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ANIMAS-LA PLATA WATER RIGHTS SETTLEMENT

HEARING

BEFORE THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

H.R. 2642

COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987

HEARING HELD IN WASHINGTON, DC
SEPTEMBER 16, 1987

Serial No. 100-72

Printed for the use of the Committee on Interior and Insular Affairs

PENNSYLVANIA STATE UNIVERSITY

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APPENDIX

WEDNESDAY, SEPTEMBER 16, 1987

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ANIMAS-LA PLATA WATER RIGHTS SETTLEMENT

WEDNESDAY, SEPTEMBER 16, 1987

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, DC.

The committee met, pursuant to call, at 1 p.m., in room 1324, Longworth House Office Building, Hon. Morris K. Udall (chairman of the committee) presiding.

The CHAIRMAN. The committee will be in order.

This afternoon, the committee is taking testimony on H.R. 2642, a bill by Mr. Campbell of Colorado to resolve certain Indian water claims in southwestern Colorado.

Without objection, a copy of the bill and the report of the Administration will be made a part of the record at this point.

[The bill, H.R. 2642, and attachments follow:]

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100TH CONGRESS
1ST SESSION

H. R. 2642

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 10, 1987

Mr. CAMPBELL (for himself, Mr. RICHARDSON, Mr. BROWN of Colorado, Mr. LUJAN, Mr. SKAGGS, Mr. HEFLEY, Mr. SKEEN, Mr. SCHAEFER, Mr. CLARKE, Mr. RAHALL, Mr. YOUNG of Alaska, Mrs. BYRON, Mr. CRAIG, Mr. LEHMAN of California, Mr. DENNY SMITH, Mr. MURPHY, Mr. OWENS of Utah, Mrs. VUCANOVICH, Mr. WILLIAMS, Mr. COELHO, Mr. ANTHONY, Mr. DONNELLY, Mr. DORGAN of North Dakota, and Mr. ALEXANDER) introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

---

A BILL

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

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

SECTION 1. SHORT TITLE.

That this Act may be cited as the "Colorado Ute Indian Water Rights Settlement Act of 1987".

SEC. 2. FINDINGS.

The Congress finds that—

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

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

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

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

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

SEC. 3. DEFINITIONS.

For purposes of this Act—

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

(2) The term "Animas-La Plata Project" means the Animas-La Plata Project, Colorado and New Mexico, a participating project under the Act of April 11, 1956 (70 Stat. 105; 43 U.S.C. 620; commonly referred to as the "Colorado River Storage Project Act") and the Colorado River Basin Project Act (82 Stat. 885; 43 U.S.C. 1501 et seq.).

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

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

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

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

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

SEC. 4. PROJECT RESERVED WATERS.

(a) WATER FROM ANIMAS-LA PLATA AND DOLORES PROJECTS.—The Secretary is hereby authorized to use water from the Animas-La Plata and Dolores Projects to supply the project reserved water rights of the Tribes in accordance with the Agreement.

(b) APPLICATION OF FEDERAL RECLAMATION LAWS.—With respect to the project reserved water supplied to the Tribes or their lessees from the Dolores and Animas-La Plata projects, Federal reclamation laws shall not apply to those project reserved waters except to the extent that

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those laws may also apply to the other reserved waters of the Tribes. Federal reclamation laws shall not be waived or modified by this subsection insofar as those laws are required to effectuate the terms and conditions contained in article III, section A, subsection 1 and 2, and Article III, section B, subsection 1 of the Agreement.

SEC. 5. TRIBAL WATER USE CONTRACTS.

(a) GENERAL AUTHORITY.—Subject to the approval of the Secretary and to the provisions of its constitution, each Tribe is authorized to enter into water use contracts to sell, exchange, lease, or otherwise temporarily dispose of water in accordance with Article V of the Agreement, but the Tribes shall not permanently alienate any water right. The maximum term of each such water use contract, including all renewals, shall not exceed 50 years in duration.

(b) APPROVAL BY SECRETARY.—(1) The Secretary shall approve or disapprove any water use contract submitted to him within 180 days after submission or within 60 days after any required compliance with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) whichever is later. Any party to such a contract may enforce the provisions of this subsection pursuant to section 1361 of title 28, United States Code.

(2) In determining whether to approve or disapprove a water use contract, the Secretary shall determine if it is in

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the best interests of the Tribe and, in this process, the Secretary shall consider, among other things, the potential economic return to the Tribe and the potential environmental, social, and cultural effects on the Tribe. The Secretary shall not be required under this paragraph to prepare any study regarding potential economic return to the Tribe, or potential environmental, social, or cultural effects, of the implementation of a water use contract apart from that which may be required under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(3) Where the Secretary has approved a water use contract, the United States shall not thereafter be directly or indirectly liable for losses sustained by either Tribe under such water use contract.

(c) SCOPE OF AUTHORIZATION.—The authorization provided for in subsection (a) shall not amend, construe, supersede, or preempt any State law, Federal law, interstate compact, or international treaty that pertains to the Colorado River or its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.

(d) PER CAPITA PAYMENTS.—The proceeds from a water use contract may not be used for per capita payments to members of either Tribe.

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SEC. 6. REPAYMENT OF PROJECT COSTS.

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

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

(b) AGRICULTURAL IRRIGATION WATER.—(1) The Secretary shall defer, without interest, the repayment of the construction costs within the capability of the land to repay, which are allocable to each Tribe's agricultural irrigation water allocation from the Animas-La Plata and Dolores Projects in accordance with the Act of July 1, 1932 (25

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

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

(c) ANNUAL COSTS WITH RESPECT TO RIDGES BASIN PUMPING PLANT.—(1) The Secretary shall bear any increased annual operation, maintenance, and replacement

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costs to Animas-La Plata Project water users occasioned by a decision of either Tribe not to take delivery of its Animas-La Plata Project water allocations from Ridges Basin Pumping Plant through the Long Hollow Tunnel and the Dry Side Canal pursuant to Article III, section A, subsection 2.i and Article III, section B, subsection 1.i of the Agreement until such water is first used either by a Tribe or pursuant to a water use contract with the Tribe. Such costs shall not be reimbursable by the Tribe.

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

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

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

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

(g) COSTS IN EXCESS OF ABILITY OF THE IRRIGATORS TO REPAY.—The portion of the costs of the Animas-La Plata Project in excess of the ability of the irrigators to repay which are to be repaid from the Upper Colorado River Basin Fund pursuant to the Colorado River Storage Project Act and the Colorado River Basin Project Act shall be repaid in 30 equal annual installments from the date that the water is first available for use.

SEC. 7. TRIBAL DEVELOPMENT FUNDS.

(a) ESTABLISHMENT.—There is hereby authorized to be appropriated the total amount of $49,500,000 for three annual installment payments to the Tribal Development Funds which the Secretary is authorized and directed to es-

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tablish for each Tribe. Subject to appropriation, and within 60 days of availability of the appropriation to the Secretary, the Secretary shall allocate and make payment to the Tribal Development Funds as follows:

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

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

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

(c) TRIBAL DEVELOPMENT.—(1) The Secretary shall, in the absence of an approved tribal investment plan provided for in paragraph (2), invest the moneys in each Tribal Development Fund in accordance with the Act entitled "An Act to

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authorize the deposit and investment of Indian funds" approved June 24, 1938 (25 U.S.C. 162a). Separate accounts shall be maintained for each Tribe's development fund. The Secretary shall disburse, at the request of a Tribe, the principal and income in its development fund, or any part thereof, in accordance with an economic development plan approved under paragraph (3).

(2) Each Tribe may submit a tribal investment plan for all or part of its Tribal Development Fund as an alternative to the investment provided for in paragraph (1). The Secretary shall approve such investment plan within 60 days of its submission if the Secretary finds the plan to be reasonable and sound. If the Secretary does not approve such investment plan, the Secretary shall set forth in writing and with particularity the reasons for such disapproval. If such investment plan is approved by the Secretary, the Tribal Development Fund shall be disbursed to the Tribe to be invested by the Tribe in accordance with the approved investment plan. The Secretary may take such steps as he deems necessary to monitor compliance with the approved investment plan. The United States shall not be responsible for the review, approval, or audit of any individual investment under the plan. The United States shall not be directly or indirectly liable with respect to any such investment, including any act or omission of the Tribe in managing or investing such funds. The princi-

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pal and income from tribal investments under an approved investment plan shall be subject to the provisions of this section and shall be expended in accordance with an economic development plan approved under paragraph (3).

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

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

(e) LIMITATION ON SETTING ASIDE FINAL CONSENT DECREE.—Neither the Tribes nor the United States shall

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have the right to set aside the final consent decree solely because subsection (c) is not satisfied or implemented.

SEC. 8. WAIVER OF CLAIMS.

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

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

SEC. 9. ADMINISTRATION.

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

SEC. 10. INDIAN SELF-DETERMINATION ACT.

The design and construction functions of the Bureau of Reclamation with respect to the Dolores and Animas-La Plata Projects shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act (88 Stat. 2203; 25 U.S.C. 450 et seq.) to the same extent as if such functions were performed by the Bureau of Indian Affairs. Any preference provided the Tribes shall not detrimentally

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affect the construction schedules of the Dolores and Animas-La Plata Projects.

SEC. 11. RULE OF CONSTRUCTION.

(a) IN GENERAL.—This Act shall be construed in a manner consistent with the Agreement.

(b) INDIVIDUAL MEMBERS OF TRIBES.—Any entitlement to reserved water of any individual member of either Tribe shall be satisfied from the water secured to that member's Tribe.

SEC. 12. EFFECTIVE DATE.

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

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voided by any party to the Agreement. Upon such termination, the amount contributed thereto by the United States shall be deposited in the general fund of the Treasury.

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United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 1 1987 OCT 2 1987

Honorable Morris K. Udall
Chairman, Committee on Interior
and Insular Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is to present our views on H.R. 2642, the "Colorado Ute Indian Water Rights Settlement Act of 1987."

On December 10, 1986, the two Colorado Ute Tribes, the State of Colorado, several other parties and representatives of the Federal Government entered into a "Final Settlement Agreement" for the purpose of settling the outstanding water claims of the tribes on several streams in southwest Colorado. In this instance, as is typical in situations like this one, exercise of the 1868 priority date of the tribes' Federal reserved water rights claims could severely disrupt the existing regimen of water use on those streams. By way of compromise, and in an admirable display of community spirit, the tribes have agreed to forego this early priority date in return for water supplied from the Dolores and Animas-La Plata Projects.

We support legislation to implement the December 10, 1986, Final Settlement Agreement. However, as presently drafted, H.R. 2642 differs from the Final Settlement Agreement in several important respects. We stand ready to work with the non-Federal parties on legislation consistent with our previous agreements regarding Ute Indian water rights and construction of the Animas-La Plata Project.

We want to emphasize the interests we have had in pursuing the Animas-La Plata Project. This Administration has long had as a standard for new water projects that the projected long-term benefits of the project must at least equal its projected costs. Under this standard, the Animas-La Plata Project is not economically feasible at current discount rates although it would be considered economically feasible at its originally authorized discount rate of 3.25 percent.

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In evaluating this project, we have considered the benefit/cost standard, non-Federal cost-sharing, and water rights settlement concerns. We have, therefore, decided to participate in the Animas-La Plata Project because it combines Federal construction expenditures with non-Federal monies to produce a project that provides for water development and settles the Indian water claims.

The Animas-La Plata Project will provide a means to satisfy the water claims of the Colorado Ute tribes, while leaving intact the historical uses already in place on these streams. As trustee for these tribes, the Department of the Interior desires to see the tribes establish secure and valuable water rights that will be of true benefit to the tribes, rather than mere "paper" water rights. The project provides an opportunity to achieve these objectives.

Without doubt, the single most controversial aspect of this bill is Indian water leasing. The bill provides for the tribes to have the opportunity to lease water provided by the settlement for off-reservation use both in the State of Colorado and out-of-state. We must emphasize here that the December 10, 1986, agreement provides for in-state leasing subject to Colorado procedural law, and for out-of-state leasing subject to a judicial determination of the tribes' right to do so given the "Law of the River" and Colorado's anti-export statute. In other words, there was to be no guarantee, either in the agreement or in the legislation, that the tribes would be able to lease out-of-state, but neither would there be a prohibition.

If the right to lease out-of-state the water provided by this settlement is established by the tribes judicially, we expect that at least two benefits would result:

--For the tribes, water from the settlement would become a source of capital to plan and develop reservation economies.

--For the United States, Indian water leasing would establish an improved potential for the economic use of project water and thereby enhance project repayment.

The December 10, 1986, Final Settlement Agreement requires legislation to implement some of its provisions. The agreement also provides that before the settlement can become effective, the State of Colorado, the tribes and the

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United States must each certify that the legislation is satisfactory. In the months following approval of the settlement agreement, we worked with the non-Federal parties to draft that implementing legislation. Concern by the non-Federal parties that the implementing legislation be introduced in time for enactment by the 100th Congress led to the introduction of H.R. 2642 before we had come to full agreement on certain of its provisions. In addition to those unresolved issues, H.R. 2642 introduces some new issues which we have not had an opportunity to discuss with the non-Federal parties, and changes some language we had previously agreed upon. We have enclosed a background memorandum which presents the key differences between the most recent negotiating draft and H.R. 2642.

It is our belief that H.R. 2642 could be an appropriate legislative framework within which to implement the Final Settlement Agreement if it were conformed generally to the Federal negotiating position as discussed in the enclosure to this letter. We do believe that certain provisions of this negotiating draft (e.g., sections 4 and 5) are more important, and therefore less open to subsequent negotiations between the parties, than others.

In summary, we are persuaded that further meetings of the parties are necessary before the Committee on Interior and Insular Affairs completes its work on H.R. 2642. We would be pleased to participate in any efforts that your Committee might undertake to facilitate the resolution of these issues. We are convinced that an early agreement is possible.

A similar letter has been sent to the Honorable Ben Nighthorse Campbell.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Wayne N. Marchant

ACTING ASSISTANT SECRETARY

Wayne N. Marchant

Enclosure

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DEPARTMENT OF THE INTERIOR
COMPARATIVE ANALYSIS OF KEY DIFFERENCES BETWEEN
H.R. 2642 AND THE MOST RECENT FEDERAL NEGOTIATING DRAFT

In this memorandum, we present a comparative analysis of the most recent draft bill prepared as the result of negotiations among the parties, which preceded introduction of H.R. 2642 (and its Senate companion S. 1415), and the provisions of H.R. 2642, as introduced. For this analysis, we have assumed that H.R. 2642 represents the current position of the non-federal parties. All references below to the "Agreement" are to the December 10, 1986, Colorado Ute Indian Water Rights Final Settlement Agreement.

1. Sec. 4 (Title), page 4, line 15:

At the time of the last negotiation, the title of section 4 in the federal version was "TRIBAL USE OF WATER" and in the non-federal version was "TRIBAL WATERS." In H.R. 2642 it is "PROJECT RESERVED WATERS." This new bill language reflects a major change made by the non-federal parties in the scope of this entire section.

2. Sec. 4(a), page 4, lines 16-20:

The previous non-federal position was that 4(a) should read as follows:

> Sec. 4. (a) The Secretary is hereby authorized to utilize water from the Animas-La Plata and Dolores Projects in satisfaction of the federal reserved water rights claims of the Tribes.

We rejected that language because we felt it did not state clearly enough that the water to be received from the projects is federal reserved water. We suggested that it read instead:

> Sec. 4. (a) The Secretary is hereby authorized to use the Animas-La Plata and Dolores Projects to supply reserved water to the Tribes.

The non-federal parties apparently did not accept our language. They have now changed the language so that H.R. 2642 reads:

> [For 4 (a)] The Secretary is hereby authorized to use water from the Animas-La Plata and Dolores Projects to supply the project reserved water rights of the Tribes in accordance with the Agreement.

The concept that the Tribes will be receiving the usual Winters doctrine type federal reserved water through the

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projects seems even less clear in the new non-federal language than it was in the previous non-federal language. In fact, the language of H.R. 2642 on its face appears to be establishing a special kind of water right ("project reserved water rights") unique to this settlement.

3. Sec. 4(b), page 4, lines 21-25, and page 5, lines 1-6:

The federal position was that section 4(b) should read:

> [4(b)]: With respect to the Tribes' reserved water supplied from the Dolores and Animas-La Plata Projects, Federal reclamation laws shall not restrict the use, or the sale, exchange, lease, or other temporary disposal, of those reserved waters by the Tribes and their lessees, and this water will be treated in all respects in the same manner as the rest of the Tribes' Federal reserved water.

The non-federal parties wanted to delete the end of our sentence, "and this water will be treated in all respects in the same manner as the rest of the Tribes' Federal reserved water" and insert instead:

> except to the extent that those laws may also restrict the use of the Tribes' other reserved waters; provided, that under no circumstances will Federal reclamation laws be waived or modified by this subsection insofar as those laws are required to effectuate the terms and conditions contained in Article III, section A, subsection 1 and 2, and Article III, section B, subsection 1 of the Agreement.

At the last negotiation, we rejected this non-federal suggestion. Our concern about substituting the "except" clause of this non-federal language in lieu of the end of our language was twofold. First, we felt our language made much clearer that the water received by the Tribes from the projects is federal reserved water to be treated the same as the rest of the Tribes' federal reserved water. Second, the non-federal language does not correctly reflect the terms of the Agreement concerning the application of federal reclamation laws to the Tribes' reserved water. (For example, the Agreement totally excludes the application of federal reclamation law to the off-reservation use of the Tribes' reserved water, both project and non-project, within the State. See p. 60 of the Agreement.)

We also objected to the proviso portion of this non-federal language. It is unnecessary since the problem it seeks to address is taken care of by the rule of construction in section 11(a) that this Act shall be construed in a manner consistent with the Agreement. Also note that if such

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language were necessary here, then provisos would be needed in a number of other places in the Act to make clear that the language of this Act is not to be interpreted in a manner inconsistent with the Agreement.

The language of H.R. 2642 makes some additional changes to the previous non-federal version of section 4(b). On page 4, line 22, the word "Tribes'" has been deleted before "reserved water" and the word "project" has been inserted instead; and on page 4, line 25, the word "project" has been added before "reserved waters." These changes, like the most recent non-federal change to 4(a), make it appear that the water given to the Tribes from the projects is a special kind of water unique to this settlement instead of making clear that it is typical federal reserved water.

The bill also deletes the phrase "restrict the use, or the sale, exchange, lease, or other temporary disposal of" and instead inserts "apply to." See page 4, lines 24-25. Similarly, "restrict the use of the Tribes' other reserved waters" has been changed to "apply to the other reserved waters of the Tribes" on page 5, lines 1-2.

4. Sec. 5(c), page 6, lines 15-21:

There has been a long-standing disagreement over this provision. The non-federal parties wanted it in the bill as a statement expressing the neutrality proviso in Article V, Section B(b) on pages 60-61 of the Agreement. The federal parties wanted it deleted because of the difficulty in achieving a neutral statement, as required by the Agreement. We suggested at an earlier date that instead of this subsection, the phrase "in accordance with Article V of the Agreement" be added in section 5(a) to take care of the non-federal parties' concern. The non-federal parties accepted our suggestion with regard to section 5(a) (see line 12 on page 5 of H.R. 2642), but insisted that section 5(c) (old section 5(d)) remain in the bill as well.

The previous non-federal version of the language of section 5(c) included the phrase "[w]ith respect to paragraph b of section B, Article V of the Agreement" at the beginning of the sentence. That phrase, limiting this provision to out-of-state use only as provided in the Agreement, was added by the non-federal parties when we pointed out that without it the provision was overbroad. H.R. 2642 has deleted that phrase.

5. Sec. 6(d), page 9, lines 16-24:

This provision in the text of the draft bill was inserted by the non-federal parties. The federal parties agreed to it but only if the phrase "to the Secretary's satisfaction"

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were inserted in line 20 after "demonstrates" and the word "gross" inserted in line 21 before "revenues." The non-federal parties have rejected these changes.

H.R. 2642 differs from the previous non-federal version only in adding a title to this section, "Tribal Deferral," which seems a misnomer since this is clearly a secretarial deferral.

6. Sec. 7(b), page 11, lines 13-21:

The federal and non-federal parties were previously in agreement on the language of this provision. H.R. 2642 has interjected a new difference by adding the phrase "in addition to the full contribution to the Tribal Development Funds" in lines 16 and 17.

7. Sec. 7(c)(3) (last sentence), page 13, lines 14-19:

The federal version of the last sentence of this paragraph contained the additional language "the approval of an economic development plan or from" after the words "arising from" on line 16. The non-federal parties rejected that language and H.R. 2642 continues to delete it.

8. Sec. 7(e), page 13, lines 24-25, and page 14, lines 1-2:

This provision was added to the draft legislation by the non-federal parties. Their previous language was as follows:

> [Sec. 7](e) Neither the Tribes nor the United States shall have the right to void the Agreement or to set aside the Final Consent Decree solely because subsections (c) or (d) are not satisfied or implemented.

The federal parties wanted this provision deleted as unnecessary and misleading, since the Tribes and the United States do not have this right anyway. (The only permissible grounds for voiding the Agreement or setting aside the Final Consent Decree are set out in the Agreement.) In H.R. 2642, the non-federal parties have deleted the words "void the Agreement or" after "right to" in line 1 on page 14 and have changed the language "subsections (c) or (d) are" to "subsection (c) is" in line 2 c page 14, but have otherwise kept this provision.

9. Sec. 9 (Administration), page 14, lines 12-17:

Prior to the introduction of H.R. 2642, the federal and non-federal parties had agreed on the wording of this provision. A new difference has been introduced by the language of H.R. 2642, which deletes the words "governing the water rights confirmed in the Agreement and Final

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Consent Decree to the extent provided" after "procedures" and before "in Article IV" in line 16 on page 14.

