Decker  
220 Halto Via Circle  
Durango, CO .81301

Thank you for the opportunity to comment. This is my third statement in public hearings on the Animas-LaPlata Project in Durango. The first was in 1979 and second in 1996. In addition, I participated in the Romer-Schoettler negotiations that developed the non-structural conceptual alternative, which the current Draft Supplemental Environmental Statement claims to evaluate as Alternative 6. Since the proponents of the structural alternative unilaterally abandoned the Romer-Schoettler process, I no longer feel obligated to support the nonstructural alternative, which, as I mentioned, was only conceptual in form. Instead, I support and urge the administration to adopt alternative 10, the No Action Alternative.

The current draft supplemental environmental says the No Action Alternative is fatally flawed because it does not meet the purposes and needs of the project. By that standard, all the alternatives and configurations of the Animas-LaPlata Project are fatally flawed in that a project has never been designed that does not violate some aspect of environmental law, water law, or Bureau of Reclamation regulations.

It is said, by the proponents of the structural Animas-LaPlata, that no action will result in the breach of a moral obligation to the tribes. How are the tribes injured? If no action is taken, they still retain the same rights they had prior to the Settlement Act and if these rights are good, they are good in perpetuity. Have they lost time in achieving their objectives? We are told they have been waiting for their water since 1868. Yet, unlike the Navajo Tribe, they still cannot specify, in this administration preferred alternative, the purposes and needs for their portion of the project. Instead, only "non-binding" scenarios are offered.

Non-binding alternatives do not add up to the purposes and needs required of environmental law or the appropriations doctrine incorporated in federal interstate compacts and the law of the western states. Water must not be diverted except for beneficial use. A reservoir without end uses is storage without beneficial use. And, if end uses are uncertain, cost benefit analysis would appear to be impossible. Non-binding scenarios can only suggest non-binding benefits.

The natural world should not be violated needlessly. Native American traditions incorporate that principle. How, then, can the tribes justify a reservoir without identifying the need for the water?

The fact is, there are no purposes and needs for M&I water that can't be supplied from other sources in the region. Given that, it is for the

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Casandras who wrote the evaluation of the No Action Alternative to explain why they think that the region will be left with uncertainty, litigation and delay.

There is yet another "non-binding" scenario that has not been evaluated by the DSEIS. The Animas-LaPlata Water Conservancy District is an irrigation district in that the members of the board of directors are mostly irrigators and the area served is preponderantly irrigation land. The directors are ready and able to convert the Ridges Basin Reservoir into an irrigation project for the dry side at the first opportunity. In any M&I scenario, the administration should first see to the deauthorization of all irrigation portions of the previous Animas-LaPlata project and furthermore, to contract only with municipal users for municipal water.

2/20/addition

In view of statements at the Shiprock Chapter House and reported in the Farmington Times, it would appear that the unquantified needs of the Navajo need to be considered before the frivolous speculations of the Utes. What is in order is a San Juan Basin Settlement Act to deal with Jicarilla Apache, Navajo and Utes. A No Action Alternative is justified for that reason as well.  
JCD

IN26-1 The purpose of the ALP Project is intended to satisfy senior water rights claims of the Colorado Ute Tribes as set forth in the Settlement Act. The settlement of water rights of the Navajo Nation and Jicarilla Apache Tribe are separate issues.

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# INDIVIDUALS

IN27

**From:** "Cynthia" <whimsy@frontier.net>  
**To:** <ALPDSEISComments@uc.usbr.gov>  
**Date:** Mon, Apr 17, 2000 4:23 PM  
**Subject:** ALP DSEIS SCOPING COMMENTS

Mr. Pat Schumacher  
Bureau of Reclamation  
PO Box 640  
Durango, CO 81301

SCOPING COMMENTS - ANIMAS LA PLATA PROJECT - DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT

Dear Mr. Schumacher,

The DSEIS fails to provide a complete and fair analysis of the non-structural alternatives to building the Animas LaPlata Project. Analysis of the effects of the preferred alternative are incomplete and an obvious bias is present is prevalent against the non-structural alternatives.

**1** | There are disturbing discrepancies between the Tribal water allocations stated in the DSEIS compared to those stated in the Settlement Act. Depletion and diversion amounts in the DSEIS are not the same as those stated in the Settlement Act. These numbers must be made equitable.

