

State Agencies



ATTORNEY GENERAL OF COLORADO

Ken Salazar

April 11, 2000

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

RE: Comments on Animas-La Plata Project DSEIS

Dear Mr. Schumacher:

On February 17, 2000, I testified at the public hearing on the Animas-La Plata Project Draft Supplemental Environmental Impact Statement (DSEIS) held in Denver, Colorado. I would like to present my comments in writing for the record.

First, I want to thank the Bureau of Reclamation for preparing a thorough environmental review of the Animas-La Plata Project and its alternatives in such a timely fashion. Over a year ago, when I appeared at a scoping meeting for this supplemental environmental impact statement, I urged Reclamation to complete this review without delay. I am pleased that it has done so and issued the DSEIS right on schedule. This is a particularly impressive achievement in light of the large amount of public input that Reclamation received and considered and the broad spectrum of alternatives that it evaluated.

At the scoping meeting, I also urged Reclamation to add a conservation pool for environmental and recreational uses to the Administration proposal. I am pleased to see that the preferred alternative – Refined Alternative 4 – includes a 30,000 AF minimum pool for fishery and water quality purposes. Even with that minimum pool, the reservoir would only hold 120,000 AF of water – less than half the size of the reservoir recommended in the 1996 environmental impact statement.

The results of Reclamation's study are not surprising to me. After carefully assessing a wide array of alternatives, Reclamation concluded that only a structural alternative can meet the purpose and need of the project – satisfying the Southern Ute and Ute Mountain Ute Tribes' claims and providing water for other Indian and non-Indian community water needs in Colorado and New Mexico – within a reasonable time. Nonstructural alternatives that rely heavily on buying land and water are fraught with risk and uncertainty and could take 30 years or longer to implement.

SA1-1 Comments noted. Refined Alternative 4 includes a 30,000 acre-foot conservation pool for water quality and recreational uses, as suggested.

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Perhaps surprising to some people is that the study found that the preferred alternative is the practicable alternative least damaging to aquatic resources. Refined Alternative 6, the nonstructural alternative that came closest to meeting the purpose and need test, would have adverse impacts on more than four times as many acres of wetlands as Refined Alternative 4. The preferred alternative limits average annual depletions to 57,100 AF, which satisfies ESA requirements. It also requires Reclamation to schedule pumping from the Animas River to reduce adverse effects to both the downstream trout fishery and recreational uses.

Also, because it would use all the remaining available storage capacity of Navajo Reservoir, Refined Alternative 6 would be more detrimental to the Navajo Nation and the Jicarilla Apache Tribe. And, because it would involve the acquisition of more than twice as much land and water, Refined Alternative 6 would be far more disruptive to existing irrigated agricultural uses and rural communities in southwest Colorado.

Finally, the study found that while the cost of Refined Alternative 4 is slightly higher than the cost of Refined Alternative 6 (\$290.6 million versus \$273 million), the cost estimate for Refined Alternative 4 is more reliable. Refined Alternative 6 has risks that could add significantly to the cost estimate.

The preferred alternative emerges head and shoulders above the nonstructural alternatives.

In completing the DSEIS, Reclamation has taken a big step toward meeting its commitment to the Ute Tribes under the 1986 Settlement Agreement. I am confident that it will proceed expeditiously to modify its analysis as necessary and issue a final environmental impact statement.

Now is the time to address the few remaining issues and move forward to build a project that is environmentally and fiscally sound, fulfills a longstanding legal and moral obligation to the Ute Tribes, preserves the existing agricultural economy, provides needed water for communities in southwest Colorado and northwest New Mexico, and avoids years of costly and acrimonious litigation.

Sincerely,



KEN SALAZAR
Attorney General
(303) 866-3557
(303) 866-4745 (FAX)

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(con't)

STATE AGENCY

SA2

Mr. Pat Schumacher
Four Corners Division Manager
By Fax: 970-385-6539

HELLO. I AM STATE REPRESENTATIVE MARK LARSON AND I REPRESENT THE FOUR CORNERS AREA IN THE COLORADO GENERAL ASSEMBLY.

I AM WRITING TO ONCE AGAIN DISCUSS THE FINAL SETTLEMENT OF THE LEGITIMATE WATER RIGHTS CLAIMS OF THE TWO COLORADO UTE TRIBES, WHO ARE MY CONSTITUENTS.

SINCE A NEGOTIATED SETTLEMENT OF THOSE CLAIMS IN 1986 AND SUBSEQUENT PASSAGE OF THE 1988 COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT, THE ANIMAS-LA PLATA PROJECT HAS SERVED AS THE VEHICLE FOR SETTLEMENT: A STORAGE FACILITY PROVIDING A NEW SUPPLY OF WATER TO OUR ARID REGION.

SA2-1 Comments noted.

THE ANIMAS-LA PLATA VEHICLE HAS STALLED MANY TIMES SINCE THEN. COMPLIANCE WITH ENVIRONMENTAL LAWS HAS DELAYED IMPLEMENTATION OF THE NEGOTIATED SETTLEMENT, AND THE PROJECT AS CONTEMPLATED THEN IS GONE, PRIMARILY AT THE EXPENSE OF NON-INDIAN AGRICULTURAL INTERESTS. THE ADDITIONAL WATER THEY HAVE DREAMED OF SINCE THE PROJECT'S 1968 AUTHORIZATION DOESN'T FIT WITH THE ENDANGERED SPECIES ACT AND THE CLEAN WATER ACT. THEIR AGRICULTURAL LIFESTYLE WILL CONTINUE TO STRUGGLE.