10. Sec. 10 (Indian Self-Determination Act), page 14, lines 19-25, and page 15, lines 1-2:

The previous non-federal version of the first three lines of this provision is the same as the language of H.R. 2642, which reads:

> The design and construction functions of the Bureau of Reclamation with respect to the Dolores and Animas-La Plata Projects shall be subject . . . .

The federal parties objected to that language as overbroad and instead suggested the following:

> The functions of the Bureau of Reclamation under this Act with respect to each Tribe shall be subject . . .

The rest of the language of this section was previously agreed to by all parties; H.R. 2642 has created a new difference by deleting the phrase "under this Act" after the word "Tribes" in line 25 on page 14.

11. There are a few other differences of a more editorial nature which should also be noted.

a. Sec. 3(2) & 3(3) (project definitions), page 3:

At the end of the definition of the Dolores Project (Sec. 3(3), lines 23-25), the non-federal parties continue to include the language "and as further authorized by the Colorado River Basin Salinity Control Act (98 Stat. 2933; 43 U.S.C. 1591)." The federal parties wanted that language deleted because the purpose of this provision is simply to identify the project; it does not definitively state all the authorizing statutes.

The language of H.R. 2642 also creates a new difference in previously agreed upon language in this definition as well as in the definition of the Animas-La Plata Project (Sec. 3(2)). It has deleted the phrase "as amended by "(on lines 16 and 22) between the two cites and has replaced it with "and" on line 16 and with a comma on line 22.

Note that our suggested compromise (that both definitions end after the cite to the CRSP Act on lines 15 and 22) has apparently been rejected by the non-federal parties.

b) Sec. 5(b)(2), page 5, lines 24-25, and page 6, lines 1-10:

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H.R. 2642 creates a new difference in previously agreed upon language by adding "under this paragraph" after "required" in line 5 on page 6.

c) Sec. 6(b)(1), page 7, lines 21-26, and page 8, lines 1-12:

H.R. 2642 creates new differences in previously agreed upon language by deleting "as provided in" after the Leavitt Act cite and before the cite to section 4 of the CRSP Act (at the beginning of line 2 on page 8) and inserting "and" instead. H.R. 2642 also has added "commonly referred to as the 'Colorado River Storage Project Act'" on lines 3-4 on page 8, although that cite is to a single provision, not to the whole Act.

d. Sec. 11(b), page 15, lines 6-9:

H.R. 2642 creates another new difference by removing the provision concerning the rights of individual tribal members from section 4 (our 4(c), the non-federal parties' previous 4(b)) and placing it here in the Rule of Construction section, as 11(b). Presumably this was done in conjunction with the non-federal decision to restrict the scope of section 4 to "project reserved waters."

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The CHAIRMAN. First, let me commend the parties on arriving at this negotiated settlement of these water claims. This settlement is in line with this committee's policy that these difficult disputes over Indian water rights are best resolved by negotiation rather than expensive, lengthy litigation or contested legislation.

However, I want to make clear that there are some serious problems involved in this legislation, including some concerns of the States in the Lower Colorado Basin. I hope that these problems can be resolved and this legislation moved forward. I know that these hearings will help in that respect.

I had intended and planned to be here most of the day, but I will be in and out. Our distinguished colleague, Mr. Campbell, will be presiding over the hearing, and we will hopefully get some minority representation here shortly.

We have our colleague, Congressman Brown, here already. Some of our Senate witnesses are coming in later. Let's defer to my colleague, Mr. Campbell, and see if he has an opening statement.

Mr. CAMPBELL. Thank you, Mr. Chairman, for bringing this matter of great importance to the Indian community and both the States of Colorado and New Mexico up for a hearing so soon after the August District Work Period. It is appreciated.

No. 2, I would like to say I am proud to have the opportunity to sponsor this legislation, and am grateful for the co-sponsorship of many of my colleagues on this committee.

H.R. 2642 represents the culmination of years of effort and historic cooperation between Indian and non-Indian water interests of Colorado, New Mexico and the Federal Government. Extraordinary efforts were exerted by those concerned to amicably resolve, in the spirit of cooperation and respect, longstanding native American water rights, which over the years had been neglected or ignored.

Those remarkable efforts resulted in a settlement agreement signed in December 1986 by the Federal Departments of the Interior and Justice, the State of Colorado, and various local governments, water districts, as well as the Southern Ute and Ute Mountain Ute Indian Tribes.

This legislation represents, codifies, and implements that delicately balanced agreement, and the mandated commitment to these Indian tribes. For everyone's sake, we should not renege on that commitment, as has so often happened in American history.

Water is to native Americans just as it is to non-Indians in the West, precious. It is a key component to those Western States seeking to escape the poverty and dependency brought about by scarce resources that nature and, sadly, our Government, has historically inflicted on the Indian.

We well know the benefits of water that has been made available to, or harnessed by, the South, Northwest, California, the Northeast and the Central United States. The Southwest is entitled to those benefits as well. Indian self-development in the Southwest requires the scarce and precious resource of water, to which the Indians are entitled.

I know firsthand of the needs of these two tribes for water. I have represented that area of Colorado in the State legislature for 4 years, and now represent it in Congress. My home is on the

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Southern Ute Indian Reservation. I can comfortably speak with authority that this legislation is needed.

H.R. 2642, and the settlement behind it, represent a compromise between Indians and non-Indians. Paper water rights, however nice they look to lawyers, and however much argued, do the Ute Mountain Utes and Southern Utes no good. Wet water, and the ability to use it, is necessary.

This legislation seeks to eventually provide those needs to the tribes. Continued litigation by the tribes, impacting upon the whole area, is neither conducive to friendly relations nor to Colorado and New Mexico water interests. This legislation would avoid such friction.

There are those concerned with the issue of off-reservation, out-of-State use of water held by the Indian tribes. This legislation does not jeopardize non-Indian water rights in this regard. It certainly does not deprive any downstream water users from enjoying those water rights accorded to them by law. As long as the downstream water users use only what is rightfully theirs, this legislation does not impact them at all.

There has been recent talk about wanting to flatly prohibit the Indian tribes by amending this legislation from ever utilizing their water off-reservation and out-of-State.

I say recent because, up until a month or so ago, it is my understanding that those concerned about this issue were desirous of a neutral bill. This legislation, as was the settlement, is designed to be expressly neutral on the matter, neither authorizing or prohibiting such water use by the two tribes.

I stated that this legislation would satisfy this Government's commitments and obligations to the Ute Mountain Utes and Southern Utes, commitments and obligations no one can deny exist.

I want to point out that this legislation also at the same time, would satisfy in part this Government's longstanding commitment and obligation to all the peoples of southwestern Colorado and northwestern New Mexico.

Part of the delicate agreement between the Indians and non-Indians involved satisfaction of Indian water rights claims from the Animas-La Plata Water project, which was authorized by law nearly 20 years ago.

Chairman Udall well remembers the efforts of the late Wayne Aspinall, a distinguished member of this committee, in ensuring that all the Western States' water interests and needs be dealt with fairly. That commitment remains unfulfilled to date. This cannot, and should not be forgotten.

Colorado and New Mexico say it should not be forgotten, and equity requires fulfillment of the government's commitment. I look forward to the testimony of our many witnesses.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Campbell follows:]

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STATEMENT OF CONGRESSMAN BEN NIGHTHORSE CAMPBELL

THANK YOU MR. CHAIRMAN.

FIRST OF ALL, I WOULD LIKE TO THANK YOU, MR. CHAIRMAN, FOR BRINGING THIS MATTER OF GREAT IMPORTANCE TO THE INDIAN COMMUNITY AND BOTH THE STATES OF COLORADO AND NEW MEXICO UP FOR A HEARING SO SOON AFTER THE AUGUST DISTRICT WORK PERIOD. IT IS APPRECIATED.

SECOND, I WOULD LIKE TO SAY I AM PROUD TO HAVE THE OPPORTUNITY TO SPONSOR THIS LEGISLATION, AND AM GRATEFUL FOR THE CO-SPONSORSHIP OF MANY OF MY COLLEAGUES ON THIS COMMITTEE.

H.R. 2642 REPRESENTS THE CULMINATION OF YEARS OF EFFORT AND HISTORIC COOPERATION BETWEEN INDIAN AND NON-INDIAN WATER INTERESTS OF COLORADO, NEW MEXICO, AND THE FEDERAL GOVERNMENT. EXTRADORDINARY EFFORTS WERE EXERTED BY THOSE CONCERNED TO AMICABLY RESOLVE, IN THE SPIRIT OF COOPERATION AND RESPECT, LONGSTANDING NATIVE AMERICAN WATER RIGHTS, WHICH OVER THE YEARS HAD BEEN NEGLECTED OR IGNORED. THOSE REMARKABLE EFFORTS RESULTED IN A SETTLEMENT AGREEMENT SIGNED IN DECEMBER, 1986 BY THE FEDERAL DEPARTMENTS OF THE INTERIOR AND JUSTICE, THE STATE OF COLORADO, AND VARIOUS LOCAL GOVERNMENTS, WATER DISTRICTS, AS WELL AS THE SOUTHERN UTE AND UTE MOUNTAIN UTE INDIAN TRIBES.

THIS LEGISLATION REPRESENTS, CODIFIES, AND IMPLEMENTS THAT DELICATELY BALANCED AGREEMENT, AND THE MANDATED COMMITMENT TO THESE INDIAN TRIBES. FOR EVERYONE'S SAKE, WE SHOULD NOT RENEGE ON THAT COMMITMENT, AS HAS SO OFTEN HAPPENED IN AMERICAN HISTORY.

WATER IS TO NATIVE AMERICANS, JUST AS IT IS TO NON-INDIANS IN THE WEST, PRECIOUS. IT IS A KEY COMPONENT TO THOSE WESTERN TRIBES SEEKING TO ESCAPE THE POVERTY AND DEPENDENCY BROUGHT ABOUT BY

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SCARCE RESOURCES THAT NATURE AND, SADLY, OUR GOVERNMENT, HAS HISTORICALLY INFLICTED ON THE INDIAN. WE WELL KNOW THE BENEFITS OF WATER THAT HAS BEEN MADE AVAILABLE TO, OR HARNESSED BY, THE SOUTH, THE NORTHWEST, CALIFORNIA, THE NORTHEAST AND THE CENTRAL UNITED STATES. THE SOUTHWEST IS ENTITLED TO THOSE BENEFITS AS WELL. INDIAN SELF-DEVELOPMENT IN THE SOUTHWEST REQUIRES THE SCARCE AND PRECIOUS RESOURCE OF WATER, TO WHICH THE INDIANS ARE ENTITLED.

I KNOW FIRSTHAND OF THE NEEDS OF THESE TWO TRIBES FOR WATER. I'VE REPRESENTED THAT AREA OF COLORADO IN THE STATE LEGISLATURE FOR FOUR YEARS, AND NOW REPRESENT IT IN CONGRESS. MY HOME IS ON THE SOUTHERN UTE INDIAN RESERVATION. I CAN COMFORTABLY SPEAK WITH AUTHORITY THAT THIS LEGISLATION IS NEEDED.

H.R. 2642, AND THE SETTLEMENT BEHIND IT, REPRESENT A COMPROMISE BETWEEN INDIANS AND NON-INDIANS. PAPER WATER RIGHTS, HOWEVER NICE THEY LOOK TO LAWYERS, AND HOWEVER MUCH ARGUED, DO THE UTE MOUNTAIN UTES AND SOUTHERN UTES NO GOOD. WET WATER, AND THE ABILITY TO USE IT, IS NECESSARY. THIS LEGISLATION SEEKS TO EVENTUALLY PROVIDE THOSE NEEDS TO THE TRIBES. CONTINUED LITIGATION BY THE TRIBES, IMPACTING UPON THE WHOLE AREA, IS NEITHER CONDUCIVE TO FRIENDLY RELATIONS, NOR TO COLORADO AND NEW MEXICO WATER INTERESTS. THIS LEGISLATION WOULD AVOID SUCH FRICTION.

THERE ARE THOSE CONCERNED WITH THE ISSUE OF OFF-RESERVATION, OUT-OF-STATE USE OF WATER HELD BY THE INDIAN TRIBES. THIS LEGISLATION DOES NOT JEOPARDIZE NON-INDIAN WATER RIGHTS IN THIS

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REGARD. IT CERTAINLY DOES NOT DEPRIVE ANY DOWNSTREAM WATER USERS FROM ENJOYING THOSE WATER RIGHTS ACCORDED TO THEM BY LAW. AS LONG AS THE DOWNSTREAM WATER USERS USE ONLY WHAT IS RIGHTFULLY THEIRS, THIS LEGISLATION DOES NOT IMPACT THEM AT ALL.

THERE HAS BEEN RECENT TALK ABOUT WANTING TO FLATLY PROHIBIT THE INDIAN TRIBES BY AMENDING THIS LEGISLATION FROM EVER UTILIZING THEIR WATER OFF-RESERVATION AND OUT-OF-STATE. I SAY RECENT BECAUSE, UP UNTIL A MONTH OR SO AGO, IT IS MY UNDERSTANDING THAT THOSE CONCERNED ABOUT THIS ISSUE WERE DESIROUS OF A NEUTRAL BILL. THIS LEGISLATION, AS WAS THE SETTLEMENT, IS DESIGNED TO BE EXPRESSLY NEUTRAL ON THE MATTER, NEITHER AUTHORIZING OR PROHIBITING SUCH WATER USE BY THE TWO TRIBES.

I STATED THAT THIS LEGISLATION WOULD SATISFY THIS GOVERNMENT'S COMMITMENTS AND OBLIGATIONS TO THE UTE MOUNTAIN UTES AND SOUTHERN UTES, COMMITMENTS AND OBLIGATIONS NO ONE CAN DENY EXIST. I WANT TO ALSO POINT OUT THAT THIS LEGISLATION ALSO, AND AT THE SAME TIME, WOULD SATISY IN PART THIS GOVERNMENT'S LONGSTANDING COMMITMENT AND OBLIGATION TO ALL THE PEOPLES OF SOUTHWESTERN COLORADO AND NORTHWESTERN NEW MEXICO. PART OF THE DELICATE AGREEMENT BETWEEN THE INDIANS AND NON-INDIANS INVOLVES SATSIFACTION OF INDIAN WATER RIGHTS CLAIMS FROM THE ANIMAS-LA PLATA WATER PROJECT, WHICH WAS AUTHORIZED BY LAW NEARLY 20 YEARS AGO. CHAIRMAN UDALL WELL REMEMBERS THE EFFORTS OF THE LATE WAYNE ASPINALL, A DISTINGUISHED MEMBER OF THIS COMMITTEE, IN ENSURING THAT ALL THE WESTERN STATES' WATER INTERESTS AND NEEDS BE DEALT WITH FAIRLY. THAT COMMITMENT REMAINS UNFULFILLED TO DATE. THIS CANNOT, AND SHOULD NOT, BE FORGOTTEN. COLORADO AND NEW MEXICO

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SAY IT SHOULD NOT BE FORGOTTEN, AND EQUITY REQUIRES FULFILLMENT

OF THE GOVERNMENT'S COMMITMENT.

I LOOK FORWARD TO THE TESTIMONY OF OUR SEVERAL WITNESSES.

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The CHAIRMAN. You mentioned our former distinguished colleague, Chairman Aspinall. I have him looking over my shoulder constantly——

Mr. CAMPBELL. Have the pleasure of serving in the area that was formerly his, and I feel he is also watching me, so don't feel alone.

The CHAIRMAN. All right. We will move along as fast as we can today. We have a long witness list, and as is customary, we will be urging you to summarize and hit the high points and help us to make a good written record with the rest of your statement.

The first witness will be the Honorable Hank Brown, the distinguished Congressman from Colorado and a man who has worked well with this committee over the years.

STATEMENT OF HON. HANK BROWN, A U.S. REPRESENTATIVE FROM THE STATE OF COLORADO

Mr. BROWN. Mr. Chairman, thank you for the privilege of addressing the committee. I have a statement, and I would like to submit for the record and summarize my remarks, if I may?

The CHAIRMAN. That will be highly satisfactory to us.

Mr. BROWN. Mr. Chairman, I want to express thanks to you, not only for holding the hearings, but for your introductory remarks. When Mo Udall says there are problems, and he wants to work them out, and he thinks the bill needs to be fair to all States, I know he means it.

You have always been helpful to Colorado and understanding of its water problems. Speaking for myself and I believe most Coloradans, I want to express my appreciation of your fairness in working with us, as an Upper Basin State.

The CHAIRMAN. I thank my friend and hope the rest of the statement is as good as this part of it.

Mr. BROWN. Mr. Chairman, I know the Administration has some reservations about this. As I am sure the chairman recalls, when the President ran for office, he specifically endorsed this project and committed himself to support it.

Now, admittedly, at that time the project was somewhat larger than what is contemplated now. It was more costly and, so the cost has also been scaled down. I don't know if the Administration's objections are that it is not big enough or costly enough, but I will look forward with some interest to hearing their comments. All of us recall the President's original pledge to support the project.

I think it deserves support. It is not only one that has a long history and is part of interstate compacts in development of our water, but one that is of substantial interest in Colorado and surrounding States. In the long term, it is in the interest of not only the Indian tribes and the local population, but the whole western area.

It is a privilege for me to add my endorsement of this project to encourage the committee in its deliberations.

Mr. Chairman, we are privileged to have the Governor of Colorado today, and I think it is an indication of how much our State cares about this project that he would come.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Brown follows:]

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HONORABLE HANK BROWN

OF

COLORADO

BEFORE THE COMMITTEE

ON INTERIOR AND INSULAR AFFAIRS

SEPTEMBER 16, 1987

Mr. Chairman, thank you for the opportunity to testify in support of H.R. 2642, the Colorado Ute Indian Water Rights Settlement Act of 1987.

As you know, the Animas-La Plata Project was authorized in 1968 as one of the provisions of the Colorado River Basin Project Act [82 Stat. 885 (1968)]. This project was designed to satisfy the water supply needs of Indians and non-Indians alike.

H.R. 2642 is a result of long negotiations between two Ute Indian Tribes of Colorado, the State of Colorado, the State of New Mexico, the Interior Department, the Justice Department, several water districts, and numerous Colorado and New Mexico municipalities. The negotiations have resulted in this important measure which will end years of litigation involving Indian water rights.

This measure would authorize the Interior Department to use water from the Animas-La Plata and the Dolores Projects to

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supply water to the Southern Ute and Ute Mountain Indian Tribes. With the approval of the Interior Department, each tribe would be authorized to enter into water use contracts to sell, exchange, lease, or otherwise temporarily dispose of its water.

In addition, this legislation would set up a 30-year straight-line ammortization for repayment of costs which exceed the irrigators' ability to repay. The Upper Colorado River Basin Fund will assume responsibility for the repayment of the additional funds. This repayment schedule is supported by the Administration.

This project is necessary, not only as a solution to the Indians' water rights claims, but also to provide water for the future needs of the tribes and presently, for the non-Indian communities. Failure to codify this settlement, could force the tribes to continue their court battle. A favorable court decision would award the Indians water rights encompassing virtually all the water in streams that rise in the mountains of southwest Colorado resulting in severe difficulties for the municipal and industrial water users in the region.

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Mr. Chairman, your committee has been instrumental in providing for water projects that are crucial to the livelihood of all citizens and this contribution is greatly appreciated. This bill before you today represents a monumental water use agreement between the citizens of New Mexico and Colorado. I appreciate the committee's consideration of this measure.

Thank you.

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The CHAIRMAN. Thank you, Hank, for a good statement, and we will be working with you trying to put the project together.

Congressman Campbell?

Mr. CAMPBELL. Mr. Chairman, thank you. I don't have a question. I want to thank him. I know he is busy, and I appreciate the time here.

Senator Armstrong wasn't able to attend, but he submitted a statement, and I would ask unanimous consent to have it included in the record.

The CHAIRMAN. Without objection, the Senator's statement will be received.

[Prepared statement of Mr. Armstrong follows:]

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Statement of

Senator William L. Armstrong

to

United States House of Representatives

Committee on the Interior and Insular Affairs

1:00 P.M., September 16, 1987

H.R. 2642,

Colorado Ute Indian Water Rights Settlement Act of 1987

I thank the Chairman of the House Committee on the Interior and Insular Affairs, Congressman Udall, and the Committee members for their support and understanding of the unique problems facing the States of Colorado and New Mexico with regard to the settlement of Indian Winters reserved water rights in southwest Colorado and the authorized construction of the Animas-La Plata Participating Project of the Colorado River Storage Project which makes the settlement possible.

The Settlement Agreement which this legislation implements will conclude years of complex and costly litigation by the Ute Mountain and Southern Ute Indian tribes to resolve their claims to water in Southwest Colorado. The Agreement not only settles the Colorado Ute Indian water rights question, but saves millions of dollars and many years of effort that would have been spent by the Indians, non-Indians, Federal government, State of Colorado, several water conservancy districts, cities and towns on litigation. In addition, damage claims resulting from the litigation could cost the United States hundreds of millions of dollars.

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Not only will the water rights settlement fulfill a century-old obligation to Colorado Ute tribes, it will remove a serious cloud from the adjudicated water rights of seven rivers and six of their tributaries in southwest Colorado as well as from the water supply of Mesa Verde National Park.

The Colorado Ute Indian Water Rights Settlement Agreement is a remarkable document. The Agreement represents more than two years of negotiation by as diverse a group as you can imagine. Involved in the monumental challenge of resolving the Indian reserved water rights question while recognizing existing uses of southwest Colorado water were representatives of several agencies of the federal government, the states of Colorado and New Mexico, the two Indian Tribes, and numerous water conservancy districts, cities and other entities representing the non-Indian water users of southwest Colorado and northwest New Mexico. At the beginning of the negotiations, no one seriously believed that such a final settlement agreement could be attained. But, it has been accomplished. Now it is necessary for the United States Congress to implement the Agreement.