**2** | Structural alternative #4 will cause unmitigatable environment damage  
- Native fish populations will be as stated in the DSEIS  
- The flow volume of the section of the Animas between the intake and outflow sections of the "preferred alternative" will be unacceptably reduced.

**3** | Why has so much M&I been added to the Tribal water allocations? The Settlement Act was predominantly agricultural water. M&I water "needs" are greatly exaggerated. Agricultural water must be put back in the project. So called justification of a structural project (i.e. coal fired power plant, golf course) is not reasonable, acceptable or realistic. Was the M & I water increased simply to degrade the viability of a non-structural alternative. Put the agricultural water back in the project and make a fair analysis of the non-structural alternative.

**4** | The DSEIS does not include a Cost Benefit Analysis. Cost Benefit Analysis has been a part this process in the past and cannot be omitted at this point in the process. Cost Benefit Analysis must accompany this process and must be applied to all potential alternatives, both structural and non-structural.

Respectfully,

Cynthia A. Dow  
615 Pleasant Drive  
Durango, CO 81301-4146  
(970) 259-2096  
whimsy@frontier.net

IN27-1 The allowed depletions for the Colorado Ute Tribes is approximately the same in the FSEIS as in the Colorado Ute Final Water Rights Settlement Agreement. As stated in Section 3.3.1.3, Water Yield of the FSEIS: the purpose and need statement describes an intent to implement the 1988 Settlement Act that contemplated an average water supply of 62,200 afy (53,200 afy of depletion) being made available to satisfy the Colorado Ute Tribes' water rights claims in the Animas and La Plata River basins. Supplying this amount of water is the goal by which each alternative was evaluated. The goal is to allow the Tribes the same depletion allowance as stated in the Settlement Agreement. The amount of depletion per unit of water supplied is different in the FSEIS than in the Settlement Agreement. In the FSEIS a depletion rate of 50% was assumed. A higher depletion rate may be used in the future depending on how the two Tribes put their water to use, however, they would still be held to a maximum depletion rate of 53,200 afy.

IN27-2 Reclamation acknowledges that project operations would chronically reduce both river flow and habitat to downstream aquatic resources. This effect, is not expected to be a major impact to native species and it is not directly mitigatable. Reclamation has committed to a monitoring program, to commence immediately, that will address an on-going problem related to very low recruitment to populations of native suckers in the Animas River. Further, once understood, Reclamation would consider implementing measures to increase native sucker recruitment, if feasible. Although not directly mitigating for the effect the project would have on native fishes, increasing native sucker recruitment is thought to be necessary in terms of maintaining these species in the Animas River. This commitment is more thoroughly described in Section 5.4.6 of the FSEIS.

IN27-3 The amount of water (allowed depletion in afy) that the two Colorado Ute Tribes would receive under the Preferred Alternative, assuming that they purchase the 13,000 afy of existing water rights, is approximately the same depletion as allowed in the Colorado Ute Indian Water Rights Final Settlement Agreement. The Administration Proposal set out a project that would supply only M&I water. The two Colorado Ute Tribes have agreed to this concept by way of Tribal resolutions agreeing to accept a project where the structural portion of the project would only supply M&I water.

IN27-4 Refer to General Comment No. 1.

# INDIVIDUALS

IN28

**From:** "Ann Ellinger" <info@chacosan.com>  
**To:** <ALPDSEISComments@uc.usbr.gov>  
**Date:** 1/27/00 2:12PM  
**Subject:** Letterhead Master

January 27, 2000

Pat Schumacher  
Bureau of Reclamation  
835 E 2nd Ave.  
Durango, CO 81301

Dear Pat Schumacher:

This letter is in reference to the proposed Animas-La Plata project on the Animas river at Durango, Colorado.

According to a biological assessment prepared for the Bureau the resulting water depletions are likely to adversely modify critical habitat in the San Juan River. As well, construction of the project will also disturb the migration habitat of bald eagles, elk, and mule deer.

In addition numerous other undesirable impacts would be noted, including lower river flows which would eliminate over 4000 kayaking and rafting user days. As an employee of a small manufacturing company that produces river sandals, this loss of recreational area is a concern.

I would urge the Bureau to consider alternatives to the structural reservoir at Ridges Basin. Further study of alternative #6, the Animas River Citizen's Conceptual Alternative, would be my recommendation.