BUT I AM PROUD OF THOSE WHO ARE STANDING BEHIND THEIR UTE NEIGHBORS. THERE ARE TWO REASONS: SOUTHWESTERN COLORADO IS A COMMUNITY IN ITS PUREST SENSE. AND, A PROJECT WHICH PROVIDES WATER TO THE UTES MEANS EXISTING USERS WILL NOT LOSE THEIR WATER TO SETTLE THE TRIBES' CLAIMS.

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WHEN I SPOKE AT A PUBLIC MEETING IN DENVER LAST YEAR, IT WAS IN SUPPORT OF NEW ANALYSIS UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT. LIKE MANY OTHERS, I BELIEVE WE'VE HAD PLENTY OF PUBLIC PROCESS AND STUDIES. BUT THE 1999 ANALYSIS UNDER NEPA LOOKED AT A VASTLY DIFFERENT PROJECT. THIS PROJECT -- THIS VEHICLE FOR SETTLEMENT OF THE UTE CLAIMS -- IS NOT YOUR FATHER'S A-L-P.

IT HAS LESS STORAGE CAPACITY. DEPLETIONS ARE IN FULL AGREEMENT WITH THE RECOVERY PROGRAM UNDER THE ENDANGERED SPECIES ACT. IMPACTS ON THE FLOW OF THE ANIMAS ARE MINIMAL, AND MITIGATION IS PLANNED FOR OTHER IMPACTS.

THE 1999 ANALYSIS ON WHICH WE ARE HEARING PUBLIC COMMENT THIS EVENING ALSO ANALYZES A NON-STRUCTURAL PLAN. THAT PLAN WOULD HAVE THE FEDERAL GOVERNMENT GIVE MONEY TO THE UTE TRIBES, WHO IN TURN WOULD BE EXPECTED TO FULFILL THEIR WATER RIGHTS BY ACQUIRING FARMS AND RANCHES.

THIS SCHEME NOT ONLY LIMITS THE TRIBES' ABILITY TO RELY ON A PERPETUAL SUPPLY OF WATER; IT HAS ENVIRONMENTAL CONSEQUENCES WHICH WOULD DRAW HOWLS OF OPPOSITION FROM ENVIRONMENTAL GROUPS IF IT WERE BEING PROPOSED BY THE TRIBES AND THEIR SUPPORTERS.

THIS DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT IS THOROUGH IN ITS EXAMINATION OF BOTH A STRUCTURAL AND NON-STRUCTURAL SOLUTION.

THE PREFERRED ALTERNATIVE IS A RESERVOIR AT RIDGES BASIN. THAT HAS LONG BEEN THE CONCLUSION OF MY CONSTITUENTS, WHO IN GOOD FAITH HAVE STUCK VIGOROUSLY TO THE VERY PRINCIPAL OF THE ORIGINAL SETTLEMENT: A FIRM SUPPLY OF WATER

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(con't)

Page Three

FOR FUTURE NEEDS OF THE SOUTHERN UTE AND UTE MOUNTAIN UTE PEOPLE *THAT IS NOT TAKEN FROM EXISTING WATER USERS.*

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(con't)

I WANT TO COMMEND THE BUREAU OF RECLAMATION FOR COMPLETING THIS ANALYSIS IN A TIMELY FASHION, AND FOR THEIR WISE CONCLUSION THAT STORAGE AND A NEW SUPPLY OF WATER IS THE VEHICLE FOR FINAL SETTLEMENT.

I THANK YOU FOR THE OPPORTUNITY TO PROVIDE THESE COMMENTS. I HOPE OUR THIS SUMMER WE CAN CELEBRATE A RECORD OF DECISION WHICH BEARS OUT THE CONCLUSION OF THIS DRAFT.

THANK YOU.

SINCERELY,

STATE REPRESENTATIVE MARK LARSEN



The Colorado History Museum 1300 Broadway Denver, Colorado 80203-2137

February 23, 2000

Pat Schumacher
 Four Corners Division Manager
 Bureau of Reclamation
 835 East Second Avenue, Suite 300
 Durango, Colorado 80301-5475

Re: Animas-La Plata Project DEIS and PA

Dear Mr. Schumacher:

Thank you for the opportunity to comment on the Draft Supplemental Environmental Impact Statement (DEIS) for the Animas-La Plata Project and the Amended Programmatic Agreement (PA).

DEIS

1. Should this project be constructed, the Bureau of Reclamation (BR) must consider what the effects the use of the water being generated will have on cultural resources. Apparently new subdivisions and new agricultural lands along with golf courses and other recreational facilities will be developed as a result of the additional water being generated.
2. A management plan needs to be developed for those cultural resources that are on the lands proposed for transfer once the project is completed.
3. How will the BR spend the 4% project limit that is being imposed on the cultural resource program?

PA

1. **Stipulation I.B.2, lines 5-6:** The reference to the current Secretary of the Interior's *Standards for Rehabilitation* is 36 CFR 67.
2. I.C.1, line 2: Change to Stip. I A.
3. I.D, line 3: Change to I D.

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SA3-1 The FSEIS Programmatic Agreement (contained in Volume 2, Attachment H) reflects Reclamation's lead agency responsibility for NHPA compliance and all end uses associated with the project. Reclamation will work with the Colorado Historical Society to meet all compliance objectives. It is anticipated the cost of meeting compliance requirements for some end uses will be either borne or cost-shared by an entity other than Reclamation. A draft management plan has been included in the Technical Appendices to the FSEIS and will be submitted to your office for review prior to finalization.