In addition to those parties, key leaders in the Administration, led by Wayne Marchant, Principal Deputy Assistant Secretary for Water and Science, have labored long and hard to perfect this legislation. The Administration has approved the basic components of H.R. 2642, two different times: once as a signatory to the detailed Animas-La Plata Project Cost-Sharing Agreement of June 30, 1986, and again as a signatory to the Colorado Ute Indian Water Rights Final Settlement Agreement of December 10, 1986.

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The implementing vehicle for the Indian Water Rights Settlement Agreement is the Animas-La Plata reclamation project to be located near Durango, Colorado. Not only does construction of the Animas-La Plata project enable the resolution of the Indian water rights question, it is another step the federal government must take to meet its commitment to the states of Colorado and New Mexico under the Colorado River Storage Project Act of 1956, as amended by the Colorado River Basin Project Act of 1968.

Contributions by nonfederal parties to construction costs of the Animas-La Plata Projects will approach 38% of project costs. Nonfederal parties will contribute $73.2 million through cash contributions, ad valorem taxes or revenue bonds, of which $5 million from Colorado will be for the Tribal Development Funds to aid the two tribes in developing their natural resources. The State of Colorado also is currently spending $6 million to construct a domestic pipeline and distribution system to the Town of Towaoc on the Ute Mountain Ute Indian Reservation. Once this pipeline is built, the people of Towaoc will no longer have to daily haul their domestic water to the reservation by trucks. Nonfederal parties will further assume a $133 million obligation towards construction of proposed Animas-La Plata project facilities.

An identical companion bill, S. 1415, was introduced in the Senate with all four Colorado and New Mexico Senators as cosponsors, which indicates the kind of accord that has been reached on this bill. Seldom has any piece of legislation received such word by word scrutiny. Every phrase and sentence has been carefully negotiated.

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Mr. Chairman, as you and your committee will be able to ascertain from the testimony in support of H.R. 2642, the negotiators of the Colorado Ute Indians Water Rights Final Settlement Agreement have brought to the Congress the solution to a perplexing, complex and long-standing problem instead of bringing the problem to your committee for resolution. The solution, as it should, fits the unique physical, legal, social, economic and environmental characteristics of southwest Colorado and northwest New Mexico. The solution is equitable. It is also workable and provides for a viable future for both the Indians and non-Indians. It could only be attained by complex negotiations and many compromises by some of the best engineering and legal talent in the country representing the States of Colorado and New Mexico, the Federal government, the two Indian tribes and the local non-Indian water users. This talent demonstrated by all parties was taxed to its limit before the cost-sharing agreement for the Animas-La Plata Project and the final Indian water rights settlement agreement could be formulated.

In some respects, the Animas-La Plata and Dolores Projects can be compared to the engine that propels an automobile, these two projects drive the final settlement of the Ute Indians reserved water rights claims by providing water to the tribes without adversely affecting the non-Indian water users on farms or in cities and towns in southwest Colorado by depriving them of rights to use water on which they are dependent.

It is noteworthy that the Animas-La Plata Project cost-sharing agreement is explicit in saying that: "The Animas-La Plata cost-sharing

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agreement is an integrated part of, and is contingent upon, a final settlement of the litigation filed in Colorado District Court for Water Division No. 7 for the quanification of the reserved water right claims of the Southern Ute and Ute Mountain Ute Indian Tribes in the State of Colorado." The Colorado Ute Indian Water Rights Final Settlement Agreement executed by all parties, including the Federal government, on December 10, 1986 provides that final settlement of the litigation now pending in the court. According to the terms of the Final Settlement Agreement it cannot be implemented until and unless H.R. 2642, sponsored by my Congressional colleagues, Representative Campbell of the 3rd Congressional of Colorado and Representative Richards of New Mexico, et al is enacted into law.

Mr. Chairman, I urge you and your committee to carefully consider H.R. 2642, its purpose and its implications as a Bill to facilitate and implement that solution to an exceedingly complex and important problem in a unique area of the United State of America and to do everything within your power to enact H.R. 2642 into law as soon as possible. As a former member of the House of Representatives, thank you for the priviledge and opportunity to present this statement in support of H.R. 2642.

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The CHAIRMAN. Anything further?

Mr. CAMPBELL. No, sir.

The CHAIRMAN. All right. Thank you, Congressman Brown.

The CHAIRMAN. Our next witness is a panel headed by the Honorable Governor Roy Romer, State of Colorado, accompanied by Mr. William McDonald, director of the Colorado Water Conservation Board and Mr. Ival Goslin, a special consultant for the Colorado Water Resources and Power Development Authority.

We also have Mr. Duane Woodard, attorney general, I am told. You can deploy yourselves in some offensive or defensive position there around the Governor.

PANEL CONSISTING OF ROY ROMER, GOVERNOR, STATE OF COLORADO; AND DUANE WOODARD, ATTORNEY GENERAL, COLORADO, ACCOMPANIED BY WILLIAM McDONALD, DIRECTOR, COLORADO WATER CONSERVATION BOARD; AND IVAL GOSLIN, SPECIAL CONSULTANT, COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY

Mr. ROMER. Thank you very much, Congressman.

Mr. Chairman and members of the committee, it is a pleasure to be here. This is an important resolution. The legislation will implement the Colorado Ute Indian water rights final settlement agreement which was executed on December 10, 1986, by the two Ute Tribes of the United States and the water user organizations in southwestern Colorado.

Appearing with me today is Mr. William McDonald, director of the Colorado Water Conservation Board, and Mr. Ival Goslin, a consultant to the Colorado Water Resources and Power Development Authority.

These two gentlemen have been among the principal representatives of the State of Colorado during the settlement negotiations and in the development of the legislation which is before you.

I would like also to acknowledge attorney general Woodard, tribal chairman Mr. Chris Baker, and Ernest House, who will appear subsequently. Without their leadership, we wouldn't be here today, and my hat is off to them.

My written statement has already been submitted, and I would appreciate its inclusion in the hearing record.

The CHAIRMAN. So ordered.

Mr. ROMER. We bring you today a solution, not a problem. The reserved water rights claims of the two tribes would have disrupted the established economy of the non-Indian water users in southwestern Colorado had they been litigated.

Instead of years of bitter and divisive litigation, however, we have achieved through compromise and accommodation a lasting and I believe equitable settlement of the tribe's claims.

The hallmarks of this settlement are wet water for the tribes, not just paper water rights provided in a manner that does not harm the non-Indian economy. And I cannot overemphasize the extraordinary good working relationships between Indians and non-Indians in southwestern Colorado, as exemplified by these negotiations.

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The settlements are unfortunately the exception rather than the rule. I hope that you share our urgency to bring this to fruition. The U.S. trustee obligations to the tribes, I believe must be fulfilled and this settlement and the required implementing legislation, I would emphasize to you, that each Indian reserved water right situation is unique.

The factual economic and social circumstances surrounding the settlement will vary from tribe to tribe and from State to State.

If Congress is to encourage negotiated settlements rather than years of expensive litigation, then it should endorse the principle that negotiated settlements will be treated on a case-by-case basis.

The Western Governors Association has concluded in a policy statement adopted at our meeting this summer—that is, the association said, "Because of the overreaching historic moral economic imperatives, we urge all concerned parties, especially those in Congress to treat settlements as case-by-case exceptional arrangements which could be perceived as possible models for related situations which are not binding legal precedents," and I urge Congress to adopt this point of view when acting on H.R. 2642.

I would like to give a brief overview of the agreement preparatory to the attorney general explaining the bill. We started in 1976, when the United States filed applications for reserved water rights for the tribes in the Colorado District Court for Water Division No. 7.

In this litigation, which the agreement bring to a negotiated settlement, in essence what the parties have done is agree on the decree which they will ask the court to enter, which the decree will quantify the tribe's reserved water rights, and define the terms and conditions of their use and administration.

A summary of the agreement is appended to my written statement, and I would just leave that for the committee to review. The Federal legislation is required to implement selected portions of this agreement.

That is what H.R. 2642 is all about. And the attorney general will provide you details in that regard.

I would like to focus on the financial aspect of the settlement. I believe you will find the non-Federal party's commitments in this regard to be exemplary. Non-Federal or financial contributions to the settlement take two forms, one upfront financing from several parties for the Animas-La Plata project, which project will provide a sizable portion of the tribe's water; and two, payments by the State of Colorado to the tribal development funds.

With respect to the Animas-La Plata project, non-Federal financing is being provided pursuant to the requirements of the Supplemental Appropriations Act of 1985. The cost sharing agreement for which the legislation calls was entered into on June 30, 1986 with the Department of the Interior.

Pursuant to that cost sharing agreement, Federal budgetary outlays for the Animas-La Plata project have been reduced 39 percent relative to what would have been required had the project been built entirely at Federal expense and authorized by Congress.

With respect to the $60.5 million tribal development funds, the agreement calls for $11 million to be provided by the State, $6 million of this will be provided via construction by the State of a pipe-

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line which would deliver the Ute Mountain Ute Tribe's domestic water supply from the Dolores Project to the reservation.

The remaining $5 million will be paid in cash. With respect to these financial obligations, I want to emphasize that Colorado has already met nearly all of its obligations. About 85 percent of the State's $48 million contribution to the Animas-La Plata project has already been appropriated, plus the pipeline from the Dolores Ute Mountain Reservation is already being engineered, and we expect to go to construction by the end of this calendar year.

Finally, that $5 million contribution to the Tribal Development Fund has already been appropriated, and I trust that this is a—is demonstrative to the commitment which the State of Colorado has made to the settlement through to the end.

We are moving forward with everything that is required of us financially, and we look forward to Congress doing the same with respect to the necessary implementing legislation. I would like to address briefly section 6(g) of the bill. It implements a provision of the June 30, 1986 Animas-La Plata project cost sharing agreement, which was insisted upon by the Department of the Interior.

Under current procedures, repayment of certain costs of the project would not be made with hydropower revenues until the final few years of the maximum 50-year payment period. Section 6(g) would change this practice by specifying repayment be made over 30 years in equal annual installments.

What I would like to draw your attention to is the fact that the requirement of section 6(g) can be met without having to increase the rate charged to those who purchase Colorado River storage project power.

The Western Area Power administration has confirmed this fact in a February 27, 1987 letter to us. A copy of that is appended to my written statement. I am aware of the concerns of the public power customers, including many CRSP customers who have located in Colorado, about this provision; however, I believe this provision is a fair and reasonable one, limited as it is to this settlement project and the specific circumstances at hand.

It is required by an agreement which we have made. We stand by it and we urge you to do the same. In closing, I would like to emphasize that the Animas-La Plata project, participating project of the Colorado River Storage project, is a linchpin of the settlement.

Without it, indeed, there is no settlement. It, along with the Dolores project, are the only means by which the tribes can receive substantial amounts of water without disrupting the established non-Indian economies in southwestern Colorado.

It is, in short, the essential ingredient of a workable settlement and a project which benefits Indians and non-Indians alike. When coupled with the non-Federal financial contributions to the project, we believe we have created an unparalleled opportunity for the United States to discharge its trustee responsibilities.

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Mr. Chairman, I thank you again for the opportunity to appear before the committee. Your prompt and favorable consideration of H.R. 2642 will be greatly appreciated and it will go a long way to righting the wrongs of the past which have been visited upon our native American brother.

[Prepared statement of Mr. Romer, with attachments, follow:]

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STATEMENT OF THE HONORABLE ROY ROMER
GOVERNOR OF THE STATE OF COLORADO

Before the

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

Concerning

H.R. 2642
THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987

Washington, D.C.
September 16, 1987

Introduction

The Colorado Ute Indian Water Rights Final Settlement Agreement ("Agreement") of December 10, 1986, was entered into by the Southern Ute Indian Tribe, Ute Mountain Ute Indian Tribe, United States, State of Colorado, and ten other entities representing water users in southwestern Colorado. It is the culmination of two years of intensive negotiations by the signatories thereto.

The reserved water rights claims of the two Tribes would have disrupted the established economy of the non-Indian water users in southwestern Colorado had they been litigated. Instead, we have achieved through compromise and accommodation a lasting and equitable settlement of the Tribes' claims which does not harm non-Indian interests.

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I cannot emphasize to you enough the extraordinary working relationships between Indian and non-Indian neighbors in southwestern Colorado. There is a strong community of interest among all of our citizens which is exemplified by the results of these negotiations. By any standard, an historic agreement has been achieved.

As you consider this settlement and the required implementing legislation, I would emphasize the unique nature of each Indian reserved water rights situation. It is important to recognize that the factual, economic, and social circumstances surrounding a settlement will vary from Tribe to Tribe and state to state. If Congress is to encourage negotiated settlements rather than years of expensive and divisive litigation, then it should endorse the principle that negotiated settlements will be treated on a case-by-case basis and will not be viewed as setting precedents for other negotiations.

The Western Governors Association has recognized this to be the case. A policy statement adopted at our meeting this summer, copy attached, notes that we governors:

> ... recognize the legitimate concerns that people distant from negotiations may feel regarding the implications of provisions in that settlement for other situations. However, each negotiated Indian water rights settlement will be unique, carefully tailored to the parties who are directly affected, and may be totally inappropriate to any

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> and all other situations. Because of overarching historic, moral, and economic imperatives, we urge all concerned parties, especially those in Congress, to treat settlements as case-by-case, exceptional arrangements which could be perceived as possible models for related situations but which are not binding legal precedents. In addition, where significant disputes exist as to application of existing laws or programs within the context of particular settlements, Congress might consider a clause which expressly reserves the right to dispute these issues as an alternative to withholding consideration or approval. Without such general, flexible approaches, no state will be able to have the disputes within its borders fully resolved.

I urge Congress to adopt this same point of view in acting on H.R. 2642 and any other settlement legislation which may come before you. If a case-by-case approach is not taken, all settlements will become hopelessly bogged down in unnecessary fears and the attendant political opposition. Individual treatment of individual settlements is the only chance we have to avoid litigation.

Final Settlement Agreement

The United States filed applications for reserved water rights for the Tribes in 1976 in Colorado District Court for Water Division No. 7. The Colorado court has jurisdiction to adjudicate these claims pursuant to the McCarren Amendment.

It is this litigation which the Agreement will bring to a negotiated settlement. In essence, what the parties have done is agree on the decree which they will ask the Colorado court

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to enter, which decree will quantify the Tribes' reserved water rights and define the terms and conditions of their use and administration.

The Agreement is a lengthy and meticulous document. A summary of it is appended to this statement. The full Agreement has been submitted separately for the record.

The Agreement provides a comprehensive settlement of the Tribes' claims for water which will enable the economic development of their reservations. It has six major components:

(1) The Tribes will receive specified amounts of water from the Animas-La Plata and Dolores Projects and additional rights to certain quantities of water from various streams which pass through their reservations.

(2) The manner in which these water rights will be used and administered is prescribed.

(3) In exchange for these water rights, the Tribes will waive all of their reserved rights claims and any claims which they may have against the United States for breach of trust in the United States' capacity as the Tribes' trustee.

(4) $60.5 million will be placed in development funds for the Tribes to enable them to develop their water

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resources and to otherwise make their reservations economically self-sufficient.

(5) Non-federal parties will contribute money to the financing of the settlement in two regards:

(a) For the financing of the Animas-La Plata Project, and

(b) For the tribal development funds.

(6) Repayment of certain of the costs of the Dolores and Animas-La Plata Projects which are allocable to the Tribes will be deferred, and the Tribes' share of operation and maintenance costs will be borne by the United States, until the Tribes put their water to use.

Purpose of H.R. 2642

Federal legislation is required to implement selected provisions of the Agreement. That is why H.R. 2642 has been introduced. An identical bill, S. 1415, has also been introduced in the Senate. Attorney General Woodard will provide you details about what the bill does.

Let me simply emphasize that this bill, unlike other Indian water rights legislation previously enacted by Congress, does

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not quantify the water rights of the Tribes. H.R. 2642 is not a legislative settlement of the Tribes' claims. Rather, H.R. 2642 is a much more limited vehicle which only implements selected provisions of the Agreement. It is the Colorado court, not Congress, which will establish the Tribes' water rights.

Financial Aspects of the Settlement

Non-federal financial contributions to the settlement take two forms: (1) up-front financing for the Animas-La Plata Project, which project will provide a sizeable portion of the Tribes' water, and (2) payments by the State of Colorado to tribal development funds. A tabular summary of the non-federal financing is attached hereto.

With respect to the Animas-La Plata Project, non-federal financing is being provided pursuant to the requirements of the Supplemental Appropriations Act of 1985 (Chapter IV, P.L. 99-98, "Department of the Interior, Bureau of Reclamation, Construction Program," 99 Stat. 293). The cost sharing agreement for which that legislation calls was entered into on June 30, 1986, with the Department of the Interior (copy attached).

Federal budgetary outlays for the Animas-La Plata Project have been reduced by 39 percent relative to what would have

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een required had the project been built entirely at federal expense as authorized by Congress. These reductions are accomplished through cash contributions by non-federal parties in the amount of $68 million towards the construction of the first phase of the project's facilities and through non-federal parties assuming responsibility for the $133 million construction cost of all of the second phase of the project's facilities.

With respect to payments to the Tribes, the Agreement calls for $11 million to be provided by the State of Colorado towards the $60.5 million tribal development funds. $6 million of this will be provided via construction by the state of a pipeline which will deliver the Ute Mountain Ute Tribe's domestic water supply from the Dolores Project to its reservation. The remaining $5 million will be paid in cash to the tribal development funds.

Colorado has already met nearly all of its obligations. The State's contribution to the Animas-La Plata Project has already been appropriated to the Colorado Water Resources and Power Development Authority. The Authority is in the process of negotiating an escrow agreement with the Bureau of Reclamation for the transfer of those funds. With respect to the pipeline from the Dolores Project to the Ute Mountain Ute Reservation, the Colorado Water Conservation Board has already let contracts for the design and engineering of that project.

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We expect to go to construction by the end of this calendar year. Finally, the $5 million cash contribution to the tribal development funds has already been appropriated by the Colorado General Assembly and will be available on July 1, 1988.

CRSP Power Revenues

Section 6(g) of the bill implements a provision of the June 30, 1986, Animas-La Plata Project cost sharing agreement which was insisted upon by the Department of the Interior. This has proved to be a controversial provision.

The construction costs of the Animas-La Plata Project allocable to irrigation which are beyond the ability of the farmers to repay are repaid to the federal government from the revenues generated by the sale of hydroelectric power produced at the Colorado River Storage Project (CRSP) storage units. The CRSP Act provides that such costs be repaid within 50 years, but it does not require any particular repayment schedule.

Under current procedures, repayment of such costs would not be made until the final few years of the maximum 50 year repayment period. Section 6(g) of the bill would change this practice for this one project by specifying that repayment be made over 30 years in equal annual installments. This has been

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characterized as "straight line amortization," in contrast to the current practice of "balloon payments" at the end of the authorized 50 year repayment period.

The requirement of section 6(g) can be met without having to increase the rate charged to those who purchase CRSP power. The Western Area Power Administration has confirmed this fact in a February 27, 1987, letter to us (copy attached).

I am aware of the concerns of public power customers, including many CRSP power customers who are located in Colorado, about this provision. However, I believe that this provision is a fair and reasonable one limited as it is to this settlement, this project, and the specific circumstances at hand. It is required by an agreement which we have made. We stand by it.

Animas-La Plata Project

The Animas-La Plata Project, a participating project of the Colorado River Storage Project, is a linchpin of the settlement. It, along with the Dolores Project, are the only means by which the Tribes can receive substantial amounts of water without disrupting the established non-Indian economies in southwestern Colorado. Furthermore, construction of the project will partially fulfill the agreement reached in the 1968 Colorado River Basin Project Act between the Upper and

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Lower Basins. Section 501 (b) of that Act calls for the project to be constructed "...concurrently with the construction of the Central Arizona Project, to the end that such... [project] shall be completed not later than the first delivery of water from said Central Arizona Project...." Deliveries to the Central Arizona Project have, of course, already commenced.

The project is important to the economic well-being of Indians and non-Indians alike. It is a project which will strike an appropriate balance between economic development on the one hand and preservation of our fish and wildlife resources on the other hand given the proper mitigation of the project's impacts.

It is, in short, the essential ingredient of a workable settlement, one which benefits Indians and non-Indians alike. When coupled with the non-federal financial contributions to the project, we believe that we have created an unparalleled opportunity for the United States to discharge its trustee responsibilities.

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Western Governors' Association
Resolution 1987

July 7, 1987
Snowbird, Utah

SPONSOR: Governor Sullivan
SUBJECT: Indian Water Rights

A. BACKGROUND

1. Water is essential to the economy and lifestyle of the West, on and off Indian reservations. For over eighty years, the federal government has allowed an untenable conflict to develop over reserved Indian water rights by encouraging non-Indian water development and by neglecting Indian water development. Indians, whose rights are generally senior to those of most non-Indians, have been deprived of gains in economic well-being which could come from being able to put the water to which they have rights to beneficial use. Non-Indians, who have made investments in good faith to put the water to which they have rights to beneficial use, now may face the loss of their investment and livelihood to senior Indian rights.

2. Over 50 disputes are currently in litigation. As has happened in many instances, litigation may cost millions of dollars, take decades to resolve, cause enormous disruption in the interim, and/or result in loss of rights or the awarding of paper rights which are useless without investment in the structures needed to store and deliver the water. The possibility of litigation clouds non-Indian rights, prevents development based on the rights in question, and causes hostile discussion between Indian and non-Indian neighbors.