I appreciate your time,

Ann Ellinger  
Environmental Coordinator

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- IN28-1 The Biological Assessment does state that the Project "may affect" critical habitat in the San Juan River. However, as part of consultation with the U.S. Fish and Wildlife Service, a Biological Opinion has been developed and is included as an attachment to the FSEIS. The Biological Opinion concludes that the project would affect, but not jeopardize, the fish, nor would it adversely affect critical habitat.
- IN28-2 Eagle migration will not be impacted by the ALP Project. Eagle roosting habitat will be protected when the project is developed. Potential impacts to elk and mule deer migration are addressed in General Comment No. 11.
- IN28-3 Refer to General Comment No. 8 regarding recreational use of the Animas River and potential impacts.

Similar letters were received from six other individuals. Their letters are included as part of Form Letter A in Volume 3B.

Rebecca Cover, Paonia, CO  
Thomas Dagan, Paonia, CO  
Carol Ellis, Paonia, CO  
Margaret Nies, Paonia, CO  
Robert Teskey, Paonia, CO  
Dawn Rae Tylak, Paonia, CO

# INDIVIDUALS

IN29

GENTLEMEN:

3/15/00

1 | THERE IS NO WAY TO PUMP WATER UPHILL  
AND MAKE THIS PROJECT ECONOMICALLY  
FEASIBLE. I AM IN FAVOR OF A JUST  
SETTLEMENT OF NATIVE AMERICAN WATER RIGHTS,  
BUT PUMPING, OR TRUCKING OR RAILROAD CARS  
ARE NOT WAYS TO MOVE WATER. WHEN  
OIL PRICES ARE OVER \$30<sup>00</sup>/BARREL AND THE  
ENERGY SECRETARY IS EXPRESSING CONCERN ABOUT  
ELECTRICITY AVAILABILITY HOW MUCH COMMON  
SENSE DOES IT TAKE TO SEE THAT THIS  
PROJECT WILL BE AN ECONOMIC MILLSTONE AROUND  
OUR COLLECTIVE NECKS. DONT PUMP IT!

Steve Ellison

STEVE ELLISON  
800 GLADE ROAD  
FARMINGTON, N.M.  
87401

IN29-1 Refer to General Comment No. 3 for a discussion of pumping water uphill.

1840 Centaur Village Drive  
Lafayette, CO 80026  
March 30, 2000

Pat Schumacher  
Four Corners Division Manager  
Bureau of Reclamation  
835 East 2nd Street, Suite 300,  
Durango CO 81301-5475

I address my comments to the latest draft supplement to the final environmental statement of the Animas-La Plata project, to Volume 1, page S-8. This is titled, INDIAN WATER RIGHTS SETTLEMENT, COST SHARING, AND PROJECT PHASING. It is subtitled the Colorado Ute Indian Water Rights Settlement Act of 1988. And I must do so in reference to the 1992 Animas-La Plata project DSEIS because the statements don't jive and thus must be explained.

In the current DSEIS, the Bureau of Reclamation continues to state that all non-Indian irrigation in the Mancos River drainage could be eliminated if the Colorado Ute Tribes were to fully exercise what are presumed to be 1868 early-priority rights for water in this and the La Plata drainage.

First of all, the Bureau of Reclamation knows damn well that on December 19, 1991, a final consent decree was signed in District Court for Water Division No. 7, State of Colorado. With the consent decree in place, "the Ute Tribes waive any and all claims to water rights in the State of Colorado not expressly identified in the decree." This consent contained the proviso that Ute Mountain Ute claims on the Mancos River will not be effective until the Towaoc-Highline Canal, a feature of the Dolores is completed. See I-5, 1992 DSEIS.) Well, has it? Please address this in the SEIS.

The SEIS in this section should also include that in this final consent decree, the Colorado Ute Tribes agreed to a 1938 water right. I quote Chuck Lile, then director of the Colorado Water Conservation board, who wrote in a letter to me, "The decrees grant the tribes a reserved water right with the same priority as that of the Animas-La Plata (1938) rather than an 1868 priority date."

I note that on S-8 the Bureau of Reclamation states as fact that the Colorado Ute Tribes have 1868 water rights predating existing users. That is mere assumption, not fact. Only the Division No. 7 court has the power to adjudicate the remaining claims the Colorado Ute Tribes have on the Animas and La Plata Rivers. Congress does not have that power. Nor does the Department of the Interior. DOI solicitor John Leshy's opinion I see has been inserted into the record in VOLUME 2, but that is only opinion, an opinion I and others dispute. I find his arguments

IN30-1 Refer to General Comment No. 14 for a further discussion of tribal water rights.