SA3-2 Thank you for the comments on the PA. Changes are reflected in the Final PA, included as Attachment H to the FSEIS.

Pat Schumacher
February 23, 2000
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4. III.B, line 6: This should be changed to a **Discovery Plan**. However, a Monitoring stipulation (to permit monitoring by the SHPO and Council) needs to be included, perhaps before the Amendments stipulation.

5. IV, line 1: 36 CFR 800.11(a) does not appear to be the appropriate citation here.

6. IV, line 3: Should MOU be replaced with **Plan of Action**, since that is what it is called in Stip. V?

7. IV.G: The Council has already been notified in IV.E. Either remove the Council from the earlier notification point (if the Council agrees) or omit "the discovery and of" here.

8. How and where are "construction/binding" 106 procedures differentiated from the "non-structural/non-binding" ones in III.C?

9. A **Duration** stipulation is needed, perhaps after the Termination stipulation.

10. Please check all citations for agreement with the revised regulation.

11. X: Is there a time frame for the SHPO and Council to comment on the annual report?

12. XII: Attachments should not be referred to as Appendices.

13. Please type in the Colorado SHPO's name on the signature page.

14. Page 15, X, second paragraph, line 4: Change "Indian Commission" to "Commission of Indian Affairs"; line 6: Change "Historic" to "Historical"; line 9: "reinterment".

15. We understand that the Navajo Nation, as well as both Ute tribes, will be full signatories to the PA.

16. Add a "Whereas" clause listing the Native American groups consulted.

If we may be of further assistance please contact Kaaren Hardy at 303-866-3398 or Jim Green at 303-866-4674.

Sincerely,


Georgianna Contiguglia
State Historic Preservation Officer

STATE OF COLORADO

OFFICE OF THE EXECUTIVE DIRECTOR

Department of Natural Resources
1313 Sherman Street, Room 718
Denver, Colorado 80203
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DEPARTMENT OF
NATURAL
RESOURCES

February 17, 2000

Bill Owens
Governor
Greg E. Walcher
Executive Director

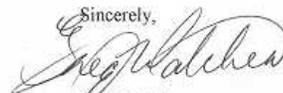
Pat Schumacher
Four Corners Division Manager
Four Corners Division of the Western Area Office
Bureau of Reclamation
835 East Second Avenue, Suite 300
Durango, CO 81301-5475

Dear Pat:

Thank you for the opportunity to comment on the draft Final Supplemental Environmental Impact Statement (EIS) on the Animas-La Plata Project and its relationship to the Colorado Ute Indian Water Rights Settlement Act. The State of Colorado has been an active proponent of the Animas La Plata Project since its inception. Colorado's long-standing support for the project and for fulfilling our obligation to the Tribes is summarized in the attached documents.

The EIS analysis of the Animas La Plata project protects both Indian non-Indian water uses in the region. Colorado strongly supports the structural alternative as the only viable means for meeting the commitment to the Tribes. This contemplates a scaled-back Ridges Basin Reservoir of 120,000 acre feet and a \$40 million development fund for the Tribes. We fully support the EIS conclusion in favor of the structural alternative and we agree that it meets the purpose and need of the proposal without significant impacts to wetlands. The nonstructural alternative would fail to resolve long-standing issues, create large cost uncertainties and destroy large areas of important wetlands.

A final settlement of the claims of the Southern Ute and Ute Mountain Ute Indian Tribes is long overdue. The State of Colorado favors H.R. 3112, introduced by Congressman Scott McInnis, to authorize the Secretary Interior to move forward with a final settlement. The NEPA process and the legislative process should move concurrently as open, public processes designed to reach a resolution this year. Thank you for your consideration. The State of Colorado looks forward to working with you on this important issue.

Sincerely,

Greg Walcher,
Executive Director

Attachments

SA4-1 Comments noted.

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STATE OF COLORADO

Colorado Water Conservation Board
 Department of Natural Resources
 1313 Sherman Street, Room 721
 Denver, Colorado 80203
 Phone: (303) 866-3441
 FAX: (303) 866-4474



Bill Owens
 Governor

Greg E. Walcher
 Executive Director

Peter H. Evans
 CWCB Director

Dan McAuliffe
 Deputy Director

COLORADO WATER CONSERVATION BOARD
 RESOLUTION IN SUPPORT OF THE ANIMAS-LA PLATA PROJECT
 January 27, 2000

WHEREAS the Animas-La Plata Project ("ALP") was authorized by Congress in 1968 to be built concurrently with the Central Arizona Project, which has been essentially completed; and

WHEREAS the Colorado Ute Indian Water Rights Final Settlement Agreement ("Settlement Agreement"), executed on December 10, 1986, resolved all of the reserved water rights claims of the two Colorado Ute Indian Tribes in a way that produced comity and cooperation, instead of litigation and conflict, through agreement among the State of Colorado, the Southern Ute and Ute Mountain Ute Tribes, the San Juan Water Commission, the US Departments of the Interior and Justice, the Animas-La Plata, Dolores, and Mancos Water Conservancy Districts, the Southwestern Water Conservation District, the City of Durango, Colorado, the Town of Pagosa Springs, Colorado, and private water parties; and

WHEREAS the ALP and allocation of a significant portion of that project's water supply to the two Tribes are essential features of the Settlement Agreement; and

WHEREAS the US Congress ratified the Settlement Agreement by passage of the Colorado Ute Indian Water Rights Settlement Act of 1988 ("Settlement Act of 1988"); and