3. Negotiated settlement of the water rights disputes provides a flexible process for resolving disputes. It can allow each of the parties involved to meet some or all of their major concerns. It allows for unique and creative arrangements to meet as many of the parties' concerns as possible. It secures commitment from all the parties to take action and provide the funding to implement the agreed-upon plan, according to an agreed-upon time schedule.

   In general, the agreement will maximize economic benefits by allowing reservations to progress towards becoming viable, self-sustaining communities; by protecting the investments of the non-Indians in their water use; and by maintaining state and federal revenues resulting from the productive use of the water. In addition it allows the federal government to fulfill its trustee obligations to the tribes and avoid payment of damages for breach of trust responsibility or of claims for compensation for lost rights from non-Indians.

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4. The western governors have participated with representatives of business (the Western Regional Council) and Indians (the National Congress of American Indians, Native American Rights Fund, and Council of Energy Resource Tribes) in the Ad Hoc Group on Reserved Indian Water Rights. The group was established in 1982 to promote negotiated settlement of Indian water rights disputes. The group has pinpointed several general problems which threaten any and all attempts to resolve these disputes:

   - o A sustained level of commitment by the Department of the Interior as well as other parties to the negotiations process. A high level commitment and consistent framework for negotiating is needed so that growing trust, progress on specifics, and confidence in the outcome can be maintained in the face of changing administrations, individuals within the Department, or representatives during negotiations.

   - o A reliable commitment of funding to implement settlements, once reached. Most settlements will require funds to construct the facilities to deliver water to the reservations or other parties to the agreement. Because of the federal responsibility in these disputes, the federal government will generally be a significant, although not sole, source of necessary financing. Parties to the disputes recognize that budgetary limits may constrain immediate implementation. However, a reliable source of funding needs to be established so that once agreements are made within those constraints, schedules and commitments are kept.

   - o Approval of the settlements by Congress. Most settlements require ratification and/or appropriation of funds by Congress. Because of their complexity, settlements often require unique provisions which may be exceptions to normal practice. If these exceptions are interpreted as a permanent or expressly authorized change in practice or as a precedent for other situations, and therefore approval of the settlements is withheld, it is unlikely any settlement will be able to be both reached and enacted.

B. GOVERNORS' POLICY STATEMENT

1. Assuring the certainty of water rights through settlement of Indian water rights disputes is important to facilitate economic growth both on and off reservations. Fulfillment of Indian treaties and satisfaction of Indian water rights is a uniquely federal responsibility assumed under the

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United States Constitution and through a course of dealings manifested in treaties, federal statutes, and executive orders. It is inequitable either to ignore such responsibilities or, by neglect, to cast the burden of fulfilling them upon the western states.

2. In general, negotiated settlements are preferable to litigation. The U.S. Department of the Interior, which serves as trustee for the tribes, should firmly commit to a process of negotiations, including enunciating such a policy; establishing guidelines for federal participation; providing technical and financial assistance to the tribes; maintaining trained negotiating teams with authority to speak for and commit the Administration; identifying sources of financing; providing high level Department commitment to work out joint agreement to proposals with the Department of Justice and Office of Management and Budget; and assisting with support for the settlements before the Congress.

3. To the extent that expenditures are necessary to implement negotiated settlements, the federal government should assume a large part of the financial burden. A reliable source of funds is needed for resolution of Indian reserved water rights claims consistent with the established water uses of non-Indians.

   The Department of the Interior, Office of Management and Budget, and members of Congress should work with states, tribes, and other parties to the settlements to facilitate the provisions of funds to implement settlements.

4. We recognize the legitimate concerns that people distant from negotiations may feel regarding the implications of provisions in that settlement for other situations. However, each negotiated Indian water rights settlement will be unique, carefully tailored to the parties who are directly affected, and may be totally inappropriate to any and all other situations. Because of overarching historic, moral, and economic imperatives, we urge all concerned parties, especially those in the Congress, to treat settlements as case-by-case, exceptional arrangements which could be perceived as possible models for related situations but which are not binding legal precedents. In addition, where significant disputes exist as to application of existing laws or programs within the context of particular settlements, Congress might consider a clause which expressly reserves the right to dispute these issues as an alternative to withholding consideration or approval. Without such general, flexible approaches, no state will be able to have the disputes within its borders fully resolved.

5. In sum, we see the following as essential elements of a policy favoring negotiated Indian water rights settlements:

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- o The settlements should be voluntary and consensual.
- o The federal government should be willing to make a fair and just contribution.
- o The settlements should be compatible with conditions in the state and locality.
- o Because each situation is unique, the settlements should not follow any set formula. They should be creative and tailored to meet the facts and circumstances of each situation.
- o Experience derived from successful settlements may assist in negotiating others but no settlement package should be seen for another.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. We reaffirm the participation of the Western Governors' Association in the activities of the Ad Hoc Group on Reserved Indian Water Rights.

2. We direct the WGA staff under the guidance of WGA's lead governor for Indian water rights to continue to work towards facilitating negotiated settlements.

3. We request that this resolution be sent to members of the Administration, especially within the Department of the Interior, members of appropriate congressional committees, and members of the western congressional delegation.

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Summary of the

Colorado Ute Indian Water Rights

Final Settlement Agreement of December 10, 1986

The Agreement consists of seven articles: general purposes, definitions, quantification and determination, administration, leasing and off-reservation use, finality of settlement, and general provisions.

Article I - General Purposes

This article provides a brief introduction to the document and sets out its general purposes which are: (1) the settlement of existing disputes or future controversies concerning the Tribes' right to beneficially use water in southwest Colorado; (2) the settlement of the litigation filed by the United States on behalf of the Tribes in the Colorado District Court for Water Division No. 7; (3) the enhancement of the Tribes' opportunities to derive an economic benefit from the use of their reserved water rights; (4) the enhancement of the Tribes' ability to meet their repayment obligations under the Agreement; and (5) the authorization for the Tribes to sell, exchange, lease or otherwise temporarily dispose of their water.

Article II - Definitions

This article includes the Agreement's glossary of terms.

Article III - Quantification and Determination

Under the terms of the Agreement, the Ute Mountain Ute Indian Tribe will receive the right to beneficially use 25,100 acre-feet of water from the Dolores Project, 33, 000 acre-feet of water from the Animas-La Plata Project, and 27,400 acre-feet of

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water from the three streams flowing through the reservation. The Southern Ute Indian Tribe will receive the right to beneficially use 29,900 acre-feet of water from the Animas-La Plata Project and over 10,000 acre-feet of water from various other water sources serving the reservation. Both Tribes will receive underground water for individual domestic and livestock uses and will have their current water uses protected.

The water rights secured to the Tribe by the Agreement are called "project reserved waters" or "non-project reserved waters," with the exception of water from the Pine River and a state water right decreed to the Southern Ute Tribe from the existing Florida Water Conservancy Project (these rights are taken as nonreserved water rights or are taken pursuant to earlier decrees). All project and nonproject reserved water rights are subject to the provisions of the Agreement concerning administration (article IV), leasing and off-reservation use (article V), finality (article VI), and general provisions (article VII).

The Agreement identifies specific places of use, times of use, types of use and, to varying degrees, consumptive uses. Stream quantifications were done in a manner which gave the Tribes surplus waters, or waters not yet decreed to or used by existing state appropriators. Dispute concerning the use of these waters will be presented to the Colorado District Court for Water Division No. 7.

The construction of the Animas-La Plata Project and the completion of the irrigation facilities of the Dolores Project are keystones to the water rights settlement because without this additional storage and supply, there is insufficient water to meet the future needs of the Tribes and the current demands of the non-Indian communities. Non-Indian user populations in southwest Colorado and northwest New Mexico receiving benefits from the Animas-La Plata Project have committed to help finance the project. On June 30, 1986, their cost-share commitments were found by the Secretary of the Interior to meet the cost-share requirements set out by Congress in Section IV of Public Law 99-88.

Article IV - Administration

The article governs all project and nonproject reserved water rights used within the boundaries of the reservation. Off-reservation use of the waters is governed by Article V of the

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Agreement. The Agreement provides for joint State-Tribal administration of the water rights confirmed to the Tribes. It subjects the on-reservation use of Tribal waters to the requirements of change in water rights proceedings, beneficial use and resolution of disputes in Colorado District Court for Water Division No. 7.

Article V - Leasing and Off-Reservation Use

Subsection A concerns not only leasing but also the sale, exchange or temporary disposal of Tribal waters. The subsection's sole purpose is to overcome the restrictions of the Indian Non-Intercourse Act by allowing the Tribes to temporarily transfer title of their water to third parties. Subsection B addresses the off-reservation use of Tribal waters. It discusses two types of off-reservation use: (1) off-reservation and in-state use; and (2) off-reservation and out-of-state use. For the off-reservation and in-state use of reserved water, the Tribes agree to comply with all of the state laws, federal laws and interstate compacts that other non-Indian water users must comply with. For off-reservation and out-of-state use, the parties agree that the Tribes can use their water to the extent permitted by state law, federal law, interstate compacts, and international treaties, as these treaties pertain to the appropriation, use, development, storage, regulation, allocation, conservation, exportation or quality of the water of the Colorado River and its tributaries.

Article VI - Finality of Settlement

This article describes the process of finalizing the Agreement. In 1987 the parties will present a proposed stipulation reflecting the terms of the Agreement to the Colorado District Court for Water District No. 7. The water court will then give notice and hold the appropriate hearings to rule on objections to the stipulation. The parties will request that the court not enter a final consent decree until the Tribes, the State and the United States jointly certify that the federal and state legislative enactments necessary to implement the Agreement have been obtained.

Even after the Agreement is made final and entered as a

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judgment of the court, the parties have agreed that the Tribe's water right and breach of trust claims on the Mancos, Animas, and La Plata Rivers can be revived if the Dolores project (for the Mancos River) or the Animas-La Plata Project (for the Animas and La Plata Rivers) is not completed.

Pursuant to the agreement, necessary enactments by Congress include: Waiver of the Non-Intercourse Act; project construction costs deferrals; project operation, maintenance and repair cost deferrals; waiver of federal reclamation law; authorization and appropriation of $49.5 million for the Tribal Development Funds; waiver of the Tribal water right claims (provided that the waiver of the claims relative to the Animas and La Plata Rivers are not final until the Animas-La Plata Project is constructed and the waiver of the claims relative to the Mancos River are not effective until the combined Highland-Towaoc Canal is constructed); and a directive to the Secretary of the Interior to comply with the administrative article.

Necessary Colorado legislative enactments include: Authorization and appropriation of $5 million to the Tribal Development Fund; authorization of the amount necessary to complete the Towaoc pipeline and domestic water distribution system; and authorization and appropriation of $5.6 million for the construction of project facilities. The Colorado General Assembly has already authorized the money necessary for the construction of the Towaoc pipeline and domestic water distribution system.

Article VI - General Provisions

The last article of this document includes miscellaneous agreements. The State agrees that the Tribes can seek additional water rights in accordance with state law; the parties reserve the right to litigate any questions not resolved by this Agreement; the parties agree that the law of abandonment will not be applied to Tribal water rights; the parties expressly reserve all rights not granted or recognized in the Agreement; the Tribes agree that if a reserved water right is recognized in this document for use on a parcel of land already irrigated under a state decree, the state decreed water right will be relinquished; the parties agree that offers or compromises made in the course of negotiation of the document can not be construed as admissions against interests or be used in any legal proceeding other one for approval and interpretation of the Agreement; the Secretary of the Interior agrees not to request reassignment of the Dolores

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Water Conservancy District's water rights pursuant to their contract with the district; the Bureau of Reclamation agrees to give preference to the Tribes to design or construct the Dolores or Animas-La Plata Projects in accordance with the law; and the United States and the state disclaim any interpretation in the Agreement which can be read to commit or obligate them to expand funds which have not been appropriated or budgeted.

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COLORADO UTE INDIAN WATER RIGHTS FINAL SETTLEMENT AGREEMENT
AND ANIMAS-LA PLATA PROJECT COST SHARING BINDING AGREEMENT

		$ in millions (Oct. 1985, prices
I.	TOTAL COST OF SETTLEMENT	
	A. Animas-La Plata Proj. (excl. of IDC)	$509.3
	B. Interim A-LP Project facilities (i.e., N. Mex. irrigation facilities)	3.0
	C. Tribal development funds	60.5
	TOTAL COST	$572.8
II.	NON-FEDERAL FINANCING OF SETTLEMENT	
	A. Cash for A-LP Project--Phase 1	
	1. Escrow account (CWR&PDA)	$ 42.4
	2. Local cash contributions	.125
	3. Revenue bond in 11th year	7.3
	4. San Juan Co. ad valorem taxes	12.8
	5. Colo. cash contribution	5.6
	SUB-TOTAL	$ 68.2
	B. Phase 2 of A-LP Project	
	1. S. Ute Reservoir	$ 53.5
	2. 11,980 acres of UMU & 10,765 acres of Colo. full service irrigation	67.6
	3. 1,900 acres of N. Mex. full service irrigation	11.9
	SUB-TOTAL	$133.0
	C. Tribal development funds	
	1. Colorado cash contributions	$ 5.0
	2. Towaoc pipeline distribution system	6.0
	SUB-TOTAL	$ 11.0
	TOTAL REDUCTION IN FEDERAL OUTLAYS	$212.2
III.	FEDERAL FINANCING OF SETTLEMENT	
	A. Animas-La Plata Project	$311.1
	B. Tribal Development Funds	49.5
	TOTAL FEDERAL OUTLAYS	$360.6

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NOTES

I. Total Cost of Settlement

A. Animas-La Plata Project--The estimated cost, exclusive of interest during construction (IDC), of the project as planned by the Bureau of Reclamation is $509.3 million ($529.8M total cost minus $20.5 interest during construction = $509.3M) in October, 1985, price levels.

B. New Mexico Interim Irrigation Facilities--$3 million covers the cost of interim water delivery facilities made necessary by the staging of Southern Ute Dam.

C. Tribal Development Funds--A $20 million fund for the Southern Ute Tribe and a $40.5 million fund for the Ute Mountain Ute Tribe.

II. Non-federal Financing of Settlement

A. Cash for Animas-La Plata Project--Phase 1

1. $42.4 million represents the purchasing value of the $30 million to be placed in escrow by the Colorado Water Resources and Power Development Authority. The $42.4 million is calculated assuming an annual inflation rate of 4.5% with earnings of compound interest at 8% per annum until the principal and accrued interest in the escrow account are exhausted, which is expected to be in about the seventh or eighth year of the 12-year construction period. Money from the escrow account will be used at the rate of 20% of each year's required construction expenditures for Phase 1 facilities.

2. Local cash contributions of $0.125 million will be as follows: Animas-La Plata Water Conservancy District, $5,000 per year during the construction period for a total of $75,000; and Montezuma County, $50,000 in a lump sum at the start of construction.

3. Revenue bonding by the Animas-La Plata Water Conservancy District (or the City of Durango or the Colorado Water Resources and Power Development Authority) will provide $7.3 million to be paid in a lump sum prior to the year in which the non-Indian M&I water allocated to

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Colorado is available from the project (projected to be the 11th year of construction).

4. San Juan County, New Mexico, through an ad valorem tax levy of 3 mills per year, will contribute $12.8 million during the construction of Phase 1 facilities.

5. $5.6 million of cash will be made available by Colorado, contingent upon appropriations by the Colorado General Assembly, for the construction of Ridges Basin Dam and shall be credited against the allocable costs of the non-Indian M&I water allocated to Colorado.

B. Phase 2 of Animas-La Plata Project

1. Through staging of the construction of Southern Ute Reservoir, to be financed and constructed by non-Federal entities, the cost of the project to the Federal government is reduced by $53.5 million: $48 million for the dam and inlet canal and $5.5 million for specific recreation and wildlife mitigation features at the reservoir.

2. By staging the construction of irrigation facilities for 10,765 acres of full service non-Indian lands under the Dry Side Canal in Colorado and for 11,980 acres of Ute Mountain Ute full service lands, to be financed and constructed by non-federal entities, there will be a reduction of $67.6 million in the outlay of Federal funds.

3. By staging the construction of irrigation facilities for 1,900 acres of full service non-Indian lands in New Mexico, including the irrigation canal, to be financed and constructed by non-federal entities, there will be a reduction of $11.9 million in the outlay of federal funds.

C. Towaoc Pipeline/Distribution System

1. $5.0 million will be made available by Colorado to the Tribal Development Funds, to be deposited within 30 days following the deposit of the first installment of federal monies in the funds. The $5.0 million has been appropriated and will become available July 1, 1988.

2. The Towaoc pipeline and domestic water distribution system for the Ute Mountain Ute Tribe will be constructed at the expense of the State of Colorado as a credit toward the tribe's

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development fund. The $6 million has been appropriated by the Colorado General Assembly and design of the project is already underway.

III. Federal Financing of Settlement

A. Animas-La Plata Project (October, 1985, price levels allocated by project purposes)

M&I*

Colorado non-Indian	$ 2.978M
Colorado Indian	38.799
Navajo Tribe	3.153
NM non-Indian	0
	$ 44.930M
Irrigation**	$235.308M
Non-reimbursable functions***	$ 30.860M
TOTAL	$311.098M

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* Repayable by M&I water users

** Sources of repayment (Oct., 1985, price levels):

Pre-payments	$ .634M
Ad valorem taxes	27.817
Irrigators	21.174
CRSP power revenues	185.683
TOTAL	$235.308M

***Recreation, fish and wildlife, and cultural resources

B. Tribal Development Funds

Of the $60.5M for the two tribal development funds, $49.5M is to be provided by the federal government, contingent upon appropriations by Congress. The final settlement agreement calls for this sum to be paid in three annual installments of $19.5M, $15M, and $15M.

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AGREEMENT IN PRINCIPLE

CONCERNING THE

COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT

AND

BINDING AGREEMENT FOR

ANIMAS-LA PLATA PROJECT COST SHARING

INTRODUCTION

The United States, the State of Colorado, the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, and certain non-Indian water users have reached an agreement in principle: (i) concerning the quantification, determination, and settlement of the reserved water rights claims of the Tribes; and (ii) providing for the uniform and cooperative administration of those rights. The final water rights settlement agreement will include the provision of water to the Tribes from the Dolores Project and Animas-La Plata Project and the determination of water rights of the Tribes to various streams in southwest Colorado. On March 14, 1986, an Agreement in Principle was entered into among the numerous non-Federal entities setting forth a comprehensive settlement and quantification of these reserved water rights claims. A final settlement agreement clarifying the March 14, 1986, Agreement in Principle (including a confirmation that the water rights to be secured to the Tribes by the settlement are in recognition and fulfillment of the reserved water rights claims of the Tribes) and implementing the provisions of this agreement in principle shall be executed by the non-Federal entities and the United States on or before July 31, 1986.

The United States, the State of Colorado, certain political subdivisions of the States of Colorado and New Mexico, the Ute Mountain Ute Indian Tribe and the Southern Ute Indian Tribe have also reached and they hereby set forth a binding agreement for the cost-sharing and financing of the Animas-La Plata Project in satisfaction of the requirement of Congress in Chapter IV of Public Law 99-88 "Department of the Interior, Bureau of Reclamation, Construction Program" (99 Stat. 293, at pp. 319-320). The non-Federal entities state that they are capable of and willing to participate in project cost-sharing and financing in accordance with the terms of this agreement. The Secretary of the Interior hereby determines that the non-Federal entities' financing plan demonstrates a reasonable likelihood of the non-Federal interests' ability to satisfy the terms and conditions of this agreement as set forth herein.

This Animas-La Plata Project cost-sharing agreement is an integral part of, and is contingent upon, a final settlement of the litigation filed in Colorado District Court for Water Division No. 7 for the quantification of the reserved water right claims of the Southern Ute and Ute Mountain Ute Indian Tribes in the State of Colorado.

WATER RIGHTS SETTLEMENT

The final water rights settlement agreement will provide for, among other things, the following:

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1. A consent decree to be prepared by the Colorado parties, the United States and the Tribes providing for a comprehensive quantification and determination of the reserved water right claims of the Tribes and providing for the uniform and cooperative administration of the decreed waters. This consent decree shall be submitted for approval by the District Court for Water Division No. 7, State of Colorado, and duly approved by the court on terms agreeable to the parties. Entry of a final decree shall be contingent upon enactment of legislation which:

a. Authorizes the Tribes, pursuant to the requirements of 25 U.S.C. 177, to lease or temporarily dispose of water to the extent otherwise permitted by applicable Federal and State law, interstate water compacts, and treaties.

b. Provides for deferral, without interest, of the repayment costs allocable to municipal and industrial water supplies, including operation and maintenance costs, allocated to the Tribes from the Dolores and Animas-La Plata Projects. As an increment of water is leased or otherwise used, repayment of that increment's prorata share of the allocable costs shall commence.

c. Assures that the Tribes are not restricted by application of federal Reclamation laws from using and/or leasing waters allocated to the Tribes from the Dolores and Animas-La Plata Projects.

d. Authorizes appropriation of the federal share of the $60.5 million Tribal Development Fund provided for in the settlement.

e. Provides that performance by the United States of the actions required by the aforementioned legislative provisions will be conditioned on the Tribes executing a waiver and release of all claims concerning water rights whether in rem or against any party to the settlement other than those which may arise under the terms of the settlement.

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

2. The creation of Tribal Development Funds for the Tribes, with $20.0 million for the Southern Ute Tribe and $40.5 million for the Ute Mountain Ute Tribe, said funds to be created as follows:

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

b. Such amount as needed, estimated at $6.0 million, to be expended by the State of Colorado for construction of the Towaoc pipeline and domestic water distribution system for the Ute Mountain Ute Tribe as a credit to the Ute Mountain Ute Development Fund. Said construction will be initiated within one year of the execution of the final settlement agreement, and shall be completed within one year of the initiation of construction.