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specious, his conclusion, fallacious. I read the United States v. Southern Ute Tribe or Band of Indians, 402 U.S. 159 (1971). It was a res judicata ruling forever barring the Southern Ute Indian Tribe from getting 1868 rights.

Given that the Animas-La Plata project's primary justification now is settlement of Colorado Ute Indian claims on the Animas and La Plata Rivers--Purpose and Need--it is imperative that the Bureau of Reclamation include a law review article by attorney Alison Maynard in Volume 2 of the DSEIS, titled, DECONSTRUCTING A WATER PROJECT (2 Denv. Univ. L. Rev. 227-266, copyright 1999). In summary of the above, the Bureau of Reclamation needs to state that the assumption that the Colorado Ute Tribes have 1868 water rights is mere assumption and that the 1991 final consent decree for the other rivers states otherwise.

**RIGHTS NOT QUANTIFIED.** Nowhere in the DSEIS can I find a quantification of the amount of water the Colorado Ute Tribes are entitled to on the Animas and La Plata Rivers. It is impossible to assess and/or comment on Purpose and Need for this project under NEPA without quantification of the amount of water the Colorado Ute tribes are entitled to under the Winters Doctrine (see page S-8, Volume 1, footnote).

How much water are the Colorado Ute Tribes entitled to from the Animas and La Plata under the Winters Doctrine? Again, only the District Court of Colorado Division No. 7 has the power to decide, not Congress, not governors, not water conservancy districts nor water commissioners, not state water boards, not the Department of the Interior, not the Ute tribes.

There are, however, two studies done in the mid-80s that quantify how much water the Colorado Ute Tribes would likely be entitled to under the Winters Doctrine, what is called the "practically irrigable acreage" (PIA) standard.

The Bureau of Indian Affairs did one, the Keller-Bliesner report. The State of Colorado did another, the W.W. Wheeler report. Colleagues of mine have made public-information requests (FOIA and Colorado Public Records Acts.) These records have been denied us yet the amount of the PIAs on the Animas and La Plata Rivers is absolutely imperative for us to determine if this project needs to be built. It would seem to me the Bureau of Reclamation has the power to obtain that information. Indeed, the State of Colorado has in the past shared that information. Reference that on S-8, last paragraph, specific reference is made that the State of Colorado had estimated that some 34,000 acres of land irrigated by non-Indians could be adversely impacted. Thus, the State of Colorado has in the past shared its quantification numbers with the Bureau of Reclamation.

I add that the 34,000 number of acres no longer is accurate, given that, as stated above, all other Ute claims on rivers appurtenant to their reservations were settled in 1991. The only

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(con't)

# INDIVIDUALS

IN30

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(con't)

Ute Winters Doctrine claims to be settled are Southern Ute claims on the Animas and La Plata Rivers. (The Ute Mountain Ute claims are fully settled. The Ute Mountain Utes have no valid claims on either of these rivers because neither river is appurtenant to their reservation.)

Please do not fall back on a glib answer that the Bureau of Reclamation must carry out the mandate of the 1986 Agreement in Principle and the 1988 Congressional Act, which is based on that. Substantial changes in the Animas-La Plata project have occurred since then. The fact that new legislation has been introduced is proof that the specific provisions of the 1988 Act are no longer valid.

In summary, statements made on page S-8 are incorrect. That the Colorado Ute tribes have 1868 water rights is mere assumption, not fact. The quantification reports must be included to do an accurate assessment of Purpose and Need.

*Jeanne W. Englert*

Jeanne W. Englert  
303-665-2582  
trex@ix.netcom.com

# INDIVIDUALS

IN31

**From:** <trex@ix.netcom.com>  
**To:** <ALPDSEISComments@uc.usbr.gov>  
**Date:** Sun, Apr 16, 2000 7:36 PM  
**Subject:** Draft SEIS comment

1840 Centaur Village Drive  
Lafayette, CO 80026  
April 3, 2000

Jack Rogers  
City Hall  
949 E. 2nd Avenue  
Durango, CO 81301

Dear Mr. Rogers:

I enclose my comments on the DSEIS of the Animas-La Plata project, and a Speakout piece I wrote for the Rocky Mountain News in 1998 plus a reprint of a Durango Herald article, dated August 9, 1995, titled "City's share of A-P costs skyrocketing" because apparently there is some confusion here about water rights the Southern Ute Indian Tribe claims on the Animas River. It appears to me, after reading a Denver Post article April 3 titled, DURANGO NOT READY TO TAP DEAL, that somehow, somewhere, somebody may have have misinformed you. Or perhaps you were misquoted. According to the Denver Post story, you said that the Colorado Ute tribes have water rights on the Animas River, "according to a water court decree."