WHEREAS the State of Colorado entered into a Binding Agreement for Animas-La Plata Project Cost Sharing with the US Department of the Interior pursuant to which certain State funds were deposited into an escrow account for the disbursement of up to forty-two million four hundred thousand dollars to defray a portion of the construction costs of the ALP Project; and

WHEREAS, the State of Colorado, acting through the General Assembly, the Colorado Water Resources and Power Development Authority, the Colorado Water Conservation Board, and other State agencies, has fulfilled all of the State's responsibilities arising from the Settlement Agreement and the Settlement Act of 1988, including the construction of the Dolores Project, with delivery of Dolores Project irrigation water to the Ute Mountain Ute Reservation, construction of a potable water pipeline to the Town of Towaoc, obtaining water court decrees recognizing the Tribes' reserved water rights on various tributaries of the San Juan River, and appropriation of funds to defray a portion of the construction costs of the Animas-La Plata Project; and

WHEREAS construction of the ALP has been continually delayed by environmental objections and regulatory requirements; and

WHEREAS the State of Colorado sponsored a series of meetings in an effort to seek a compromise to allow construction of the ALP to proceed in fulfillment of provisions of the Settlement Agreement; and

WHEREAS the Colorado process produced two proposals: 1) the proposal of supporters of the ALP, including the Colorado Ute Indian Tribes, the Animas-La Plata Water Conservancy District, the Southwestern Water Conservation District, and the San Juan Water Commission and La Plata Water Conservancy District in New Mexico, to construct a modified ALP; and 2) the proposal of those opposing construction of the ALP, calling for a cash settlement fund for the Tribes in lieu of the construction of the ALP, a proposal firmly rejected by both Tribes; and

WHEREAS the State of Colorado endorsed the modified ALP proposal because the non-structural alternative failed to meet the objectives of the Settlement Agreement; and

WHEREAS Representative Scott McInnis has proposed HR 3112 to authorize construction of a modified ALP and to reconcile terms of the Settlement Act of 1988 through construction of Ridges Basin Reservoir with a pumping-plant and pipeline from the Animas River, but without the construction of the originally contemplated delivery and irrigation facilities in the La Plata River drainage; and

WHEREAS elimination of the originally contemplated delivery and irrigation facilities in the La Plata River drainage represents the loss of a significant opportunity for the provision of water to non-Indian water users in southwestern Colorado; and

WHEREAS the proposal to construct a modified ALP reduces the federal cost by over half and contemplates a reduction of Colorado's cost-sharing; and

WHEREAS the US Fish and Wildlife Service has favorably completed its consultation under the Endangered Species Act on the modified ALP with an annual depletion of 57,100 acre-feet of water from the San Juan River system; and

WHEREAS the Bureau of Reclamation has completed two supplemental EIS's at a cost of more than \$10 million, which evaluated the impacts of constructing the ALP Project and both have supported the construction of a structural alternative.

NOW, THEREFORE, BE IT RESOLVED by the Colorado Water Conservation Board at its January 26-27, 2000 meeting that:

1. The Board expresses its appreciation to the Colorado Ute Indian Tribes for their continued efforts to work and cooperate with non-Indian water users in southwestern Colorado to ensure that Tribal claims are resolved in a way that avoids taking water from other water users and ensures a reliable water supply for all residents of the area.

2. The Board commends the non-Indian Project supporters for achieving a settlement acceptable to the Colorado Ute Indian Tribes, although at great sacrifice to the intended agricultural beneficiaries of the ALP.

3. The Board expresses its appreciation to the water users in New Mexico and to New Mexico officials for their support of the modified ALP.

4. The Board endorses the modified ALP as agreed to by the two Colorado Ute Indian Tribes and their non-Indian neighbors.

5. The Board supports enactment of HR-3112 to implement the modified ALP structural alternative that will resolve the Tribes' reserved water rights claims and urges Congress to expedite its consideration.

6. The Board also urges Congress to make municipal and industrial water available to non-Indian Project participants at a fair and affordable price.

7. The Board asks all citizens of Colorado, its Congressional Delegation, the Western States Water Council and others in a position of leadership to help resolve this long-standing conflict by endorsing the enactment of HR-3112 and the construction of the modified Animas-La Plata Project.

BE IT FURTHER RESOLVED, that copies of this Resolution be sent to the Chairmen of the Southern Ute Indian and Ute Mountain Ute Tribes, each member of Colorado's Congressional Delegation and its General Assembly, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, each member of the New Mexico Congressional Delegation, the Colorado Water Resources and Power Development Authority, appropriate officials of water agencies in southwestern Colorado, the appropriate officials in each of the Colorado River basin states, the Chairman of the Navajo Nation, the Director of the Native American Rights Fund, the Western States Water Council, the Speaker of the US House of Representatives and the President of the United States.

ATTESTED BY:

Peter H. Evans, Director
Colorado Water Conservation Board

OPENING STATEMENT OF THE STATE OF COLORADO
TO PARTICIPANTS IN THE DISCUSSIONS
TO RESOLVE ISSUES SURROUNDING THE
ANIMAS-LA PLATA PROJECT

DENVER, COLORADO
October 9, 1996

Introduction

The State of Colorado appreciates the willingness of representatives of the parties with a significant stake in the Animas-La Plata Project to participate in discussions to resolve issues surrounding the Project. Hopefully, today's meeting will be the first step in a timely process that will lead to agreement to move forward with the implementation of the final piece in the resolution of Tribal reserved water rights claims under the 1986 Colorado Ute Indian Water Rights Final Settlement Agreement -- that portion concerning the Animas and La-Plata Rivers.