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

In consideration for the Ute Mountain Ute Tribe's agreement to accept delayed payment of the Federal contribution to its Tribal Development Fund, the Secretary of the Interior, the State of Colorado, and the Ute Mountain Ute Tribe shall use their best efforts to acquire for the Ute Mountain Ute Tribe, for recreation purposes, not less than 100 acres of land with access to McPhee Reservoir of the Dolores Project from lands which had been recently transferred from the Department of the Interior to the Department of Agriculture.

3. Appropriate finality provisions to protect Federal, Tribal, and State interests in the settlement.

ANIMAS-LA PLATA COST SHARING AGREEMENT

Cost sharing and financing of the Animas-La Plata Project shall be as follows:

1. The facilities of the project, or mutually acceptable alternatives, shall be constructed in two phases as identified below:

Phase One Facilities

Ridges Basin Dam and Reservoir
Durango Pumping Plant
Ridges Basin Inlet Conduit
Ridges Basin Pumping Plant and Transmission Facilities
Long Hollow Tunnel
Durango Municipal and Industrial Pipeline
Shenandoah Pipeline
Recreation, Fish and Wildlife and Cultural Resources Phase One
Dry Side Canal Phase One
Operation and Maintenance Facilities Phase One
Southern Ute Inlet (partial)
Southern Ute Diversion Dam
Red Mesa Pumping Plant, Laterals and Transmission Facilities
Alkali Gulch Laterals Phase One
La Plata New Mexico Laterals Phase One
Dry Side Laterals Phase One
Drains Phase One
New Mexico Interim Facilities

Phase Two Facilities

Southern Ute Dam and Reservoir
Southern Ute Inlet (partial)
New Mexico Irrigation Canal
Ute Mountain Ute Pumping Plant, Laterals, and Transmission Facilities
Drains Phase Two
Recreation, Fish and Wildlife and Cultural Resources Phase Two
Dry Side Canal Phase Two
Alkali Gulch Laterals Phase Two
Alkali Gulch Pumping Plant and and Transmission Facilities
Dry Side Laterals Phase Two
La Plata New Mexico Laterals Phase Two
Operation and Maintenance Facilities Phase Two
Southern Ute Pumping Plant, Laterals, and Transmission Facilities
Third Terrace Pumping Plant and Transmisssion Facilities
La Plata Diversion Dam

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Contingent upon appropriations by the Congress, Phase One facilities shall be constructed by the Bureau of Reclamation within a period of not less than 12 years from the date of this agreement. Phase Two facilities will be constructed by one or more of the non-federal entities signatory to this agreement on such schedules as they deem practicable.

2. As part of their non-federal contributions, the non-Federal entities agree to non-federally finance the Phase Two facilities listed above. Until the completion of Phase Two facilities, this phasing of facilities has the effect of making the Southern Ute Tribe's municipal and industrial water and the Ute Mountain Ute Tribe's municipal and industrial and irrigation water available at Ridges Basin Reservoir. In addition, it has the effect of deferring the irrigation of 10,700 acres of full service land in Colorado and the irrigation of 1,900 acres of full service land in New Mexico.

3. Construction of Phase One facilities will be financed as follows:

a. $30 million contribution to be deposited by the Colorado Water Resources and Power Development Authority, less the amount not to exceed $75,000 to be spent by the Authority for the surface geology survey in 1986, into an escrow account within 30 days following the initiation of irreversible construction or pre-construction activities by the Secretary for the development of Phase One of the Animas-La Plata Project. Escrow funds, including interest earned thereon, will be available on demand by the Secretary to fund no more than twenty percent of the total estimated Phase One development costs in any year.

b. $7.3 million to be provided by the Animas-La Plata Water Conservancy District in a lump-sum payment to the Secretary no later than September 30 of the year prior to the year in which the Secretary declares that municipal and industrial water is expected to be available to non-Indian beneficiaries in Colorado. Allocable costs in excess of $7.3 million attributable to inflation will be repayable pursuant to a repayment contract between the Secretary and the District with such escalation for inflation of materials and labor costs not to exceed 30 percent. Escalation of overhead costs will be treated in accordance with paragraph 6 below.

c. $75,000 to be provided by the Animas-La Plata Water Conservancy District in payments of $5,000 per year, payable on or before October 1 of each year, commencing the first year the Secretary expends funds for the Animas-La Plata Project.

d. $50,000 to be provided by Montezuma County to the Secretary in a lump-sum payment within 30 days following initiation of irreversible construction activities by the Secretary for Phase One.

e. An estimated $12.8 million, to be provided by the San Juan Water Commission through the agency of San Juan County, will be available to the Secretary to fund the estimated annual cost of developing the New Mexico non-Indian municipal and industrial water share of the Phase One facilities, such funds to be provided on a schedule of applicable actual costs related to New Mexico municipal and industrial water facilities. Allocable costs in excess of $12.8 million attributable to inflation will be repayable pursuant to a repayment contract between the Secretary and the San Juan Water Commission with such escalation for inflation of materials and labor costs not to exceed 30 percent. Escalation of overhead costs will be treated in accordance with paragraph 6 below.

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f. $5.6 million to be provided by the State of Colorado, contingent upon appropriations by the Colorado General Assembly, to the Secretary for Ridges Basin Dam. Such funds shall be provided on a schedule acceptable to Colorado and the Secretary beginning in the first year of construction of said dam.

g. All other funds needed to satisfactorily complete construction of the Phase One facilities shall be provided by the United States, contingent upon appropriations by the Congress.

4. No expenditure of federal funds by the Secretary will be made for irreversible construction actions or activities in the development of the Animas-La Plata Project prior to passage of the legislation enumerated in Paragraph One under the heading Water Rights Settlement and prior to implementation of 30-year straight-line repayment of those costs of the Animas-La Plata Project to be repaid by Colorado River Storage Project power revenues.

5. Repayment contracts must be executed by Indian and non-Indian beneficiaries of the Animas-La Plata Project with the Secretary of the Interior for repayment of the reimbursable costs of the project. In determining the reimbursable costs of the Project, the financial contributions of the non-federal entities to the construction of Phase One facilities shall be credited to the allocable costs of each project function as follows:

Function	Amount ($ millions)
New Mexico Non-Indian Municipal and Industrial	$ 12.8
Colorado Non-Indian Municipal and Industrial	$ 12.9
Colorado Non-Indian Irrigation	$ 37.625

6. The repayment contracts will include provisions to recover any escalation of construction costs for Phase One facilities. In negotiating the escalation provisions, consideration will be given to fixing overhead costs charged to the Animas-La Plata Project by the Secretary.

7. All operation, maintenance and replacement costs not deferred under legislation will be borne by the non-Federal entities under the provisions of repayment contracts, subject to applicable Reclamation Law.

8. Any use of water other than that contemplated in the Final Environmental Impact Statement for the Animas-La Plata Project shall be subject to compliance with the National Environmental Policy Act.

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Dated this 30th day of June, 1986.

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

IN WITNESS THEREOF, the parties hereto have caused this agreement to be executed as of the date first above written by their respective officers and representatives, and warrants that each is duly authorized by the respective entity to execute this agreement which shall bind the parties hereto, their successors and assigns.

For the State of Colorado

For the State of Colorado

For the Colorado Water Resources and Power Development Authority

For the Southern Ute Indian Tribe

For the Animas-La Plata Water Conservancy District

For the Ute Mountain Ute Indian Tribe

For the New Mexico Interstate Stream Commission

For the San Juan Water Commission

For Montezuma County

For the Secretary of the Interior

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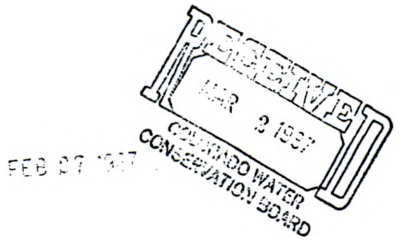
Department Of Energy
Western Area Power Administration
P.O. Box 11606
Salt Lake City, Utah 84147



FEB 27 1987

Mr. J. William McDonald
Director
Colorado Water Conservancy Board
1313 Sherman Street
Denver, CO 80203

Dear Mr. McDonald:

This is in response to the questions you posed to the Western Area Power Administration regarding the impact of various repayment scenarios on Colorado River Storage Project (CRSP) ratepayers. The basis of the comparison is the existing 1985 repayment formulation which includes Animas-LaPlata, scheduled to come on line in 2004-2011. The repayment model is programmed to pay for the facility in the years 2053-2060 because the facility is noninterest bearing and, under the conventional criteria, repayment is postponed until the later years of its financial life. In the base case there are no non-Federal participants and the power user's liability for Animas-LaPlata is $398 million. The rate calculated is 9.92 mills per kWh with these assumptions.

The alternatives to the basic case are analyzed using a straightline annual amortization schedule for Animas-LaPlata with the first payment taking place in 2004. Three time periods are examined which are 30, 40, and 50 years. In these cases there is non-Federal participation which reduces the power user's liability for Animas-LaPlata to $195 million. The results of the calculations show that there is no significant impact on the basic rate from any of the alternative assumptions.

The results are not those normally expected to occur. With increasing time periods for repayment it is expected that mill rates would fall. In moving the repayment nearer to the present, one would expect that mill rates would go up. Neither happened because of the unique conditions of timing and relative facility size. Three items can be identified which all contribute to the moderation of the expected impacts of the changed assumptions on power rates.

First, the costs attributable to Animas-LaPlata represent about 6.25 percent of total system costs and, while they are a significant fraction of the costs, do not overwhelm the rate.

Second, there exists sufficient time separation between Animas-LaPlata and later facilities so that project revenues can be used to reduce appreciably the outstanding debt on existing structures before repayment of newer debts must be undertaken.

Third, a feature of the Central Utah Project is controlling the rate determination with the result that the repayment study can accomodate the Animas-LaPlata without any rate impact.

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The first item simply reduces the magnitude of the rate change because the portion of total system cost represented by Animas-LaPlata is small. If Animas-LaPlata were a much more costly facility it would have a greater impact on the CRSP mill rate.

Items two and three both revolve around time periods between facilities which provide enough breathing room so that facility costs do not build on each other and thereby establish a "new" controlling feature. A delay as short as 5 years in Animas-LaPlata operations would change the repayment conditions and likely cause an increase in the mill rate to customers. In addition to timing, item three also involves a very unique system designed to repay facilities in the CRSP by calculating a revenue requirement for projects. Established in law, each state in the basin has a preset percentage assignment of revenue for repayment of participating facilities in its boundaries. The revenue requirement needed from CRSP is computed based on each state's individual revenue requirement divided by that state's percentage allocation. The largest individual state revenue requirement from the computation for all four states becomes the controlling revenue requirement which will meet the project costs in the four states. If the percentage assignment of the state is low, then this causes a large rise in the revenue requirement from the project which then controls the mill rate. Conversely, if a higher percentage factor is controlling calculations it results in a lower rise in the revenue requirement. (Example: A $100,000 revenue requirement needed by Colorado (46 percent) results in a total requirement for all four states of $217,000 while an identical state requirement for New Mexico (17 percent) will result in a total requirement of $588,235.) In any event, new or changed facilities which do not alter the revenue requirement will fit within project mill rates which is the case with Animas-LaPlata.

While this special case of Animas-LaPlata shows no rate changes for power users, it should not be inferred that these results are applicable anywhere outside the CRSP. The provisions of the Colorado River Storage Act cause the results found here. Even at that, small changes in facility timing could make appreciable changes in the rates especially if the facilities start building on each other.

Sincerely,

Lloyd Greiner

Lloyd Greiner
Area Manager

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The CHAIRMAN. Thank you.

The attorney general is next.

Mr. WOODARD. Mr. Chairman, my name is Duane Woodard. I am the Colorado attorney general, and I appreciate the opportunity to appear before this committee today to testify in support of H.R. 2642.

I would like to say at the outset that I believe we have come a long way since December of 1984, when I first met with the chairmen of the two Ute Tribes to propose that we attempt to negotiate a settlement of the tribes' reserved water rights claims, and with the support of the tribes, I subsequently met with the Solicitor of the Department of the Interior, the former Judge Richardson, who held that post in the Department of Justice, to inquire as to the interests of the United States in commencing negotiations on this very important matter.

In April 1985 in Denver, the parties formally convened themselves to initiate the long and arduous task which lay before us, and that we have come this far is in and of itself quite remarkable, but we are not yet done, and that is what brings us, the States of Colorado and New Mexico—and I do not speak for New Mexico, but they have been a matter of these negotiations and the agreements entered into thus far.

The two tribes, the Southern Ute Tribal council, and non-Indian water users in southwestern Colorado are here today. We are united in presenting to you, as Governor Romer said, a solution, not a problem.

Before I speak to the bill itself, I would like to briefly view the history of the litigation concerns concerning the tribes' reserved water rights claims, because that is what gave rise, or impetus, I should say, to my meeting with Judge Richardson at the Department of the Interior in 1985.

Although the United States filed suit in 1930 in Federal District Court to quantify the rights of the Southern Ute Indian Tribe to the Pine River, and a decree was entered, no other claims were filed on behalf of the tribes until 1972.

At that time, the U.S. Department of Justice, as trustee for the tribes, filed claims in Federal District Court for both tribes on nearly all of the streams in the San Juan River Basin in southwestern Colorado.

The State of Colorado moved to dismiss this filing based on the position that under the McCarran amendment, the State District Court had jurisdiction. This case reached the U.S. Supreme Court on the issue of whether the claims should have been pursuant to the McCarran amendment filed in State court.

The U.S. Supreme Court ruled that the State did, in fact, have jurisdiction and that the policy of the McCarran amendment would be furthered if the quantification of the tribal claims to water occurred in the State court, and that is an integral part of what we are about to do with regard to how this particular piece of legislation is structured.

Consequently, in 1976, the Department of Justice ended up filing water rights applications in the Colorado District Court for Water District No. 7 in Durango, Colorado, and it is this litigation pend-

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ing for 11 years that this agreement will bring to a negotiated conclusion.

Implementation of the December 1986 agreement requires, however, not only the entry of a decree by the Colorado State court, but also the enactment of legislation by Congress, thus H.R. 2642.

I wish to emphasize at the outset that H.R. 2642 is not a legislative settlement of the tribes' reserved water rights claims. Unlike other Indian water rights legislation which has been enacted by Congress, H.R. 2642 does not provide for a legislative quantification of the tribes' water rights—reserved water rights, or a legislative definition of the parameters of the tribes' reserved water rights.

Rather, it is the Colorado District Court, the State court in Water Division No. 7 which has jurisdiction pursuant to the McCarran amendment to decree and vest in the tribes the Indian reserved water rights to which the parties have agreed pursuant to the December 1986 agreement.

Thus, the bill before you is a much narrower expression of congressional involvement than has been the case in the previous settlements which were entirely the creature of an Act of Congress.

A brief summary of H.R. 2642 is appended to my written statement. In addition, the States and the tribes are preparing a joint statement which explains and sets forth the background of the bill. I would respectfully request of the chairman and this committee that the hearing record be held open for 3 weeks, so we can submit this joint statement in behalf of the tribes and the State.

The CHAIRMAN. Without objection, you will have those extra 3 weeks.

Mr. WOODARD. Thank you, Mr. Chairman. We appreciate that.

Rather than belabor the provisions of H.R. 2642 section by section, I will highlight the main purposes of the bill, and they are as follows:

No. 1, per the terms of the agreement, the tribes are to receive water rights to water supplied from the Animas-La Plata and Dolores projects and to effect this part of the agreement, the bill, A, authorizes the Secretary of the Interior to use the projects to provide water to the tribes; B, provides for certain deferrals of costs that would otherwise be borne by the tribes pending their use of project water; and, C, provides that Federal reclamation laws shall not apply to the project's reserved waters supplied to the tribes except to the extent that those laws may also apply to the tribes' other reserved waters.

Now, the purpose of this provision is to ensure that project reserved waters are not treated differently except as provided for in the agreement, than the other reserved waters of the tribes, simply because a reclamation project is the source of the water.

Section 5 of the agreement—of the proposed legislation authorizes each tribe, subject to the Secretary's approval, to enter into water use contracts to sell, exchange, lease or otherwise temporarily dispose of water in accordance with article V of the agreement.

Section 7 establishes the tribal development funds for which the agreement calls, and authorizes the appropriation of a total of $49.5 million by the Federal Government. The State of Colorado has already authorized and appropriated $11 million with regard to tribal development funds, $5 million of which is already under con-

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tract with regard to energy studies pursuant to the building of the Toiyabe pipeline from the city of Cortez to the Ute tribal headquarters in Toiyabe.

We believe that the State of Colorado has already moved with regard to the appropriation of $11 million, and in these times of fiscal constraints, shows an abundance of good faith by the citizens of the State of Colorado in this regard.

Section 8 authorizes the tribes to waive and release claims concerning or related to the water rights described in the agreement, and conditions the performance of the Secretary's obligations under the act upon the tribes' execution of such waivers and releases.

Section 9 authorizes the Secretary to comply with the administrative procedure set forth in article IV of the agreement. The Department of the Interior requested that this section be included to ensure that it would have authority to administer the tribal water rights in compliance with the agreement.

The agreement provides that the construction of the Animas-La Plata and Dolores projects by the Bureau of Reclamation shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act.

And section 10 of the bill implements this provision.

The one provision of the bill to which I would like to specifically address myself is section 5. To understand this section, one must look to the issue of off-reservation use of water by the tribes.

In order to be able to use water off-reservation, the tribes must overcome three potential barriers. No. 1, the Non-Intercourse Act, which is found at 25 U.S.C. 177. No. 2, the Winters Doctrine; and No. 3, all applicable State and Federal laws, interstate compacts and international treaties.

To remove the front of these barriers, which is all that section 5(a) does, is a condition necessary but not sufficient to the tribes' being able to use water off-reservation. Section 5(a) does nothing, however, to remove the second and third of the potential barriers to the off-reservation use of water.

Indeed, the purpose of section 5(c) is to ensure that the mere removal by section 5(a) of the barrier presented by the Non-Intercourse Act does not remove or in any way affect any of the other obstacles which may exist to the off-reservation use of water.

But either way, the section does not in and of itself authorize, enable or permit the off-reservation use of water. The agreement clearly does permit, as have previously congressionally litigated settlements, the tribes to use water off-reservation within the State of Colorado under the terms and conditions set forth in the agreement.

But the agreement, in stating that the tribes may use water off-reservation outside the State to the extent permitted by any State law, Federal law, interstate compact or international treaty, confers no authority on the tribes to use water outside the State of Colorado.

It merely states that the tribes are subject to the applicable laws, whatever they may be found to be. In fact, the issue remains to be settled by future litigation and is not addressed, with the exception

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of removing the barrier of the Non-Intercourse Act by either the legislation or the agreement.

I would submit to you that the out-of-State provision of the agreement in section 5(a) and 5(c) of the proposed bill lead to no different result than the silence which is found in Indian settlement legislation previously passed by Congress concerning the off-reservation and out-of-State use of water.

One can construe from the silence of those acts no more or no less than what sections 5(a) and 5(c) result in. In closing, let me acknowledge that this bill has been introduced without the concurrence of the Department of the Interior and the Department of Justice, even though they were signatories to the December 1986 final agreement.

It is said with a good deal of concern and disappointment that we found ourselves without the support of those Departments, despite many months of efforts to draft a mutually acceptable bill.

In our view, H.R. 2642 is faithful to the letter and the spirit of the December 10, 1986 agreement. The Departments have never articulated in writing any rational basis for their objections to the bill as introduced.

We would welcome this committee's inquiries of the Administration in this regard, as we have been at a loss in getting a response to the bill.

Again, Mr. Chairman, and members, I appreciate the opportunity to appear before you. I would be pleased to respond to any questions which you might have, and I would be assisted in this matter by Mr. Ival Goslin of the Colorado Water and Power Development Authority on my right, and Mr. Bill McDonald, the director of the Colorado Conservation Board on my left.

[Prepared statement of Mr. Woodard with attachment, follows:]

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STATEMENT OF THE HONORABLE DUANE WOODARD
ATTORNEY GENERAL OF THE STATE OF COLORADO

before the

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

concerning

H.R. 2642
THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987

Washington, D.C.
September 16, 1987

Introduction

While federal legislation is required to implement certain provisions of the Colorado Ute Indian Water Rights Final Settlement Agreement ("Agreement") of December 10, 1986, and the Binding Cost Sharing Agreement for the Animas-La Plata Project of June 30, 1986, H.R. 2642 is not a legislative settlement of the Tribes' reserved water rights claims. Unlike other Indian water rights legislation which has been enacted by Congress, H.R. 2642 does not provide for a legislative quantification of the Tribes' reserved water rights or a legislative definition of the parameters of the Tribes' reserved water rights.

Rather, it is the Colorado District Court for Water Division No. 7 which has jurisdiction, pursuant to the McCarran Amendment, to decree and vest in the Tribes the Indian reserved water rights to which the parties have agreed. Thus, the bill

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before you is a much narrower expression of Congressional involvement than has been the case in the previous settlements which were entirely the creature of an act of Congress.

History of the Litigation

The United States filed suit in 1930 in federal district court to quantify the rights of the Southern Ute Indian Tribe to the Pine River and a decree was subsequently entered. However, no other claims were filed until 1972.

At that time, the United States Department of Justice, as trustee for the Tribes, filed claims in federal district court for both Tribes on nearly all of the streams in the San Juan River Basin in southwestern Colorado. Colorado moved to dismiss this filing based on the position that under the McCarran Amendment, 43 U.S.C. 666, the State district court had jurisdiction. This case reached the U.S. Supreme Court on the issue of whether the claims should have been, pursuant to the McCarran Amendment, filed in state court (see, Colorado River Water Conservation District v United States (a/k/a Akin v United States), 424 U.S. 800 (1976)). The Supreme Court ruled that the state did have jurisdiction and that the policy of the McCarran Amendment would be furthered if the quantification of the tribal claims to water occurred in the State court. Consequently, the Department of Justice ended up filing water

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rights applications in the Colorado District Court for Water Division No. 7 in 1976.