I was surprised to read this because, to my knowledge, no such court decree awarding the Colorado Ute Tribes an 1868 water right on the Animas River exists. (See In the Matter of the Application for Water Rights of the United States of America (Bureau of Indian Affairs, Southern Ute and Ute Mountain Ute Tribes.) Findings of Fact, Conclusions of Law and Decree (District Ct. Water Div. NO 7, Colo.) (No. W-1603-76F.)

I sympathize with you that you were likely quoted out of context. You likely were referring to the Pine River decree, which, as you know, was strictly limited to the Pine River. And which, as you know, has no effect on the Animas River whatsoever. You probably should make reference to Morrison No. 7736 at 14.

What I found most disturbing in that Denver Post report was that apparently you said that the City of Durango's rights date back to 1936, thus junior rights to the presumed Colorado Ute Tribes' rights. According to the MASTER PLAN REPORT ON WATER SUPPLY AND TREATED WATER FACILITIES, DURANGO COLORADO done by Black & Veatch, Consulting Engineers, Denver, Colorado, 1981, Project No. 9538.001, the City of Durango's water rights on the Animas River date back to 1883.

Though I quote from this report, I note a serious omission in Appendix B, QUANTIFICATION OF RESERVED WATER RIGHTS FOR INDIAN RESERVATIONS, which I address in the enclosed documents. The prestigious law firm of Moses, Harrison, Woodruff, and Wittemeyer the City hired in 1981 was unaware of the 1971 U.S. Supreme Court res judicata ruling I refer to. I can speak to this exactly. I discovered this ruling in 1987, researching Ute Indian rights at the Colorado Supreme Court Law Library. I asked David Harrison why there was no mention of 402 U.S. 159 (1971) in the Black & Veatch report.

He was startled. He knew nothing of this case. It is unfortunate that this prestigious Boulder law firm did not know about it back in 1981-82 because they

IN31-I Refer to General Comment No. 14 for a discussion of Reclamation's position on the water rights of the Colorado Ute Tribes.

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could, in my opinion, have then assured the City of Durango that there is no way Southern Ute water claims could have a negative impact on the City's Animas River water rights.

At the time this report was issued, there was no knowledge about how much water the Southern Ute Tribe would be entitled to on the Animas River because those quantification analyses had not yet been done. Please note my comments on the DSEIS, the denial of documents from both the federal government and the State of Colorado of quantification reports needed by the City of Durango to assess the amount of water which the Southern Ute Tribe would be entitled to under law and thus to make an informed decision. Peculiar, isn't it, that two agencies refuse to provide quantification numbers so vitally needed by people such as yourself in your capacity as director of public works, City of Durango.

My opinion is that there is no way the City of Durango can make a reasoned, informed decision as long as the City is denied sufficient information to do so. Based on the Denver Post article I cited above and an earlier report I read in the Durango Herald, I don't think the City of Durango is playing with a full deck of cards.

I urge you to obtain a copy of the University of Denver Water Law Review article I reference in my DSEIS comments. It also contains an article on that subject by Southern Ute water attorney, Scott McElroy. You may contact the Water Law Review by calling (303) 871-6223. The footnotes in Ms. Maynard's article alone are worth the small price, sparing the City's attorney hours of tedious research.

I am distressed to read in the Denver Post that, once again, scare tactics are being used to pressure the City of Durango into a project not in its best interests. The article I alluded to above states, "If A-LP is scratched, the tribes can choose at the end of this year to renegotiate the settlement or sue for their water rights on the Animas and La Plata rivers. Rogers and other city officials are afraid that without a new water-storage project, the tribes' senior rights could dry up the city's share of the Animas River, along with holders of junior rights."

It's a shame that you and other city officials be fearful over a chimera of senior rights that are merely claimed, not adjudicated in court. I quote from an article in High Country News, titled "Animas-La Plata: still flawed" (December 17, 1990). This article, can probably still be obtained from HCN, being a compilation of articles about the Animas-La Plata project HCN published in 1996.