We have history on our side. Despite the controversy and divisiveness that has been generated by the Animas-La Plata Project, there exists an extraordinary partnership between the States of Colorado and New Mexico, and the Indian and non-Indian communities in southwestern Colorado and northwestern New Mexico. Together, we have successfully quantified Tribal reserved rights claims, and implemented most of the Settlement Agreement, in a unique way that serves as a national model. More than that, however, is a genuine sense of pride that exists between the Indian and non-Indian communities in the area, over shared use and development of water and mineral resources, economic opportunity, and preserving the quality of life and environmental heritage of the area.

Through the Agreement, we have avoided protracted, expensive and divisive litigation. We have preserved non-Indian economies and provided for stable development of Tribal economies. We have avoided the social disruption resulting from the enforcement of reserved rights claims. We have integrated the administration of Indian and non-Indian water rights.

Accomplishing these results has required vision, extraordinary leadership, respect for the needs of all sides, a willingness to listen to and explore new solutions, and a commitment to stay at the table until a solution is reached. If these same qualities are applied in this process, we can reach a positive and lasting result.

As we will discuss, the State of Colorado is willing to work through this process to openly discuss the Project, and any

reasonable solutions for meeting the commitments of the 1986 Settlement Agreement on the Animas and La Plata Rivers. The purposes of today's meeting will be to reach agreement on the scope of these discussions, an initial list of issues to be addressed, and a process to address those issues.

To explain our position, we would like to put these discussions in historical context. Our purpose in doing so is not to generate argument about what happened in the past, or why. Colorado is interested in looking forward for solutions.

Therefore, we will begin by briefly reviewing the history of the Reservations, the Animas-La Plata Project and the 1986 Settlement Agreement. Then, we will propose for discussion Colorado's ideas as to the scope of these discussions and the issues to be addressed.

Historical Context

The original Ute Reservation was established by treaty in 1868, prior to the arrival of non-Indian settlers to the area. The arrival of non-Indians resulted in conflicts, and reconfiguration of the Reservation lands. In 1895, Indians living on the Reservation were given the option of settling on 160 acre allotments, or moving to the western portion of the Reservation. Non-Indians were able to acquire some of these allotments as well. In 1934 this homesteading process was closed. The result was the present configuration of checkerboard Indian and non-Indian lands on the Southern Ute Reservation and the contiguous block nature of the Ute Mountain Ute Reservation. These lands are downstream from non-Indian development in Colorado. Almost every river in southwestern Colorado passes through one or both of the Reservations.

The rights of Indian Tribes to reserved water is based on the date of the reservation.¹ In the late 1800's, non-Indian irrigation was beginning upstream from the Reservation, on the Pine River. The Southern Ute Tribe filed claims for irrigation purposes in 1895, and water litigation ensued until 1930, when a federal court awarded the Indian claimants the number one water right on the Pine River. This created a severe water shortage for the non-Indian irrigators, and resulted in the construction of Vallecito Dam in 1941, to serve both Indian and non-Indian lands.

In contrast, the Mancos Project was developed on the Mancos River by 1950. Although the Mancos River is the primary river through the Ute Mountain Ute Reservation, the Tribe did not receive the benefit of water service from the Project. In fact, the town of

¹Winters v. United States, 207 U.S. 564 (1908).

Towaoc did not even have a potable water supply until 1990, under the implementation of the 1986 Settlement Agreement.

Plans were also moving forward for comprehensive water development throughout the Upper Colorado River Basin. In 1956, Congress enacted the Colorado River Storage Project Act.² This Act authorized the construction of initial CRSP units -- Curecanti, Flaming Gorge, Navajo and Glen Canyon; participating projects -- including the Florida Project; and the preparation of planning reports -- including the Animas-La Plata and Dolores Projects. The Florida Project was completed to serve lands on Florida Mesa in 1963, which included some Indian lands but which did not completely meet Indian needs.

The CRSP Act also established a mechanism for assisting in the funding of construction of these and other projects, through the creation of the Upper Colorado River Basin Fund (the "Basin Fund"). In short, hydroelectric power revenues generated from the CRSP are credited to the Fund to pay for certain construction, operation and maintenance costs of the initial CRSP units. The balance of any revenues are credited to each of the upper basin states to pay for that portion of the construction costs of participating projects allocated to irrigation, that are beyond the ability of irrigation contractees to repay. Additionally, participating projects can take advantage of favorable rates for CRSP power.

In 1968, Congress enacted the Colorado River Basin Project Act.³ Among other things, the CRBP Act authorized the construction of the Animas-La Plata and Dolores Projects, concurrent with the completion of the Central Arizona Project. The authorization for the Animas-La Plata project was for a configuration substantially different than the presently proposed configuration.⁴ However, the Project was always contemplated to serve both Indian and non-Indian municipal, industrial and irrigation needs.⁵

²P.L. 84-485; 70 Stat. 105; 43 U.S.C. 620.

³P.L. 90-537; 82 Stat. 885; 43 U.S.C. 1505.

⁴Section 501(c) of the 1968 CRBP Act provides that the A-LP Project be constructed "in substantial accordance with the engineering plans set out in the report of the Secretary transmitted to the Congress on May 4, 1966, and printed as House Document 436, Eighty-ninth Congress..." In contrast to the present configuration, the Project then contemplated the construction of Howardsville Reservoir above Silverton, a diversion from the Animas River near Electra Lake above Durango, Animas Mountain Reservoir, and extensive facilities in the La Plata Basin, including Hay Gulch Reservoir, Three Buttes Reservoir and Ute Meadows Reservoir.