It is this litigation that the Agreement will bring to a negotiated conclusion. Implementation of the Agreement requires, however, not only the entry of a decree by the Colorado court, but also the enactment of legislation by Congress. Thus, H.R. 2642 and an identical bill in the Senate, S. 1415.

Summary of H.R. 2642

The main purposes of the bill are as follows:

(1) The Tribes are to receive water rights to water supplied from the Animas-La Plata and Dolores Projects. To effect this part of the Agreement, the bill:

(a) Authorizes the Secretary of the Interior ("Secretary") to use the project to provide water to the Tribes,

(b) Provides for certain deferrals of costs that would otherwise be borne by the Tribes pending their use of project water, and

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(c) Provides that federal reclamation laws shall not apply to the project reserved waters supplied to the Tribes except to the extent that those laws may also apply to the Tribes' other reserved waters. The purpose of this provision is to insure that project reserved waters are not treated differently, except as provided for in the Agreement, than the other reserved waters of the Tribes simply because a reclamation project is the source of the water.

(2) Section 5(a) authorizes each Tribe, subject to the Secretary's approval, to enter into water use contracts to sell, exchange, lease, or otherwise temporarily dispose of water in accordance with Article V of the Agreement. Section 5(b) sets forth the procedures and criteria by which the Secretary shall review and approve or disapprove of any water use contract submitted by a Tribe.

(3) Section 7 establishes the tribal development funds for which the Agreement calls and authorizes the appropriation of a total of $49.5 million, payable in three annual installments.

(4) Section 8 authorizes the Tribes to waive and release claims concerning or related to the water rights

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described in the Agreement and conditions the performance of the Secretary's obligations under the Act upon the Tribes' execution of such waivers and releases.

(5) Section 9 authorizes the Secretary to comply with the administrative procedures set forth in Article IV of the Agreement. The Department of the Interior requested that this section be included to insure that it would have authority to administer the tribal water rights in compliance with the Agreement.

(6) The Agreement provides that the construction of the Animas-La Plata and Dolores projects by the Bureau of Reclamation shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act. Section 10 of the bill implements this provision.

Off-Reservation Use of Water

Section 5 authorizes each Tribe, subject to the Secretary's approval, to enter into water use contracts to sell, exchange, lease, or otherwise temporarily dispose of water in accordance with Article V of the Agreement. To understand section 5, one must look to the issue of off-reservation use of water by the Tribes.

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In order to be able to use water off-reservation, the Tribes must overcome three potential barriers:

(1) The Non-Intercourse Act, 25 U.S.C. §177,

(2) The Winters Doctrine and the inherent characteristics of an Indian reserved water right, and

(3) All applicable state and federal laws (which includes, without limitation, statutes, regulations and rules, and judicial decisions), interstate compacts, and international treaties.

To remove the first of these barriers, which is all that section 5(a) does, is a condition necessary, but not sufficient, to the Tribes being able to use water off-reservation. For that matter, the barrier of the Non-Intercourse Act has to be removed in order for a Tribe to temporarily dispose of its water on-reservation should it want, for example, to lease water to a mining or industrial venture which operates within the boundaries of the reservation.

Section 5(a) does nothing, however, to remove the second and third of the potential barriers to the off-reservation use of water. Furthermore, section 5(c) insures that the mere removal by section 5(a) of the barrier presented by the Non-Intercourse Act does not remove, or in any way affect, any

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of the other obstacles which may exist to the off-reservation use of water. Put another way, section 5(a) does not, in and of itself, authorize or enable the off-reservation use of water

The Agreement clearly does permit the Tribes, as have Congressionally legislated settlements, to use water off-reservation within the State of Colorado under the terms and conditions set forth in the Agreement. But the Agreement, in stating that the Tribes may use water off-reservation "... outside the State to the extent permitted by any: (1) State law, (ii) Federal law, (iii) Interstate compact; or International treaty," confers no authority on the Tribes to use water outside of the State of Colorado (the terms "State law" and "Federal law" include, without limitation, statutes, rules and regulations, and judicial decisions, including the Winters Doctrine). In fact, the issue remains to be settled by future litigation and is not addressed, with the exception of removing the barrier of the Non-Intercourse Act, by either the legislation or the Agreement.

I would submit to you that the out-of-state provision of the Agreement (Article V. B. b) and sections 5(a) and (c) of the bill lead to no different result than the silence which is found in Indian settlement legislation previously passed by Congress concerning the off-reservation, out-of-state use of water. One can construe from the silence of those acts no more or no less than what sections 5(a) and (c) result in.

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Furthermore, one cannot look to the Agreement as having established the legal right of the Tribes to use water off-reservation, outside of the State of Colorado, as I noted above.

In closing, let me acknowledge that this bill has been introduced without the concurrence of the Department of the Interior and the Department of Justice, even though they are signatories to the Agreement. It is with a good deal of concern and disappointment that we found ourselves without the support of those departments despite many months of efforts to draft a mutually acceptable bill.

In our view, H.R. 2642 is faithful to the letter and the spirit of the Agreement. The departments have never articulated in writing any rational basis for their objections to the bill as introduced. We would welcome this committee's inquiries of the Administration in this regard, as we have been at a loss in getting a response to the bill.

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SUMMARY OF H.R. 2642 AND S. 1415

COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987

On December 10, 1986, the United States, Southern Ute Indian Tribe, Ute Mountain Ute Indian Tribe, State of Colorado, and numerous local water users in southwestern Colorado entered into the Colorado Ute Indian Water Rights Final Settlement Agreement (the Agreement). The purpose of the Agreement is to settle all claims by the Tribes and by the United States on behalf of the Tribes in the water adjudication proceedings pending in the Colorado District Court for Water Division No. 7, which litigation was filed in 1976.

The Agreement was preceded by another document--the June 30, 1986, Binding Agreement for Animas-La Plata Project Cost Sharing. This agreement provides for non-federal financing of part of the construction cost of the Animas-La Plata Project, the project being an integral component of the settlement.

In order to implement certain provisions of these two agreements, federal legislation will be required. It is for this reason that the subject bills have been introduced.

SECTION 1. SHORT TITLE

Colorado Ute Indian Water Rights Settlement Act of 1987.

SECTION 2. FINDINGS

This section sets forth the congressional findings upon which the legislation is premised.

SECTION 3. DEFINITIONS

This section defines certain terms used in the act.

SECTION 4. PROJECT RESERVED WATERS

Subsection (a) authorizes the Secretary of the Interior (the Secretary) to use water from the Animas-La Plata and Dolores Projects to supply the project reserved water rights of the two Tribes in accordance with the Agreement. Subsection (b) provides that federal reclamation laws shall not apply to the project reserved water supplied to the Tribes from the projects except to the extent that those laws may also apply to the Tribes' other reserved waters.

SECTION 5. TRIBAL WATER USE CONTRACTS

Subsection (a) authorizes each Tribe, subject to the Secretary's approval, to enter into water use contracts to sell, exchange, lease, or otherwise temporarily dispose of water in

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accordance with Article V of the Agreement. The Tribes are not, however, authorized to permanently alienate any water right. Subsection (c) states that the authorization provided for in subsection (a) shall not amend, construe, supersede, or preempt any state law, federal law, interstate compact, or international treaty that pertains to the Colorado River or its tributaries.

Subsection (b) sets forth the procedures and criteria by which the Secretary shall review and approve or disapprove of any water use contract submitted by a Tribe.

Subsection (d) provides that the proceeds from a water use contract may not be used for per capita payments to members of either Tribe.

SECTION 6. REPAYMENT OF PROJECT COSTS

Subsection (a) provides that the Secretary shall defer, without interest, the repayment of the construction costs which are allocable to each Tribe's municipal and industrial water allocation from the Animas-La Plata and Dolores Projects until water is first used. O & M costs are likewise deferred. When an increment of its allocation is first used by a Tribe, repayment of that increment's pro rata share of construction costs commences and the Tribe begins to bear the pro rata share of O & M costs.

Subsection (b) makes the same provisions for each Tribe's agricultural irrigation water allocation from the two projects, except that O & M costs are deferred only for the Animas-La Plata Project.

Subsections (c) and (d) provide for further deferrals of the financial obligations of the Tribes with respect to the Animas-La Plata and Dolores Projects under certain circumstances.

Subsection (e) defines when water shall be deemed to be used by the Tribes for the purpose of determining when their financial obligations pursuant to subsections (a) through (d) are triggered.

Subsection (f) authorizes the appropriation of such funds to the Secretary as are needed to pay for the O & M costs which the Secretary is to bear pending the use of water by the Tribes.

Subsection (g) implements a provision of the June 30, 1986, Animas-La Plata Project cost sharing agreement. It provides that the costs of the Animas-La Plata Project which are in excess of the irrigators' ability to repay and which are therefore to be repaid from the Upper Colorado River Basin Fund shall be so repaid in 30 equal annual installments from the date that water is first available for use.

SECTION 7. TRIBAL DEVELOPMENT FUNDS

Subsection (a) establishes a tribal development fund for each Tribe and authorizes the appropriation of a total of $49.5

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million payable in three annual installments to the two funds. Subsection (b) provides for the additional payment of interest if the three annual installments authorized by subsection (a) are not made as called for by that subsection.

Subsection (c) sets forth how monies in the two funds shall be invested by the Secretary and the process by which each Tribe may submit its own tribal investment plan. Further provision is made for the submittal by the Tribes to the Secretary of economic development plans for the expenditure of the monies in a fund.

Subsection (d) provides that no part of the principal of the tribal development funds, or of the income accruing from such funds, shall be distributed to a member of either tribe on a per capita basis.

SECTION 8. WAIVER OF CLAIMS

This section authorizes the Tribes to waive and release claims concerning or related to the water rights described in the Agreement and conditions the performance of the Secretary's obligations under the act upon the Tribes' execution of such waivers and releases.

SECTION 9. ADMINISTRATION

This section authorizes the Secretary to comply with the administrative procedures set forth in Article IV of the Agreement when exercising his authority to administer water rights on the Tribes' reservations.

SECTION 10. INDIAN SELF-DETERMINATION ACT

This section provides that design and construction of the Animas-La Plata and Dolores Projects by the Bureau of Reclamation shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act. Any preference provided the Tribes by virtue of this section shall not detrimentally affect the construction schedules of the projects.

SECTION 11. RULES OF CONSTRUCTION

This section provides how the act shall be construed.

SECTION 12. EFFECTIVE DATE

This section provides that sections 4(b), 5, and 6 shall take effect on the date on which the final consent decree is entered by the Colorado District Court. This section further prescribes how monies appropriated to the tribal developmental funds shall be handled pending the entry of the final consent decree or in the event the decree is not entered by December 31, 1991.

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The CHAIRMAN. Thank you.

I thought I recognized the gentleman on your immediate right. At one time, during the sixties, when we were fighting for the Central Arizona project plan, he was with the Ute water folks over there, and he may be a defector to Colorado. Keep your eye on him.

Mr. WOODARD. Pretty fast on his feet.

The CHAIRMAN. Fast, but he is honest.

Mr. WOODARD. Yes, he is.

The CHAIRMAN. See if we can get the attention of the Administration, which is sometimes hard to do. Keep after us, and I will talk to the staff and see what we can do with Congressman Campbell.

Mr. WOODARD. Mr. Chairman, I have presented a copy of my formal statement previously to the staff.

The CHAIRMAN. All right.

Mr. GOSLIN. Mr. Chairman?

The CHAIRMAN. Yes, sir?

Mr. GOSLIN. Mr. Chairman, you have made a remark earlier in the proceedings here this afternoon about our mutual friend, Mr. Aspinall, looking over your shoulder, and I want to say to you, I am rather proud to be sitting here and having a mutual friend of mine looking over my shoulder from the back wall.

The CHAIRMAN. I am at a loss for words.

Mr. GOSLIN. You are never at a loss for words, Mo, don't fool me.

The CHAIRMAN. Mr. Campbell?

Mr. CAMPBELL. I am not at a loss for words. I have got a couple.

I think one of the misconceptions about this bill is it is perceived to be an Indian bill. I look at it as a Colorado-New Mexico bill, including Indian people and everybody else, too, and I am concerned not only with what it is going to cost taxpayers if we build the thing at Animas-La Plata in the form of litigation, attorneys' costs and so on—and I heard during one of the discussions several times that if the tribes went to court if this was not implemented, the legislation, and we didn't build the Animas-La Plata and the tribes went to court, pursued it all the way to the Supreme Court and were in fact—did get their legal right to the water they are entitled to, that it will take out something like 25 percent of all non-Indian owned irrigated farm land to supply those rights.

That was one of the things I heard, and I know there are several cases around the country that have gone to extreme costs in litigation, one being between the State of Wyoming, I believe it is, and maybe the Wind River Shoshone—that is what it is.

Could you tell me what has been spent in litigation up there so far?

Mr. WOODARD. Just quickly, Congressman Campbell, I believe that the loss of water to non-Indian irrigators, as well as municipal and industrial users in the San Juan Basin of southwestern Colorado would be in excess of 25 percent if we went forward with litigation, and all of the attendant bad feelings that would probably engender.

No. 2, with regard to the status of the litigation involving the State of Wyoming and the Wind River Reservation involving the Shoshone and Arapahoe Tribes, I have been informed by members of the Wyoming attorney general's office that they have spent in

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excess of $11 million on that litigation thus far, and it is nowhere near a final conclusion.

I would have to assume that the U.S. Department of Justice has matched up dollar for dollar with the State of Wyoming, and when we talk about the San Juan River Basin and the things that are found in that basin from the easternmost part of the basin at the San Juan Mountains to the Ute line on the west, we are talking about a much more complicated and diverse stream system than we find in the State of Wyoming on the Wind River, so I believe that anything that happened between the State of Wyoming and the Department of Justice involving $11 million expended by the State of Wyoming and a like amount, I presume, by the Feds, would be matched and more in the San Juan Basin.

Mr. CAMPBELL. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, gentlemen. We appreciate your help here today.

The CHAIRMAN. I have got to leave, and our next witness will come up—Ross Swimmer, Assistant Secretary for Indian Affairs, Department of the Interior; and Wayne Marchant, Deputy Assistant Secretary for Water and Science, Department of the Interior.

I am going to leave things in charge here with Congressman Campbell for a while.

STATEMENT OF WAYNE MARCHANT, DEPUTY ASSISTANT SECRETARY FOR WATER AND SCIENCE, U.S. DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY ROSS O. SWIMMER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS

Mr. MARCHANT. Thank you.

I am Wayne Marchant, Principal Deputy to the Assistant Secretary for Water and Science, and I am accompanied by Ross Swimmer, the Assistant Secretary for Indian Affairs. We are here today with pleasure to present the views of the Department of the Interior on H.R. 2642.

As you are aware, on December 10, 1986, the two Colorado Ute Tribes, the State of Colorado, several other parties and representatives of the Federal Government entered into a "Final Settlement Agreement" for the purpose of settling the outstanding water claims of the tribes on several streams in southwest Colorado.

In this instance, as is typical in situations like this one, exercise of the 1868 priority date of the tribes' Federal reserved water rights claims could severely disrupt the existing regimen of water use on those streams.

By way of compromise, and in an admirable display of community spirit, the tribes have agreed to forego this early priority date in return for water supplied from the Dolores and Animas-La Plata projects.

And I would add a personal note. It was my privilege to participate in the negotiations that led to the cost sharing agreement and the settlement document, and I would observe, as others have, that it is truly extraordinary that we are here today.

The spirit of cooperation and compromise that prevailed throughout all of those negotiations I think is a real testament to the community spirit that exists in that part of Colorado.

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We support legislation to implement the December 10, 1986, final settlement agreement. However, as presently drafted, H.R. 2642 differs from the final settlement agreement in several important respects.

We stand ready to work with the non-Federal parties on legislation consistent with our previous agreements regarding Ute Indian water rights and construction of the Animas-La Plata project.

We want to emphasize the interests we have had in pursuing the Animas-La Plata project. This Administration has long had as a standard for new water projects that the projected long term benefits of the project must at least equal its projected costs.

Under this standard, the Animas-La Plata project is not economically feasible at current discount rates although it would be considered economically feasible at its authorized discount rate of 3.25 percent.

In evaluating this project, we have considered the benefit cost standard, non-Federal cost sharing, and water rights settlement concerns. We have, therefore, decided to participate in the Animas-La Plata project because it combines Federal construction expenditures with non-Federal monies to produce a project that provides for water development and settles the Indian water claims.

The Animas-La Plata project will provide a means to satisfy the water claims of the Colorado Ute Tribes, while leaving intact the historical uses already in place on these streams. As trustee for these tribes, the Department of the Interior desires to see the tribes establish secure and valuable water rights that will be of true benefit to the tribes, rather than mere "paper" water rights. The project provides an opportunity to achieve these objectives.

Without doubt, the single most controversial aspect of this bill is Indian water leasing. The bill provides for the tribes to have the opportunity to lease water provided by the settlement for off-reservation use both in the State of Colorado and out of State.

We must emphasize here that the December 10 agreement provides for in-State leasing subject to Colorado procedural law, and for out-of-State leasing subject to a judicial determination of the tribes' right to do so given the "law of the river" and Colorado's antiexport statute.

In other words, there was to be no guarantee, either in the agreement or in the legislation, that the tribes would be able to lease out of State, but neither would there be a prohibition.

If the right to lease out-of-State the water provided by this settlement is established by the tribes judicially, we expect that at least two benefits would result:

For the tribes, water from the settlement would become a source of capital to plan and develop reservation economies.

For the United States, Indian water leasing would establish an improved potential for the economic use of project water and thereby enhance project repayment.

At this point, we will outline the process that was used to develop the implementing legislation. The December 10, 1986, agreement requires legislation to implement some of its provisions.

The settlement agreement also provides that before the settlement can become effective, the State of Colorado, the tribes and

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the United States must each certify that the legislation is satisfactory.

In the months following the settlement agreement, we worked with the non-Federal parties to draft that implementing legislation. Concern by the non-Federal parties that the implementing legislation be introduced in time for enactment by the 100th Congress led to the introduction of H.R. 2642 before we had come to full agreement on certain of its provisions.

In addition to those unresolved issues, H.R. 2642 introduces some new issues which we have not had an opportunity to discuss with the non-Federal parties and changes some language we had previously agreed upon.

Accordingly, before the committee completes its work on H.R. 2642, we are persuaded that further meetings of the parties are necessary to resolve the substantive and technical differences. We would be pleased to participate in any efforts the committee might undertake to facilitate the resolution of these issues.

In closing, we want to express our appreciation for this opportunity to appear today before the committee. We will now be happy to respond to any questions you may have.

[Combined prepared statements of Mr. Marchant and Mr. Swimmer follow:]

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STATEMENT OF
WAYNE MARCHANT, DEPUTY ASSISTANT SECRETARY FOR WATER AND SCIENCE
AND
ROSS O. SWIMMER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS
WITNESSES FOR THE DEPARTMENT OF THE INTERIOR
BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
ON H.R. 2642, A BILL "TO FACILITATE AND IMPLEMENT THE SETTLEMENT OF COLORADO UTE INDIAN RESERVED WATER RIGHTS CLAIMS IN SOUTHWEST COLORADO, AND FOR OTHER PURPOSES."

September 16, 1987

Mr. Chairman and members of the Committee, we are here today to present the views of the Department of the Interior on H.R. 2642, "The Colorado Ute Indian Water Rights Settlement Act of 1987."

As you are aware, on December 10, 1986, the two Colorado Ute Tribes, the State of Colorado, several other parties and representatives of the federal government entered into a "Final Settlement Agreement" for the purpose of settling the outstanding water claims of the tribes on several streams in southwest Colorado. In this instance, as is typical in situations like this one, exercise of the 1868 priority date of the tribes' federal reserved water rights claims could severely disrupt the existing regimen of water use on those streams. By way of compromise, and in an admirable display of community spirit, the tribes have agreed to forego this early priority date in return for water supplied from the Dolores and Animas-La Plata Projects.

We support legislation to implement the December 10, 1986, Final Settlement Agreement. However, as presently drafted, H.R. 2642 differs from the Final Settlement Agreement in several important respects. We stand ready to work with the non-federal

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parties on legislation consistent with our previous agreements regarding Ute Indian water rights and construction of the Animas-La Plata Project.

We want to emphasize the interests we have had in pursuing the Animas-La Plata Project. This Administration has long had as a standard for new water projects that the projected long-term benefits of the project must at least equal its projected costs. Under this standard, the Animas-La Plata Project is not economically feasible at current discount rates, although it would be considered economically feasible at its authorized discount rate of 3.25 percent.

In evaluating this project, we have considered the benefit/cost standard, non-federal cost-sharing, and water rights settlement concerns. We have, therefore, decided to participate in the Animas-La Plata Project because it combines federal construction expenditures with non-federal monies to produce a project that provides for water development and settles the Indian water claims.

The Animas-La Plata Project will provide a means to satisfy the water claims of the Colorado Ute tribes, while leaving intact the historical uses already in place on these streams. As trustee for these tribes, the Department of the Interior desires to see the tribes establish secure and valuable water rights that will be of true benefit to the tribes, rather than mere "paper" water rights. The project provides an opportunity to achieve these objectives.

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Without doubt, the single most controversial aspect of this bill is Indian water leasing. The bill provides for the Tribes to have the opportunity to lease water provided by the settlement for off-reservation use both in the State of Colorado and out of state. We must emphasize here that the December 10 Agreement provides for in state leasing subject to Colorado procedural law, and for out of state leasing subject to a judicial determination of the tribes' right to do so given the "Law of the River" and Colorado's anti-export statute. In other words, there was to be no guarantee, either in the Agreement or in the legislation, that the tribes would be able to lease out of state, but neither would there be a prohibition.