I quote from this story. "The report by Sonosky, Chambers & Sachs lends some support to Engler's claim (that the Ute tribes don't have 1868 rights). 'A major risk for the tribe would have been proving an 1868 priority for some of its water,' the report stated." (Earlier in the story I refer to just above, this report was a study commissioned by the Southern Utes, that the firm is based in Washington, D.C.

To obtain a copy of this story, refer to High Country News (ISSN/0191/5657. Also P.O. Box 1090, Paonia, CO 81428, Tel. phone # is 970-527-4898. The email address is editor@hon. org.

If you read the reports I made and references cited in the enclosed documents, you can be assured that Southern Ute water right claims on the Animas River could not negatively impact the City's diversion of water from the Animas River. The 44 cfs conditional rights the City holds predate the Animas-La Plata conditional rights. The Horse Gulch Reservoir is cheaper than water from the Animas-La Plata project. Saving \$2 million dollars in cost may not mean much to the federal government, or the

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state government, but means a lot to Durango.

I sympathize with your frustration about not getting a cost estimate of the water from the Bureau of Reclamation. We never could get a straight answer. I recall John Brown, then project director saying, "It'll cost what it will cost." A blank check.

As you can see from reading my DSEIS comments to the Bureau of Reclamation, we mere citizens were rebuffed when we asked for the studies done that quantify the amount of water the Southern Ute Tribe is entitled to under the Winters Doctrine. But you, in your capacity as public works director, have the power to force the Attorney General, Ken Salazar, to give the City of Durango the W.W. Wheeler report that quantifies the Southern Ute water rights on the Animas River. To reach him, call (303) 866-4500.

I stress the importance of doing so because we taxpayers paid for this information. You need to know. The First Assistant Attorney General in the Natural Resources Section, Wendy Weiss (303-866-5008), in a letter to me dated September 18, 1998, confirmed that the 2,711 acres I refer to in my SPEAKOUT piece is what the Southern Ute Tribe claims to have on the Animas River.

Two thousand, seven hundred and eleven acres, a water duty of only 5,422 acre-feet, cannot be a threat to Durango's water rights, both the absolute ones and the conditional ones. Please consider.

Jeanne W. Englert  
303-665-2582  
trex@ix.netcom.com

Tim & Jeanne Englert  
1840 Centaur Village Drive  
Lafayette, Colorado 80026  
303-665-2582

# INDIVIDUALS

IN32

From: "JOJO'S Gourmet" <jojoss2u@frontier.net>  
To: <ALPDSEISComments@uc.usbr.gov>  
Date: 2/11/00 5:13AM  
Subject: ALP PROJECT

To whom it may concern:

I am writing in reference to the alternatives ( 10 ) to ALP. I am a tax payer of La Plata County and I do not believe in excessive taxation on projects as this white elephant. To pump water uphill to fill a large reservoir in Ridges Basin is overly expensive. This seems to me to only benefit the land owners around the reservoir who property values will go up. This was there interest from the beginning.

It is obvious that the evaluation process was not prioritized to settle Indian claims, but was expanded to include recreation and a huge quantity of water for development. I strongly believe this will be devastating to the quality of life of the Four Corners region.

As I am unable to attend the Feb. 15th meeting to share my opinion, I wish to go on record with the following;

The great majority ( 70% ) of the Indian portion of ALP water will supply power plants and coal mines. Almost all the rest will be sucked up buy federal projects ( resorts ) and only 2 % satisfies the Ute housing needs.

The DSEIS shows clearly what ALP Opponents have long said, there is no legitimate use for the water. None of the future uses justifies the cost which will only go up as the project moves on. Non Structural alternatives are more practical, cheaper and better for the tax payers like myself who will not benefit a wit from this project. It will cost all the tax payers to much for to little.

02/11/00 Joann S. Farley

IN32-1 Refer to General Comment Nos. 2 and 3.

IN32-2 Refer to General Comment No. 13 for a discussion of project scope. See General Comment No. 6 for a discussion of potential future uses of water. Refer to General Comment No. 2 concerning project costs.

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IN33

FEARN ENGINEERING SERVICES  
P.O. Box 790  
Silverton, Colorado 81433  
TELEPHONE (970) 387-5813 FAX (970) 387-5760

April 10, 2000

Mr. Pat Schumacker, Manager  
Four Corners Division  
Bureau of Reclamation  
835 East Second Avenue, Suite 300  
Durango, Colorado 81301

Re: Comments on the Animas-La Plata Draft Supplemental Environmental Impact Statement

Dear Mr. Schumacker:

I am a consulting engineer involved not only in mining but also in the improvement of the quality of the water in the Upper Animas River as a member of the Animas River stakeholders Group. I support Alternative 4, the storage alternative.