⁵Changes in the proposed configuration of the Project were made in the 1966 Report included in House Document 436, to increase municipal and industrial supplies, and decrease irrigation supplies. A summary of the proposal water supply and depletions as of the 1968 CRBP Act is as follows:

Thus, as of the late 1960's, there was some resolution of Tribal claims, and a good deal of water development undertaken and contemplated in the San Juan River Basin. Some but not all of this development benefitted the Tribes. However, quantification of Tribal claims, and their impact on non-Indians, were certainly open questions. The United States Supreme Court⁶ established a test for the amount of such claims, based on practicably irrigable acreage, which includes both present and future irrigation needs.

Quantification of the Tribal claims in Colorado commenced in 1972, when the United States Department of Justice filed reserved rights claims on behalf of the two Ute Tribes in federal district court. The state of Colorado and other parties intervened, and moved to dismiss on the grounds that under the McCarren Amendment⁷ jurisdiction belonged in state water court. The United States Supreme Court⁸ ruled that state court was the most appropriate forum in which to achieve integrated adjudication of reserved rights claims. Immediately thereafter, the United States filed extensive claims in state water court.⁹

Animas-La Plata Project Water Supply -- 1968				
	Irrigation (af/yr)	Municipal and Industrial (af/yr)	Total Supply (af/yr)	Total Depletion (af/yr)
Colorado	138,900	62,700	201,600	112,300
New Mexico	50,000	13,500	63,500	34,100
Total	188,900	76,200	265,100	146,400
Ute Mountain Ute Tribe	21,730	23,500	45,230	22,100
Southern Ute Tribe	1,370	30,000	31,370	22,700
Total (Included in state's share above)	23,100	53,500	76,600	44,800

⁶Arizona v. California, 373 U.S. 546 (1963).

⁷43 U.S.C. 666. The McCarren Amendment consents to the joinder of the United States as a defendant in any suit for the adjudication of water rights where the United States owns or is acquiring such rights.

⁸Akin v. United States, 424 U.S. 800 (1976).

⁹These claims were originally filed as one pleading in the water court for Division No. 7, and Case No. W-1603-76, and sought confirmation of the reserved rights held by the United States in trust for the Ute Mountain Ute and Southern Ute Tribes, individual Indians owning trust allotments on the Southern Ute

The Tribal claims encompassed the potential irrigation of some 93,000 acres, in over 25 stream systems. Most of these lands were in the La Plata and Mancos River Basins, which were water-short and over-appropriated. Success by the Tribes would totally eliminate existing non-Indian irrigation, disrupting local economies and creating hostility.

The 1986 Settlement Agreement
and Subsequent Legislation

In April 1985, many parties, public and private, convened negotiations to address the issues raised by the Tribe's reserved rights claims. The state of Colorado's negotiating position was based on several principles:

- vested property rights held by owners of state decreed water rights would not be compromised;
- existing economies should be protected;
- existing uses should be protected by a "no injury" standard;
- reserved rights claims should be quantified by state water court, not by Congress or in federal courts; and
- the Tribes' legitimate needs, such as the lack of a potable water supply for Towaoc, should be met.

After intense and complex negotiations, an agreement in principle was reached that included a binding cost-sharing agreement for construction of the Animas-La Plata Project. This Agreement was titled the "Agreement in Principle Concerning the Colorado Ute Indian Water Rights Settlement and Binding Agreement for Animas-La Plata Project Cost Sharing." By signing the Agreement in Principle, the Secretary of Interior certified that the non-federal cost share contributions were reasonable, allowing for the federal release of the first \$1 million for construction of the Project. In addition to the cost sharing elements of the Agreement, the parties to the state water court litigation agreed to a set of principles that established the parameters for settlement of the reserved right claims.

Reservation, and the Bureau of Indian Affairs. Subsequently, the application was amended and eleven separate applications were filed, each amended application asserting water rights associated with a specific river: W-1603-76 (Navajo River); W-1603-76A (Blanco River); W-1603-76B (San Juan River); W-1603-76C (Piedra River); W-1603-76D (Pine River); W-1603-76E (Florida River); W-1603-76F (Animas River); W-1603-76G (Mancos River); W-1603-76H (Dolores River); W-1603-76I (McElmo Creek); and W-1603-76J (La Plata River).

After six months of intense negotiations. The Colorado Ute Indian Water Rights Final Settlement Agreement was signed on December 10, 1986. The Settlement Agreement contains six major elements:¹⁰

1. In each of the drainage basins, the reserved rights of the Tribes were quantified.¹¹

¹⁰The following is a summary of the Agreement, and shall not be construed to interpret any of its provisions, or be binding on any of the parties thereto.