If the right to lease out of state the water provided by this settlement is established by the tribes judicially, we expect that at least two benefits would result:

--For the tribes, water from the settlement would become a source of capital to plan and develop reservation economies.

--For the United States, Indian water leasing would establish an improved potential for the economic use of project water and thereby enhance project repayment.

At this point we will outline the process that was used to develop the implementing legislation. The December 10, 1986, Agreement requires legislation to implement some of its provisions. The settlement agreement also provides that before the settlement can become effective, the State of Colorado, the tribes and the United States must each certify that the

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legislation is satisfactory. In the months following the settlement agreement, we worked with the non-federal parties to draft that implementing legislation. Concern by the non-federal parties that the implementing legislation be introduced in time for enactment by the 100th Congress led to the introduction of H.R. 2642 before we had come to full agreement on certain of its provisions. In addition to those unresolved issues, H.R. 2642 introduces some new issues which we have not had an opportunity to discuss with the non-federal parties, and changes some language we had previously agreed upon. Accordingly, before the Committee completes its work on H.R. 2642, we are persuaded that further meetings of the parties are necessary to resolve the substantive and technical differences. We would be pleased to participate in any efforts the Committee might undertake to facilitate the resolution of these issues.

In closing, we want to express our appreciation for this opportunity to appear today before the Committee. We will now be happy to respond to any questions you may have.

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Mr. CAMPBELL [presiding]. I wonder if I could interrupt just a bit before I ask any questions.

Did you also have a statement, Mr. Secretary?

Mr. SWIMMER. No, I concur with the statement, and Indian Affairs is very satisfied with the progress in this settlement.

Mr. CAMPBELL. If we can take a break, then? I would like to introduce Senator Domenici, who is co-sponsoring this legislation, and I appreciate your coming over. I didn't know if you were going to be able to make it or not.

STATEMENT OF HON. PETE V. DOMENICI, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Mr. DOMENICI. Mr. Chairman, I very much appreciate your accommodating me. I won't take a lot of your time or the time of your members or witnesses. I would ask that a statement indicating my reasons for support be made a part of the record.

Mr. CAMPBELL. Yes, sir.

Mr. DOMENICI. —First, Mr. Chairman, I want to thank you and the committee for the expeditious handling of this legislation. Obviously, this committee has many difficult jobs, and with the huge issues that are around, I am very appreciative that you have had time to proceed with this one at this time.

You already know that this is a very vital project to New Mexico. Most of the issues here in this legislation seek to clear up water issues and related issues on the Colorado side. We cannot construct the Animas-La Plata project unless the issues that are the subject matter of this legislation, which I am co-sponsoring in the Senate, are resolved.

New Mexico stands to get an average of 54,000 acre-feet of water a year, and I think you are aware of the fact that the remaining acreage is for the State of Colorado. We have been waiting patiently since 1968 when we were promised this project.

We thought we were as much entitled to this project as the others that were adopted simultaneously on the Colorado, but had to be last and wait our turn. We want this project so much and need it that we are going to have to pay a substantial portion of its cost, as far as the non-Federal Government share, and we are willing to do that.

That has been put together and I understand, Mr. Chairman, that the non-Federal share is much higher than other projects, 38 percent. We are willing to do that, too.

The two Indian tribes that are involved in this legislation had a huge lawsuit from which they probably would have recovered substantial amounts of money from the Federal Government.

They have been patient and very cooperative. We have before us now the legislation that will settle those longstanding disputes, which probably would have adversely affected both States and the whole basin had they prevailed, and cost the Government a lot of money.

Rather than go that route, this legislation solves those problems by resolving the disputes and granting some privileges to the tribes that they wouldn't otherwise have regarding the water and removing them from the application of some laws that would otherwise

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apply. None of this in my opinion should cause us to hesitate in passing this legislation.

Overall, when you put it together, I think the summary is it is time. We have waited patiently. The Indian people have. Both States have. We are not there yet. Obviously, this is a very big project. These agreements are somewhat meaningless unless and until we get the whole project moving and completed, and I think a good balance has been struck.

I am hopeful that the Indian people in the State of Colorado will come out well. I think our State will come out well, and we put up our share in a cost sharing arrangement, and did so quickly.

So I am here today to do three things—to thank you for expeditious treatment, to urge that you proceed with dispatch; and to commit as best I can that we will proceed in the Senate as expeditiously as on your side.

I do note that one of New Mexico's leading water experts is here, Steve Reynolds. With your permission, I do want to welcome him, and I am sure that even if he is not testifying, he will contribute substantially by way of background information and expertise to the accomplishment of our goals here, and the protection of everyone.

Thank you very much, Mr. Chairman.

[Prepared statement of Mr. Domenici follows:]

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STATEMENT OF SENATOR PETE V. DOMENICI
ON H.R. 2642,
THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

September 16, 1987

Mr. Chairman,

Thank you for permitting me to testify before the Committee today. Although the provisions of the Colorado Ute Indian Water Rights Settlement Act do not directly affect the State of New Mexico, the passage of this legislation is vital to the Animas-La Plata Project, which will supply much-needed water to northwestern New Mexico. As a cosponsor of the companion measure in the Senate, S. 1415, I come before you today to encourage you to approve H.R. 2642.

The Animas-La Plata Project is needed to provided water to northwestern New Mexico and southwestern Colorado. The beneficiaries of project are diverse. They include residents of two states, three Indian tribes, municipalities, farmers and ranchers, business owners, and sportsmen.

The Animas-La Plata Project will supply an average of 54,000 acre-feet of water to New Mexico per year. The remaining 144,000 acre-feet will go to Colorado.

The Project is will allow New Mexico to put to use the water of Upper Colorado River Basin to which it is entitled. It will ensure that water is available in the future to support the population, industry, and agricultural enterprises of communities in northwestern New Mexico such as Farmington, Aztec, and Bloomfield, as well as the Navajo Reservation.

The Animas-La Plata Project has been on the drawing boards for over 30 years. In 1968, when Congress authorized the Central Arizona Project, it committed the Federal Government to the construction of the Animas-La Plata Project. However, in spite of that express commitment, construction has yet to begin on the Project.

Most recently, the Project had to overcome the twin hurdles presented by Public Law 99-88, which mandates non-federal cost-sharing for Federal reclamation projects, and various water claims and other legal claims made by the Ute Mountain Ute and Southern Ute Indian Tribes against the Federal Government.

Many thought it would be impossible to come up with either a cost-sharing agreement or a settlement of the Indian claims, but last year both goals were achieved.

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The projected cost of the Project, including the settlement of the Indian water rights claims, is $573 million. Pursuant to the cost-sharing agreement entered into by the parties that will benefit from the construction of the Project, the non-Federal parties to the agreement will contribute $212 million towards the construction of the Project and the settlement of the Indian water rights claims. This represents 37% of the combined costs of the Animas-La Plata Project.

I have long supported cost-sharing, not only to reduce Federal expenditures, but also as a means of evaluating the true need of a project. I would like to point out that very few Federal projects have as a high a level of non-federal participation as does the Animas-La Plata Project. As I am sure the Chairman is aware, non-federal entities have borne only 9.5% of the cost of the Central Arizona Project, although the two projects were authorized at the same time.

The cost-sharing agreement was the product of much negotiation. Considering the number of parties and the long-standing problems between them, it is amazing that an agreement could be reached.

The 1986 Colorado Ute Indian Water Rights Final Settlement Agreement represents an historic settlement of Indian water rights claims and settles other claims that the tribes have against the Federal Government. That agreement is predicated on the construction of the Animas-La Plata Project, which is far less costly than the potential liability of the Federal Government for the claims of the Colorado Ute Indian Tribes.

H.R. 2642 and S. 1415 are needed to implement the Animas-La Plata cost-sharing agreement and the Colorado Ute Indian water rights agreement. These bills provide statutory authority for a number of provisions in those two agreements, including provisions on the use of water from the Animas-La Plata Project by the Colorado Ute Indian Tribes, the establishment of tribal development funds, and the bill before you has been carefully crafted by many parties.

Mr. Chairman, the Colorado Ute Indian Water Rights Settlement Act is supported by all the members of both the Colorado and the New Mexico Congressional delegations and the States of New Mexico and Colorado. This legislation is needed in order for the Animas-La Plata Project to move forward. There is no question that Colorado and New Mexico have given their support over the years for Lower Colorado River Basin projects that have allowed the Lower Basin States to conserve water, furnish water to arid lands, and preserve the Colorado River. It is not time for the Upper Basin States of New Mexico and Colorado to be given the right to devlop the water rights to which they are entitled. I hope that the Committee will act favorably on this legislation in the near future so that construction on the Animas-La Plata Project, which has been delayed so long, can finally begin.

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Mr. CAMPBELL. Thank you for your testimony.

I will be glad to defer, if you have any questions you would like to ask Secretary Swimmer or Mr. Marchant. I know you didn't hear much of the testimony, but you——

Mr. DOMENICI. I might ask the Secretary one question.

Mr. Secretary, while you have obviously been involved in the Indian water part of this intimately, the Secretary of the Interior has been involved in working with OMB and others on the funding of the project. And I just wonder if you know, are you now within the Administration really committed to not only this legislation, but to proceeding ahead with the project?

Mr. SWIMMER. I believe I can answer that affirmatively, that we are in agreement with the project. We support legislation that will effect the settlement agreement reached by the parties, and I think that with a minor amount of time, some of the drafting concerns that we have can be taken care of.

Earlier, I listened to the testimony of the attorney general, Duane Woodard, from the State of Colorado. What he says is what we agree with. Now, we want to be sure we get that in the language and that we all agree the language says that, and that is basically where we are. But we are in support of this process and believe that it is the right way to go in this instance, not only to settle these claims, but to substantially improve the lives and being of a lot of people out in that country.

Mr. DOMENICI. Mr. Chairman, the reason I asked that question is that we have in the past had two issues bouncing off this Administration—one, the funding of the project, and two, the settlement of the Indian water claims. From time to time, I have heard that we will never get them both done. Since we are resolving one here, I want to be sure that the Administration is firmly committed to the other aspect, which is the construction of the project.

Mr. SWIMMER. Yes, that is true.

Mr. CAMPBELL. Thank you. Appreciate your testimony, sir. That answered two of my questions, too, so let me go to a couple of others.

You mentioned there were several differences, Mr. Marchant—we are going to have to run in a few minutes. Take a few minutes more before we take a break. You said it was—as I understood your testimony, the Administration didn't think it was economically feasible, but it is going to support it.

Also, the question of water leasing, as I understand the language, and as we heard the attorney general mention under 5(c), it is neutral. It leaves it really to future judicial settlement. Doesn't address it one way or the other. Apparently, your interpretation is different.

Is that true, or have you had a chance to study it?

Mr. SWIMMER. The legislation differs from the agreement. I am not an attorney myself, but I would like to report that there are at least two issues we think are sufficient, substantive and deserve some discussion.

One of those is the characterization available to the tribes through this agreement. The second issue deals with leasing, and it is the advice of our counsel that there are some substantive differ-

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ences between the agreement we reached in December and the language of the legislation as it is now drafted.

We don't think that either of those issues is insurmountable, and I have already expressed our willingness, and from a personal perspective, eagerness to sit down with the parties. There are, in addition, a few issues that are strictly technical that we need not deal with today.

None of them, in my view, is insurmountable.

Mr. CAMPBELL. I have written to the Department on two different times, once in June and once in August, and I am still waiting for a response. Also heard the attorney general mention the same thing. They have written several times and haven't gotten any kind of responses.

I know I have had some complaints about the Federal mails, and we aren't that far apart, and I wonder why we haven't gotten responses from letters sent in June or August that I have written on this.

Mr. MARCHANT. Mr. Chairman, I would like to give the mail credit for that tardiness—I would like to, but I can't. I think the fact that we are tardy is simply a reflection of the complexity of the bill, and the fact it includes the concerns of the Department of the Interior, Justice, reclamation issues which are my concern and tribal issues which are Secretary Smimmer's concerns. We have expended a lot of energy trying to reach consensus.

We are close in the Administration now. In fact, we have consensus in the Administration, and it remains only for us to——

Mr. CAMPBELL. When you have the time to look at it, you will give us a written explanation of your differences?

Mr. MARCHANT. Absolutely.

Mr. CAMPBELL. Can you give me a tentative date we can expect that?

Mr. MARCHANT. We will have a letter, any luck at all, and barring Postal Service—we will get to you within 1 week or 10 days.

Mr. CAMPBELL. And also, you mentioned your willingness to sit down with the tribes in Colorado, too, to amend the language. Is that—could we foresee moving forward to that, too, and not waiting 3 or 4 months? Could we depend on you to do that also in the short time?

Mr. MARCHANT. Certainly.

Mr. CAMPBELL. All right.

Let's see, maybe one other thing, too. Well, I will skip that one. Let me just hold on just a minute to look through my notes just a moment. I think that will be all, and I appreciate your testimony.

Mr. SWIMMER. Thank you.

Mr. MARCHANT. Thank you.

Mr. CAMPBELL. Thank you, Secretary Swimmer, too.

We have a quorum call on, so I will call a 10-minute recess if people would like to get a cup of coffee or relax here for about 10 minutes. We will be out for about 10.

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AFTER RECESS

Mr. CAMPBELL. The hearing will be back in order.

The next witnesses will be mayor Thomas Taylor from the city of Farmington, New Mexico; and Mr. Steve Reynolds from the New Mexico Interstate Stream Commission. And we will proceed with mayor Taylor, if it is all right.

PANEL CONSISTING OF THOMAS TAYLOR, MAYOR, CITY OF FARMINGTON, NEW MEXICO; AND STEVE REYNOLDS, SECRETARY, NEW MEXICO INTERSTATE STREAM COMMISSION

Mr. TAYLOR. Mr. Chairman, I thank you for the opportunity to be able to speak to you this afternoon. I am Tom Taylor, mayor of the city of Farmington, New Mexico, and I am representing the San Juan Water Commission here today.

It was a milestone in New Mexico water history last year when officials representing the cities of Aztec, Bloomfield and my city of Farmington, San Juan County, New Mexico, and the San Juan Rural Water Users Association joined to form the commission.

The commission is to be responsible for the repayment and allocation of the State of New Mexico's share of the waters of the of the Animas-La Plata project. New Mexico is entitled to 30,000 acrefeet of water to be used for the benefit of the citizens, municipalities, water user associations and industries in San Juan County.

Farmington only received about 6 inches of rain a year. Virtually every living thing in my community depends on the flow in that river. It is critical to our future, to the growth and development of my city and to the areas in northwest New Mexico.

We in New Mexico have long supported the Animas-La Plata Project, not only for the benefits which it will bring to our communities, but also for the benefits that will accrue to our neighbors in Colorado. Our friends in Colorado have given us the opportunity to participate not only in the negotiations for the cost sharing agreement, which was mandated by the Congress and successfully concluded on June 30, 1986, but also in the historic Indian Water Rights Settlement Agreement, which is the subject of legislation under consideration today.

These agreements were made in good faith reliance upon Federal promises which include not only the law of the river, but treaties over 100 years old between the Ute Indians and U.S. Government.

The alternative to this legislation is litigation which would cost millions of dollars, take decades to resolve and cause enormous disruption of non-Indian water rights, both in Colorado and New Mexico. Litigation can and should be avoided by passage of this legislation.

The citizens of New Mexico and Colorado have a vital interest and a vested right to use of the water and the benefits of the Animas-La Plata project as granted and protected by prior congressional action, by interstate compacts involving the Colorado River and by treaties with the Indian tribes.

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It is our strong belief that the passage of this legislation and the construction of the Animas-La Plata project will enable our entire region to obtain the economic benefits which can flow from the maximum utilization of our precious water resources. Water is essential to our economy. We in New Mexico request your support for the passage and implementation of this legislation.

Thank you.

[Prepared statement of Mr. Taylor follows:]

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STATEMENT OF
THOMAS C. TAYLOR
MAYOR, CITY OF FARMINGTON, NEW MEXICO
MEMBER, SAN JUAN COUNTY, NEW MEXICO, WATER COMMISSION
BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
regarding
H.R. 2642
THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987
WASHINGTON, D.C.
September 16, 1987

I am Tom Taylor, Mayor of the City of Farmington, New Mexico, and I am here today representing the San Juan Water Commission of Northwestern New Mexico.

It was a milestone in New Mexico water history last year when officials representing the cities of Aztec, Bloomfield and Farmington, San Juan County, New Mexico, and the San Juan Rural Water Users Association agreed to form the Commission. The Commission is to be responsible for the repayment and allocation of the State of New Mexico's share of the waters of the Animas-La Plata Project. New Mexico is entitled to 30,000 acre-feet of water to be used for the benefit of the citizens, municipalities, water user associations and industries in San Juan County. This supply of water out of the Animas River is critical to the future growth and development of my city and our area of northwestern New Mexico.

We in New Mexico have long supported the Animas-La Plata Project, not only for the benefits which it will bring to our communities but also for the benefits that will accrue to our neighbors in Colorado. Our friends in

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Colorado have given us the opportunity to participate not only in the negotiations for the Cost Sharing Agreement which was mandated by the Congress and successfully concluded on June 30, 1986, but also in the historic Indian Water Rights Settlement Agreement which is the subject of legislation under consideration today. These agreements were made in good faith reliance upon federal promises which include not only the law of the river but treaties over 100 years old between the Ute Indians and United States Government. The alternative to this legislation is litigation which could cost millions of dollars, take decades to resolve and cause enormous disruption of non-Indian water rights both in Colorado and New Mexico. Litigation can and should be avoided by passage of this legislation.

The citizens of New Mexico and Colorado have a vital interest and a vested right to use of the water and the benefits of the Animas-La Plata Project as granted and protected by prior congressional action, by interstate compacts involving the Colorado River and by treaties with the Indian Tribes.

It is our strong belief that the passage of this legislation and the construction of the Animas-La Plata Project will enable our entire region to obtain the economic benefits which can flow from the maximum utilization of our precious water resources. Water is essential to our economy.
We in New Mexico request your support for the passage and implementation of this legislation

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Mr. CAMPBELL. Thank you, mayor Taylor. I have no questions of you, and if you would like to proceed, Mr. Reynolds—and I might mention we are trying to keep it to a 5-minute testimony, if we can. We have a lot of people.

Mr. REYNOLDS. I will try, Mr. Chairman.

Mr. CAMPBELL. Your full testimony will be in the record anyway, in writing.

Mr. REYNOLDS. Thank you, Mr. Chairman, and members of this distinguished committee. Public Law 90-537 was enacted in September of 1968, and authorized a Central Arizona project and also the Animas-La Plata project, along with other Upper Colorado River Basin projects.

The act accommodated the interests of all seven of the Colorado River Basin States after decades of controversy, litigation and negotiation. I am confident that the witnesses here today representing the other Colorado Basin States will acknowledge the accord that led to the enactment of the legislation authorizing the Central Arizona project.

Section 501(b), that act directs the Secretary to proceed as nearly as practical with the construction of the Animas-La Plata project concurrently with the construction of Central Arizona project to the end of the former shall be completed not later than the date of the first delivery of water from the Central Arizona project.

The first delivery of water from that project was made in March. It was 1985. Obviously, the goal of section 5(d)(1)(b) can't be met. Some delay in the initiation of construction of the Animas-La Plata project was justified for the reason that the Bureau's definite plan report requires substantial change in the project configuration.

Whether or not the construction of the Animas-La Plata project could have been completed in the timely manner contemplated by Congress is now moot. The section 5(d)(b) is an element of that accord among the seven States that was insisted upon by Congressman Wayne Aspinall of Colorado to make clear the Federal commitment to implement the 7-State consensus.

The Bureau's definite plan report shows that the Animas-La Plata project could furnish a water supply of some 14,200 feet for irrigation in New Mexico, about half of that supplemental service lands rather than newly irrigated lands.

The project could also furnish 900 acre-feet of water annually for 380 fill surface acres on that portion of the Ute Mountain Indian Reservation in New Mexico. Also, been capable of furnishing 38,400 acre-feet of water annually for municipal, industrial use in San Juan County, New Mexico; Farmington, Aztec, Bloomfield, rural communities adjacent to those cities, and for Shiprock; the latter a town on the Navaho Indian Reservation in New Mexico.

By the enactment of Public Law 99-88 in August of 1985, Congress profoundly altered the rules of the game that had been set by earlier Federal legislation. That 1985 act provided that none of the funds it appropriated could be extended to undertake construction of the Animas-La Plata project except under terms and conditions acceptable to the Secretary of the Interior as set forth in a binding cost sharing and financing agreement.

Presumably, the objective of that 1985 act was to hold down the Federal budget deficit, an objective which we all have shared. The

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people in New Mexico understand that the Federal Government's financial status has changed since 1968, when the Animas-La Plata project was authorized.

Mr. Chairman, I think that Congressman Wayne Aspinall would have understood the need to change the rules in the middle of the game, and I am sure that he would have welcomed the opportunity to settle the Colorado Ute Indian water rights claims by enacting H.R. 2642 and constructing the Animas-La Plata project.

A part of the strategy of that 1985 act was to test whether the project beneficiaries truly believed the project is worthwhile. The Animas-La Plata project beneficiaries have met that test by a joint powers agreement under State law. The cities of Aztec, Bloomfield, Farmington of San Juan County, and the San Juan Rural Water Users Association have agreed on an allocation of the water available in the Animas-La Plata project, and an ad valorem tax sufficient to finance during the construction of the project the cost allocatable to industrial and municipal water supply of 30,800 acre-feet.

That cost is estimated to be $12.8 million. The New Mexico Interstate Stream Commission, upon which I serve as secretary, agreed to the deferral of facilities required for the irrigation of 1900 acres of full service land in New Mexico, and the construction of those works by one or more non-Federal entities on such schedule as those entities deemed to be practical.