IN33-1 Comment noted.

In 1988, Congress passed the Colorado Ute Indian Water Rights Settlement Act which provided the two Colorado Ute Tribes with specific amounts of water from the Animas-La Plata Project to settle their reserved water rights claims in the Animas and La Plata River basins. Implementation of this settlement has been delayed too long, denying the Tribes the benefit of the agreement they reached with their non-indian neighbors, the State of Colorado and the United States.

The delay has triggered a clause in the settlement agreement which now necessitates a decision by the Tribes as to whether to honor the basis of the settlement, a storage project, or to litigate their reserved water right claims, which could cost millions of dollars for the State of Colorado and citizens in southwest Colorado.

Alternative 4, a downsized Animas-La Plata Project, would satisfy all Endangered Species Act requirements. In addition, it is the best alternative to resolve the Tribes' reserved water rights with the least environmental impact, although at the sacrifice of the irrigation water

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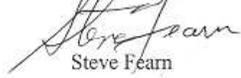
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(con't)

for non-indian agricultural water users on the La Plata River, water so long worked for. In order to get this matter settled to avoid a cloud over the heads of irrigators on the La Plata River, the Tribes have also made significant concessions.

Alternative 4 does not resemble the original Animas-La Plata Project because both the irrigation component of the Project and the large reservoir have been eliminated. What remains is a down-sized, off-stream reservoir that satisfies the bulk of the Tribes' reserved water rights claims and which stores municipal water for the growing communities in the Durango and Farmington areas. The balance of the Tribes' reserved water rights would be satisfied through purchases. The United States needs to honor its obligations to the Ute Tribes by carrying through on the commitments made in the 1988 Settlement Act.

Justice Black stated, "Great Nations, like great men, should keep their word." The time has come for the United States to fulfill its trust responsibility to the Tribes. I support the preferred Alternative.

Respectfully,



Steve Fearn

# AT LAST RANCH



Elizabeth T. Feazel  
10731 East Highway 160  
Pagosa Springs, CO 81147



24 MARCH 2000

MR. PAT SCHUMACHER  
BUREAU OF RECLAMATION  
835 EAST SECOND AVENUE  
STE 300  
DURANGO, CO 81301 - 5475

DEAR PAT SCHUMACHER,

I CAN'T BELIEVE THE PROPOSED ANIMUS-LA PLATA WATERWORKS IS IN ANY FORM STILL UNDER CONSIDERATION.

IF PUT INTO OPERATION THE ALP WILL SEVERLY DEplete THE STREAM FLOW, DAMAGING THE FISHERIES AND THE THRIVING RAFTING BUSINESS. WHAT WILL HAPPEN TO DOWNSTREAM WATERRIGHTS WHEN THE RIVER GETS DRAWN DOWN TO INSTREAM MINIMUM FLOWS? WILL IRRIGATED LANDS BE DRIED UP?

WATER STORAGE IN A RECREATIONAL LAKE WILL DESTROY THE BODO WILDLIFE SANCTUARY AND WE ALREADY HAVE PLENTY OF RECREATIONAL LAKES,

APPARENTLY THERE IS NO REASONABLE WAY OF GETTING WET WATER TO THE UTE TRIBES, AND IF THEY GET THE WATER THEY MAY SEND IT OUT OF STATE CARRYING COAL SLURRY TO YET ANOTHER SOURCE OF POWER PLANT AIR POLLUTION.

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IN34-1 Hydrology models performed by Reclamation do not predict, even under worse case projections, that there will be significant depletions from operation of the proposed Durango Pumping Plant. Please refer to General Comment No. 10 for a discussion of the pumping plant, and General Comment Nos. 8 and 9 for discussions of impacts on rafters and endangered species.

IN34-2 The impacts to wildlife at Bodo from the creation of the Ridges Basin Reservoir are addressed in Sections 3.5, 3.6, 3.7, 4.7, and 5.4. Please refer to General Comment No. 11 for a further discussion of the impacts and mitigation concerning the elk herd at Bodo.