¹¹A summary of the quantification in the various basins is set forth below:
Ute Mountain Ute Tribe

Mancos River	Project reserved water right from the Dolores Project, up to 1000 af/yr m&i, 23,300 af/yr irrigation and 800 af/yr fish and wildlife development. Non-project reserved water right for direct flow and/or storage of 21,000 af/yr for irrigation of 7200 acres.
Animas and La Plata Rivers	Project reserved water right from the Animas-La Plata Project, up to 6000 af/yr m&i, 26,300 af/yr irrigation.
Navajo Wash	Non-project reserved water right for diversion of 15 c.f.s. or 4800 af/yr for irrigation of 1200 acres.
San Juan River	Non-project reserved water right for diversion of 10 c.f.s., or 1600 af/yr for the irrigation of 640 acres.
<u>Southern Ute Tribe</u>	
Animas and La Plata Rivers	Project reserved water right from the Animas-La Plata Project, up to 26,500 af/yr m&i, 3,400 af/yr irrigation.
Pine River	The Tribe retained its right as quantified in the 1930 federal decree and the 1934 state decree, and a 1/6 interest in Vallecito Reservoir.
Florida River	563 af/yr for water from the Florida Project for the irrigation of 4 specified parcels. 6.81 c.f.s., or 1090 af/yr of non-project water rights for the irrigation of specified parcels.
Stollsteimer Creek	Non-project reserved water right for 1850 af/yr fill and refill in Pargin Reservoir, Non-project reserved water right for 2 c.f.s., Non-project reserved water right for 3.5 c.f.s., all for the irrigation of 60 acres.
Piedra River	Non-project reserved water right for 8.9 c.f.s., or 1595 af/yr, for the irrigation of 535 net acres.
Devil Creek	Non-project reserved water right for 183 af/yr for the irrigation of 61 acres.
San Juan River	Non-project reserved water right for 1530 af/yr for irrigation of 510 net acres.

2. The Tribes waived ancillary breach of trust claims against the United States.
3. The Tribes agreed to specific conditions concerning the administration and use of reserved water rights, so as to integrate such administration into administration of non-Indian water rights. These conditions included beneficial use as a limiting condition, monitoring of water usage, sharing of streamflow data, and judicial change in use proceedings in Colorado state water court when required. The state court was given jurisdiction over all water on the Reservations not decreed to the tribes as reserved water rights, including both unappropriated water and state appropriative rights. The parties agreed to the entry of consent decrees in state water court.
4. The Tribes received commitments to obtain \$60.5 million in Tribal Development Funds, to enable the development of water and assist in economic self sufficiency.¹²
5. The non-federal parties agreed to significant cost sharing of the Animas-La Plata Project and Tribal Development Funds.¹³ The parties agreed to seek Congressional deferral of Tribal repayment of certain

Round Meadow Creek	Non-project reserved water right for 975 af/yr for the irrigation of 325 net acres.
Cat Creek	Non-project reserved water right for 1372 af/yr for the irrigation of 482 net acres.
Navajo River	No reserved rights.

¹²Of this amount, \$20.0 million was to be earmarked for the Southern Ute Tribe, and \$40.5 million for the Ute Mountain Ute Tribe. The Funds were created by the following contributions:

\$5.0 million from the State of Colorado
 \$6.0 million from the State of Colorado in the form of the construction of the Towaoc Pipeline and a domestic water distribution system for the Ute Mountain Ute Tribe (The actual amount spent by Colorado was \$7.8 million.)
 \$49.5 million from the United States, in three installments

¹³The state of Colorado committed to the expenditure of \$60.8 million toward these purposes. This money has either been spent, or is on deposit as restricted funds. The state has spent \$7.8 million in the construction of the Towaoc Pipeline, \$5.0 million to the Tribal Development Fund, and \$300,000 toward a portion of the construction of the Animas-La Plata Project. The state has committed in restricted funds \$42.4 million held by the Colorado Water and Power Development Authority for the cost share toward phase I of A-LP, and \$5.3 million held in the construction fund of the Colorado Water Conservation Board toward cost share of the Ridges Basin Reservoir.

project costs until the water from the projects was actually put to beneficial use.

6. The parties agreed to seek Congressional relief from the Non-Intercourse Act¹⁴ limitations on Congressional oversight over the use of reserved water rights. The Tribes were allowed to sell, exchange or lease water outside the Reservations, within or outside the state of Colorado, subject to state and federal law, interstate compacts, and the law of the Colorado River.

The Settlement Agreement specified certain contingencies that had to be met before the settlement became final. The parties agreed to submit consent decrees to the Division 7 water court for judicial approval. A stipulation setting forth this commitment was filed, but was subject to legislative enactments by the United States Congress and Colorado legislature prior to becoming final.

Federal legislation was introduced, and was enacted in 1988.¹⁵ The Act approved the settlement and contained all the provisions contemplated by the parties, except for those relating to the interstate marketing of water. The legislation as introduced reflected the neutral nature of the Settlement Agreement concerning the legality of interstate marketing of reserved water rights under the Law of the River. However, Lower Colorado River Basin states adamantly opposed the provision, and demanded that the Tribes be flatly prohibited from applying for any out of state changes in place of use. Other western states objected to the potential alienation of any federal reserved water right from the federal reservation. The final Act therefore limited use of Tribal rights in the Lower Colorado River Basin until a final court order or agreement of all seven Colorado River Basin States has previously allowed such right for non-federal, non-Indian water rights. Moreover, the Act provides that any use of water off Reservation will result in the right being changed to a state of Colorado water right for the term of such use.

The Colorado General Assembly also enacted the legislation contemplated by the Settlement Agreement. This legislation appropriated \$5 million to the Tribal Development Funds, so much as needed for the Towaoc Pipeline, and \$5.6 million for the Ridges Basin cost sharing.

In December 1991, the Water Court approved the consent decrees that had been submitted to it based on the stipulations entered pursuant

¹⁴25 U.S.C. 177. The Non-Intercourse Act requires Congressional approval of the transfer of Indian trust property.