# AT LAST RANCH



Elizabeth T. Feazel  
10731 East Highway 160  
Pagosa Springs, CO 81147



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WHO WILL PAY FOR THE CONSTRUCTION AND THE OPERATION OF THIS DESIGN FREAK THAT PUMPS WATER UPHILL AT ENORMOUS EXPENSE? THE TAXPAYERS, OF COURSE. NO BRANCH OF GOVERNMENT SPENDS ANYTHING BUT OTHER PEOPLES MONEY. THE BUREAU OF RECLAMATION MUST HAVE RESURRECTED RUBE GOLDBERG TO HEAD THEIR DESIGN DEPARTMENT. WHICH BRINGS US TO THE BIG QUESTION; WHO BENEFITS?

*Elizabeth T. Feazel*

IN34-3 Refer to General Comment No. 2 for a discussion of project costs .

# INDIVIDUALS

IN35

**From:** "Suzanne Drennan" <suedrennan@hotmail.com>  
**To:** <ALPDSEISComments@uc.usbr.gov>  
**Date:** Sat, Apr 15, 2000 2:30 PM  
**Subject:** ALP

To: Pat Schumacher

Dear Pat,

I am writing to voice my opposition to the ALP project. I have not read anything that shows me that this project makes sense. It makes no sense economically, environmentally, geologically, or geographically. Why should American taxpayers pay for a project that would waste millions of dollars and electricity pumping water uphill, only to have it run back down hill with no decided way of getting it to the Native Americans that this project is supposedly for? When I went to Fort Lewis College, we looked at this project in economics classes, and not one economics professor believes that it is economically viable. Nor do the economists I've heard speaking in public about it. I do not want my taxes helping with this project, nor does anyone I've discussed it with.

Why should we dam the beautiful Animas river? The redistribution of the water below Smelter mountain would wreak havoc on countless ecosystems and the wildlife within them. The reservoir created in Ridges Basin would effect the wildlife there, and disrupt important elk migration areas. This unnecessary project would damage the environment in many ways. Geologically speaking, Ridges Basin is no place to put a reservoir. The mountains in that area are known for shifting and sliding. One nearby mountain is called the "moving mountain" for that reason. At one of the public hearings on the project, I listened to a geologist explain why the area is unsuitable. He felt so strongly about it that he said if this project goes through he certainly wouldn't live south of the site, and he would urge others not to do so as well. He felt that strongly about the lack of sound geologic conditions in Ridges Basin.

Geographically, this is just not the place for the reservoir and for the water to be diverted. If this project is being touted as being for the Native Americans, then why not just divert water closer to the reservation without wasting all that money pumping it uphill? I've read that the Utes want to build a coal plant- maybe- they're not quite sure what they want the water for yet. I don't want to have some coal plant built so that it can generate electricity to pump water uphill- just so that water can help run the coal plant. It's an expensive and unnecessary circle that doesn't need to happen. We have enough coal plants in the four corners area that are doing a fine job of polluting our air. We don't need any more.

I've also read that some of the water will be used for golf courses. This I find just plain ridiculous. We live in the southwest. Water is a precious resource. We don't need to create a reservoir and use the water for golf courses. There are many more important, less wasteful uses for the water here. The idea of using it for golf courses had to come from someone from the East, or someone who doesn't recognize the value of water here. It's preposterous!

I feel that this project is unnecessary and not well thought out. Sure, it's been around and revised for decades, but it still hasn't been proven to be necessary. And if we don't need it, we certainly shouldn't be spending millions of dollars making it happen. I say we take no action, and let the Native Americans take us to court over their water rights when they've at least come up with some uses for the water. I support their rights, and if they don't want to do anything with the water, but just want to have it,

IN35-1 Comments noted. A discussion of damming the Animas River, and potential wildlife impacts are included in General Comment No. 15 and 11.

IN35-2 An extensive Geologic Design Data Report was compiled for the proposed Ridges Basin Reservoir. The report looked at all potential geologic hazards and situations including landslides. The nature and extent of historic landslides were noted along the base of Carbon and Basin Mountains. Evaluation of the recorded landslide characteristics has determined a low potential for the reservoir to induce landsliding. Landslides will also be monitored during reservoir filling on an annual basis as part of the filling criteria and after filling.

IN35-3 Comment noted.

IN35-4 Comment noted.

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that's fine, but let them build a reservoir to hold it on their land and not have American taxpayers slinging out the cash to pump it uphill out of one of the last wild rivers in the west. Thanks for your time.

Sincerely,  
Suzanne Fegelein  
Durango resident

---

Get Your Private, Free Email at <http://www.hotmail.com>