¹⁵The Colorado Ute Indian Water Rights Settlement Act of 1988, P.L. 100-585, 102 Stat. 2973.

to the Settlement Agreement, and following the enactment of necessary federal and state legislation.

In summary, all of the conditions of the settlement have been satisfied, except for the construction of the Animas-La Plata Project, and the Agreement remains in effect.

Colorado's Suggestions
Concerning the Issues to be Addressed

We all know that the Animas-La Plata Project has been marked by contentious debate and acrimony. It has been characterized by hardened positions on all sides. For our part, the state of Colorado is committed to these discussions, as perhaps our only opportunity to have open, honest dialogue, at the same table with the Tribes, proponents and opponents of the Project, and the federal agencies that have permitting and construction responsibilities. We view this process not as an obstacle, but as an opportunity -- to open new communications, to forge new understandings, and to achieve results that will honor our moral and legal commitments to the Southern Ute and Ute Mountain Ute Tribes, to the water users of southwest Colorado, to the environment, and to our taxpayers. We are willing to address, in good faith, all reasonable solutions that will be brought forward through this process. We will be committed to the full implementation of all agreements that result.

Our purpose in setting out a brief history is to give these discussions a context. That history does not bind us like a straightjacket, but it does inject important considerations, complexities and perspectives to this process. Significant issues were addressed in the Settlement Agreement and Act, and in the Animas-La Plata Project itself. Enormous resources have been spent, by all sides, in environmental compliance and permitting work related to the Project. If we understand history, we can build on that history, craft new solutions, and create lasting results.

The state of Colorado believes that the history which we have outlined injects certain "realities" into this process. We present these realities not as limitations to these discussions. We present them as issues that will need to be addressed and dealt with in these discussions. Others may add to or subtract from this list, but we present them from the state's perspective for initial consideration by the participants:

1. The Settlement Agreement established the quantification and priority of Tribal reserved and non-reserved water rights on many streams and rivers in Southwestern Colorado. These rights have been decreed in Colorado

Water Court. The Settlement Agreement also established specific conditions concerning the administration and use of the water rights of the Tribes consistent with state law, including agreements concerning changes in use both on and off the Reservations. Those agreements are critical to the integrated administration of Indian and non-Indian water rights.

2. Under the Settlement Agreement, the Tribes have the right to receive the following amounts of water, through the Project, from the Animas and La Plata Rivers:

Ute Mountain Ute Tribe: 6000 af/yr for m & i
26,300 af/yr for irrigation

Southern Ute Tribe: 26,500 af/yr m & i
3,400 af/yr irrigation

These are maximum amounts, subject to shortage sharing provisions.

3. Under the Settlement Act, the Tribes received several benefits, including Congressional relief from the Non-Intercourse Act and economic relief by relieving the obligation of the Tribes' repayment obligation until water is beneficially used.
4. The state of Colorado has complied with requirements of the Settlement Agreement for significant cost-sharing with and financial responsibility to the Tribes. The state has deposited \$5 million into the Tribal Development Fund, has spent \$7.8 million to construct the Towaoc Pipeline and domestic water distribution system, has spent \$300,000 toward cost-sharing for the Animas-La Plata Project, and has committed \$47.7 million toward cost-sharing for the Project.
5. The Project is the beneficiary of Colorado River Storage Project power revenues, both for the repayment of certain capital costs and for pumping costs.
6. Vested rights have been created under Colorado law to water rights in all of the various streams and rivers which are the subject of the Settlement Agreement. Extensive economies have developed in reliance on those rights.
7. The failure of all the parties to reach resolution of the Tribes' reserved rights claims on the Animas and La Plata Rivers may result in prolonged, expensive and divisive litigation.

8. Several entities other than the Southern Ute and Ute Mountain Ute Tribes have been designated to receive water from the Project. These entities include the Navajo Nation, the cities of Durango and Farmington, and irrigators.
9. Construction of the Project, or the implementation of any solution reached under this process, will require full compliance with state and federal law, including specifically federal environmental and reclamation law, and the Law of the Colorado River.

Some of the above "realities" may be changed under the scope of new solutions that may be reached through this process. Others may be extremely difficult if not impossible to significantly alter. Nevertheless, the state of Colorado is committed to working with each of the parties to explore these and new ideas.

We therefore propose that the following issues will need to be addressed through this process, as new ideas are explored:

- The effect of new ideas on the existing parameters of the Settlement Agreement, the Settlement Act, existing environmental compliance, and financial resources of the parties.
- The effect of new ideas on existing vested water rights, local economies, the decrees that have been entered in Colorado Water Court, and the administrative agreements contained in the Settlement Agreement;
- The effect of new ideas on the obligations to the Tribes under the Settlement Agreement, and the benefits to the Tribes under the Settlement Act;
- The effect of new ideas on Colorado's cost-sharing commitments;
- Existing and new potential uses for CRSP power revenues;
- The desire to avoid reserved rights litigation;
- The needs of entities other than the Southern Ute and Ute Mountain Ute Tribes; and
- Compliance with law.

Conclusion

The state of Colorado has a long lasting and productive working partnership with the two Ute Tribes and with southwestern Colorado. We look forward to working with all of the parties to this process in this spirit to develop, and implement, a durable resolution to the controversies that have engulfed the Animas-La Plata Project, and which have prevented the complete implement of the Settlement Agreement. . . .

We are committed to participating openly and honestly, and to listening carefully to the concerns and needs of all the participants. The state of Colorado will do everything possible, consistent with its interests, to achieve a positive result from this process.