The cost thus deferred is estimated at $9 million. The effect of the June 30, 1986 agreement in principle concerning the Colorado Ute Indian water rights settlement and binding agreement for the Animas-La Plata project cost sharing that was approved by the Secretary of the Interior is to reduce the construction of the cost to be financed by the United States.

This is at October 1985 prices, from $500 million to $317 million. And that reduction in the Federal cost sharing burden was effected by the non-Federal entities in New Mexico and Colorado committing to pay up front $68 million of the construction costs and agreeing to the deferral of construction of project works costing $124 million, until the non-Federal entities deem it practical to finance that work.

The enactment of H.R. 2642, in construction of the Animas-La Plata Project, are needed to implement the negotiated settlement of the Colorado Ute Indian Tribe's reserved water rights stream. That negotiated settlement is consistent with the Justice Department's current vigorous efforts to negotiate rather than litigate Indian water right claims, and I am pleased to hear today, Mr. Chairman, that is the goal of this committee.

If the bill is not enacted, ill will and expensive, protracted litigation would be fostered. The outcome of that litigation is, of course, uncertain, but ultimately could require the—that facilities are payments more costly than the Federal share of the Animas-La Plata project to meet the United States trust obligations to the Colorado Ute Tribes.

I understand section 5 of the bill, which would authorize the use of tribal water rights off the tribe's reservations may be troublesome to some of the Colorado River Basin States.

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In the course of the negotiation of the June 1986 binding agreement for Animas-La Plata project cost sharing and financing, the New Mexico Interstate Stream Commission agreed to not oppose congressional action exempting the Southern Ute and Ute Mountain Indian Tribes from restrictions of the Non-Intercourse Act as those restrictions relate to the sale or lease of water for use of their respective reservations, provided that an agreement for financing and cost sharing for the Animas-La Plata project was executed as it has been.

Mr. Chairman, I believe that our concession on that point is not prejudicial to New Mexico's interests, and that is still our position. And on behalf of the State, Mr. Chairman, I urge this distinguished committee's favorable consideration of H.R. 2642, and I thank you for the opportunity to present this statement.

[Prepared statement of Mr. Reynolds follows:]

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STATEMENT
presented to the
HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
on
H.R. 2642
A BILL TO IMPLEMENT THE SETTLEMENT OF
THE COLORADO UTE INDIAN WATER RIGHTS CLAIMS
by
S. E. Reynolds
New Mexico State Engineer
September 16, 1987

Public Law 90-537, enacted on September 30, 1968, authorized the Central Arizona Project and also the Animas-La Plata Project along with several other Upper Colorado River Basin projects. The Act accommodated the interests of all seven of the Colorado River Basin states after decades of controversy, litigation and negotiation. I am confident that the witnesses here today representing the other Colorado River Basin states will acknowledge the accord that led to the enactment of the legislation authorizing the Central Arizona Project.

Section 501(b) of the Act directs the Secretary to proceed as nearly as practicable with the construction of the Animas-La Plata participating project concurrently with the construction of the Central Arizona Project to the end that the former shall be completed not later than the date of the first delivery of water from the Central Arizona Project; provided only that appropriate repayment contracts for the Animas-La Plata Project shall have been executed as provided in Section 4 of Public Law 84-485, the law authorizing the Colorado River Storage Project in the Upper Basin.

The first delivery of water from the Central Arizona Project was made in March of 1985; obviously the goal of Section 501(b)

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cannot be met. Some delay in the initiation of construction of the Animas-La Plata Project was justified for the reason that the Bureau's definite plan report required substantial change in the project configuration. Whether or not the construction of the Animas-La Plata Project could have been completed in the timely manner contemplated by Congress is now moot. But Section 501(b) is an element of the 1968 accord among the Colorado River Basin states insisted upon by Congressman Wayne Aspinall of Colorado to make clear the federal commitment to implement the seven-state consensus.

The Bureau of Reclamation's definite plan report shows that the Animas-La Plata Project, as authorized, would be capable of furnishing a water supply of 14,200 acre-feet annually for 4,530 acres of full-service lands and 3,760 acres of supplemental service lands within the La Plata Conservancy District near Farmington, New Mexico. The Project could also furnish 900 acre-feet of water annually for 380 full-service acres on that portion of the Ute Mountain Ute Indian Reservation within New Mexico.

The Project would also be capable of furnishing 38,400 acre-feet of water annually for municipal and industrial use in San Juan County, New Mexico, for the municipalities of Farmington, Aztec, Bloomfield, rural communities adjacent to those cities and for Shiprock, the latter a town on the Navajo Indian Reservation in New Mexico.

The Bureau of Reclamation's definite plan report shows that the Animas-La Plata Project would be capable of supplying 198,200

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acre-feet of water annually for use in Colorado and New Mexico; of that amount 53,500 acre-feet or 27 per cent would serve New Mexico facilities. The Animas-La Plata Project water supply for New Mexico would result in the beneficial consumptive use of about 34,100 acre-feet of New Mexico's apportionment under the Upper Colorado River Basin Compact of 1948. The Secretary of the Interior has acquired, pursuant to State law, the water rights needed for the New Mexico portion of the Project. The rights have a May 1, 1956, priority date.

By the enactment of Public Law 99-88 in August of 1985, Congress profoundly altered the "rules of the game" that had been set by earlier federal legislation. The 1985 act provided that none of the funds it appropriated could be expended to undertake construction of the Animas-La Plata Project, except under terms and conditions acceptable to the Secretary of the Interior as set forth in a binding, cost-sharing and financing agreement.

Presumably, the objective of the 1985 Act was to hold down the federal budget deficit, an objective which we all should share. The people of New Mexico understand that the federal government's financial status has changed since 1968, when the Animas-La Plata Project was authorized.

A part of the strategy of Public Law 99-88 was to test whether the project beneficiaries truly believe the project is worthwhile. The Animas-La Plata Project beneficiaries have met that test. By a Joint Powers Agreement under State law, the cities of Aztec, Bloomfield and Farmington, San Juan County and the San Juan Rural Water Users Association have agreed upon an allocation of the water to be made available by the Animas-La

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Plata Project and an ad valorem tax sufficient to finance during the construction of the Animas-La Plata Project the cost allocable to a municipal, industrial water supply of 30,800 acre-feet. That cost is estimated to be $12.8 million.

The New Mexico Interstate Stream Commission, upon which I serve as Secretary, agreed to the deferral of facilities required for the irrigation of 1900 acres of full-service land in New Mexico and the construction of those works by one or more non-federal entities on such schedule as those entities deem practicable. The cost thus deferred has been estimated at $9 million.

The effect of the June 30, 1986, "Agreement in Principle Concerning the Colorado Ute Indian Water Rights Settlement and Binding Agreement for Animas-La Plata Project Cost-sharing" that was approved by the Secretary of the Interior, is to reduce the construction cost financed by the United States from $509 million to $317 million. That reduction in the federal cost-sharing burden was effected by the non-federal entities committing to pay up-front $68 million of the construction cost and agreeing to the deferral of construction of project works costing $124 million until non-federal entities deem it practicable to finance the work.

Enactment of H.R. 2642 is needed to implement the negotiated settlement of the Colorado Ute Indian Tribes reserved water rights claims. That negotiated settlement is consistent with the Justice Department's current vigorous efforts to negotiate, rather than litigate, Indian water rights claims.

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If the bill is not enacted, ill-will and expensive, protracted litigation would be fostered. The outcome is uncertain, but ultimately could require facilities or payments more costly than the federal share of the Animas-La Plata Project to meet the United States trust obligation to the Colorado Ute Tribes.

I understand that Section 5, which would authorize the use of tribal water rights off the tribes' reservations, may be troublesome to some of the Colorado River Basin states. In the course of the negotiation of the June 1986 binding agreement for Animas-La Plata Project cost-sharing and financing, the New Mexico Interstate Stream Commission agreed to not oppose Congressional action exempting the Southern Ute and Ute Mountain Ute Indian Tribes from the restrictions of the Non-Intercourse Act (25 USC 177) as those restrictions relate to the sale or lease of water for use off their respective reservations; provided that an agreement for financing and cost-sharing for the Animas-La Plata Project has been executed pursuant to Public Law 99-88. I believe our concession on the point is not prejudicial to New Mexico's interests; and that is still our position.

On behalf of New Mexico I urge this distinguished Committee's favorable consideration of H.R. 2642; and I thank you for the opportunity to present this statement.

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Mr. CAMPBELL. Thank you, Mr. Reynolds, and mayor Taylor. I have no questions. I just would say, though, that your communities in northwestern New Mexico and mine in southwestern Colorado share a common past, and part of that common past, as I understand it from historians, has been that there were six civilizations who left that area because of lack of water.

And I would sure hope you do, too, that—we are not going to have a common future and be the seventh civilization to leave because of a lack of water.

Thank you, and I would like to defer to Congressman Rhodes, if he has any questions or comments.

Mr. RHODES. No questions, Mr. Chairman.

Mr. TAYLOR. I read the same history and I share your hope.

Mr. CAMPBELL. Part of it is frightening, if you think what happened could happen to us. Thank you.

Mr. CAMPBELL. The next witness will be Mr. Ralph Hunsaker, Central Arizona Water Conservation District, accompanied by Mr. Dennis Underwood and Mr. Jack Stonehocker. Oh, and excuse me, Barbara Markham, chief counsel from the Colorado Department of Water Resources. And we will start with Ralph Hunsaker.

STATEMENT OF RALPH HUNSAKER, CENTRAL ARIZONA WATER CONSERVATION DISTRICT, ACCOMPANIED BY BARBARA MARKHAM, CHIEF COUNSEL, ARIZONA DEPARTMENT OF HUMAN RESOURCES; DENNIS UNDERWOOD, EXECUTIVE DIRECTOR, COLORADO RIVER BOARD OF CALIFORNIA; AND JACK STONEHOCKER, EXECUTIVE DIRECTOR, COLORADO RIVER COMMISSION OF NEVADA

Mr. HUNSAKER. Yes, you did.

Mr. Chairman, I am Ralph Hunsaker. I am an attorney with O'Connor, Cavanagh, Anderson, Westover, Killingsworth & Beshears of Phoenix, Arizona. I represent the Central Arizona Water Conservation District; however, today I am also appearing on behalf of the Department of Water Resources of Arizona, the Colorado River Board of California, and the Colorado River Commission of Nevada. These three agencies have the responsibility to speak for their States on policy with regard to the management and use of the Colorado River.

I am accompanied by Barbara Markham, chief counsel, Department of Water Resources of Arizona; Dennis Underwood, executive director of the Colorado River Board of California; and Jack Stonehocker, director of the Colorado River Commission of Nevada.

Mr. Chairman, we have prepared a written statement and would like that to be included in the record.

Mr. CAMPBELL. Without objection, it will be included.

Mr. HUNSAKER. We appreciate the opportunity to testify before your committee on H.R. 2642.

The Colorado Ute Indian Water Rights Final Settlement Agreement on December 10, 1986 represents a complex and apparently comprehensive resolution of Winters water rights for the Ute Mountain Ute and Southern Ute Tribes on the stream systems involved.

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Two important principles regarding off-reservation use within Colorado are a part of that settlement: No. 1, the requirement that Winters rights be subject to State administration of water rights; and, two, subordination of the priority dates of each Winters right to protect junior appropriators.

We feel that these two principles represent a significant advance for the administration of Winters rights and believe they should be considered in every settlement of this character.

Our concern with the settlement is found in article V B(b) thereof, which provides for the use of Winters rights outside the State of Colorado.

Management and use of Colorado River water is governed by a series of interstate compacts, international treaties, U.S. Supreme Court decrees, Federal and State statutes, and contracts, collectively described as the law of the river, which apportions water rights between basins and among the seven Colorado River States, and establishes a priority system to the use of Colorado River water.

These documents, painfully developed over the past 65 years, have been relied upon institutionally by the seven Colorado River Basin States in the development of their apportioned Colorado River water and, in the case of Mexico, its annual guaranteed delivery of river water pursuant to the Mexican Water Treaty between the United States and Mexico.

A basic premise of the river's priority of use system is that water which cannot be beneficially used by a Colorado River right holder becomes available to meet the water needs of lower priority right users, which may not otherwise be met.

By the same token, unused apportionments of one State can be beneficially used by another State until such time as those waters are needed by the State to which the water was apportioned.

Given that the river has been fully apportioned and that the States' total apportionments and the delivery obligations pursuant to the Mexican Water Treaty far exceed the river's long term supply, the selling and leasing of a State's unused apportioned water for use in another State by any entity is inconsistent with the law of the river, and would severely injure other river users.

It would allow a party with no Colorado River water rights to obtain priorities to and take away Colorado River water away from entities and States with longstanding rights.

As an example of the importance of the law of the river apportionment and priority scheme, one only needs to review the testimony and reports leading up to the passage of Public Law 90-537, the Colorado River Basin Project Act, which among others authorizes the Animas-La Plata project and the Central Arizona project.

The feasibility of the Central Arizona Project was and is dependent upon receiving water that is not needed in the Upper Basin. If this water is sold, it would diminish the yield of the Central Arizona project. The Congress was keenly aware of this in its authorization of the project.

The Indian reservations involved in the settlement agreement are located in Colorado and transfer of their rights as set forth in the agreement outside Colorado to another State within the Colorado River system would be inconsistent with and therefore not permitted by the law of the river.

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Attached to this statement is a more indepth review of the law of the river with regard to the settlement agreement. The key provisions of the law of the river on this issue are the Colorado River Compact of 1922, the Boulder Canyon Project Act of 1928, the Upper Colorado River Basin Compact of 1948 and several Supreme Court decisions and decrees in *Arizona* v. *California.*

Running through each of them is the thread that protection of the rights and interests of the two basins and each of the States to the use and priorities of their apportioned share of Colorado River water.

The apportionment and priority scheme is comprehensive in dealing with the waters of the river, designates quantities and priorities for use within each of the States, and identifies which State will be charged with the use involved.

The foundation document is the 1922 Colorado River Compact, which divided the water of the Colorado River Systems between the Upper Division States of Colorado, New Mexico, Utah and Wyoming and the Lower Division States of Arizona, California and Nevada.

The compact apportions from the Colorado River System to each of these two basins "the exclusive beneficial consumptive use to 7.5 million acre-feet of water per annum." It also requires the States in the Upper Division "shall not withhold water, and the States of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses."

The development of the Lower Basin and apportionment of its 7.5-million acre-feet share under the compact began with congressional passage of the 1928 Boulder Canyon Project Act. In so doing, Congress explicitly approved the compact and made the rights of the United States to Colorado River System water, "as well as the rights of those claiming under the United States," subject to the compact.

This presumably makes Indian reservations claiming Colorado River System waters, such as the Ute Mountain Ute and Southern Ute Tribes, subject to the compact.

This act, in additional to authorizing construction of Hoover Dam and the All-American Canal, preempted State water rights administration of the mainstream of the river within the Lower Basin and made a contract with the Secretary mandatory for any diversion of water.

In *Arizona* v. *California,* the Supreme Court adopted the apportionment scheme of the Boulder Canyon Project Act and recognized broad discretion in the Secretary of the Interior to allocate and distribute waters from the mainstream.

Unlike the Lower Division States, who had to rely on the Supreme Court to apportion their share of the Upper Basin, were able to reach an apportionment under the 1948 Upper Colorado River Basin Compact.

These documents and others making up the law of the river bar the interstate and interbasin transfer of the Winters water rights of the Ute Indian reservations. They require that the user basin or user State be charged with the use of the water under the water accounting system they establish.

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They do not recognize or establish any procedures whereby such transfers could be accommodated or dealt with or the transferring State could be charged with the water use.

In addition, while priority dates are set forth in the settlement agreement for use of these waters within the State of Colorado, there is no process for evaluating priorities across State lines and accommodating the impact on those in other States.

The sale of——

Mr. CAMPBELL. Could I interrupt you? We only have 5 minutes to get back over there and vote again. I hate to interrupt you right in the middle of testimony. I thought you might be done by now.

We will run over there and vote, and we will come back, and we will have some questions, too.

AFTER RECESS

Mr. CAMPBELL. The hearing is in session, if you would like to continue.

Also, I would like to remind the panel of the time constraints. We have a lot of people yet waiting. Some of them have early airplanes, and if you could try and keep it down to our 5-minute limit, I would appreciate it.

Mr. HUNSAKER. I will be brief. Thank you.

The sale of the winter waters within the State of Colorado has been considered in a lot of detail in the settlement agreement in the priority dates and the administrative problems have been settled and the rights of junior appropriators have been protected, but with respect to other States and interbasin and interstate sales, that is not true. We believe that the disclaimer language in article 5 of the settlement agreement does not begin to answer the questions which we have raised here, and it essentially abandons all those questions to the courts which all of the people in the basin would like to avoid.

We therefore believe that this position is ill conceived and will only serve to disrupt the entire structure of rights and priorities in the area of Colorado River water developed and relied upon over the past 65 years. We therefore propose amendments which are attached to our statement, and I won't go into any detail with respect to those except simply to say that we ask that the interstate sale of water be barred and that we indeed have a true neutrality so that this legislation and this agreement which are entered into affect water rights within the State of Colorado only and not affect other States with respect to their priority systems which have been meticulously worked out and create difficulties and problems within those other States.

We would like to ask also that the record be kept open for 3 weeks for submission of any additional written comments, Mr. Chairman.

Mr. CAMPBELL. Without objection, it will remain open for 3 weeks.

[Prepared statement of Mr. Hunsaker, with attachments, follow:]

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Joint Statement

of

Department of Water Resources of Arizona,

Colorado River Board of California, and

Colorado River Commission of Nevada

on

House Bill 2642

before the

Committee on Interior and Insular Affairs

House of Representatives

September 16, 1987

Mr. Chairman, I am Ralph Hunsaker, I am an attorney with O'Connor, Cavanagh, Anderson, Westover, Killingsworth & Beshears of Phoenix, Arizona. I represent the Central Arizona Water Conservation District; however, today I am also appearing on behalf of the Department of Water Resources of Arizona, the Colorado River Board of California, and the Colorado River Commission of Nevada. These three agencies have the responsibility to speak for their states on policy with regard to the management and use of the Colorado River. I am accompanied by Alan Kleinman, Director of the Arizona Department of Water Resources, Dennis Underwood, executive Director of the Colorado River Board of California, and Jack Stonehocker, Director of the Colorado River Commission of Nevada.

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We appreciate the opportunity to testify before your Committee on H.R. 2642.

The issue of Indian and other reserved water rights continues to be one of the most troubling to deal with in areas of the western United States where water is in short supply. The Winters doctrine of Indian reserved water rights is a recognized aspect of western water law, and the right of Indian tribes to develop their reservation lands is unquestioned. However, because Winters rights do not depend on past use of water, uncertainty as to the magnitude of Indian water rights claims and if and when they will actually be exercised makes administration of rights difficult and subjects long standing junior appropriators to having their use of water cut back or terminated, disrupting the economies they represent. This is an unavoidable consequence of the Winters right generally.

However, in the past few years, the Department of the Interior has made a significant change in course in dealing with Winters rights which has worsened the uncertainty problem. It now views them as a financial tool to accomplish Indian water rights settlements rather than as an opportunity for land development within reservation boundaries, which is the rationale the courts have used in development of the doctrine. The Winters doctrine, which has been developed entirely through court action, has never been extended by a court to permit sale of the water apart from the land. Traditionally, the Department, to meet Indian financial

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needs or to settle monetary claims of tribes, has requested appropriations from Congress. It apparently now views sale of these water rights outside of reservation boundaries as a money making opportunity and a way to reduce federal budgetary needs.

Further discussion of the issue of whether Winters rights may be sold for use off the reservation and apart from the land is provided in an attachment to this statement.

The Colorado Ute Indian Water Rights Final Settlement Agreement of December 10, 1986 represents a complex and apparently comprehensive resolution of Winters water rights for the Ute Mountain Ute and Southern Ute Tribes on the stream systems involved. Two important principles regarding off reservation use within Colorado are a part of that settlement: (1) the requirement that Winters rights be subject to state administration of water rights and (2) subordination of the priority dates of each Winters right to protect junior appropriators. We feel that these two principles represent a significant advance for the administration of Winters rights and believe they should be considered in every settlement of this character.

Our concern with the settlement is found in Article V B(b) of the Settlement Agreement. That language states:

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

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Tribes by this Agreement outside the boundaries of their reservations:

* * *

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

(i) State law;
(ii) Federal law;
(iii) interstate compact; or
(iv) international treaty

that pertains to the Colorado River or its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation or quality of those waters; provided, however, that nothing in this Agreement shall be construed to establish, address, or prejudice whether, or the extent to which, any of the aforementioned laws do or do not permit, govern or apply to the use of the Tribes' water outside the State."

Management and use of Colorado River water is governed by a series of interstate compacts, international treaties, United States Supreme Court decrees, federal and state statutes and contracts collectively described as "The Law of the River" which apportions water rights between basins and among the seven Colorado River Basin states and establishes a priority system to the use of Colorado River water. These documents, painfully developed over the past 65 years, have been relied upon institutionally by the seven Colorado River Basin states in the development of their apportioned Colorado River water and, in the

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case of Mexico, its annual guaranteed delivery of river water pursuant to the Mexican Water Treaty between the United States and Mexico.

A basic premise of the river's priority of use system is that water which cannot be beneficially used by a Colorado River right holder becomes available to meet the water needs of lower priority right users, which may not otherwise be met. By the same token, unused apportionments of one state can be beneficially used by another state until such time as those waters are needed by the state to which the water was apportioned. Given that the river has been fully apportioned and that the states' total apportionments and the delivery obligations pursuant to the Mexican Water Treaty far exceed the river's long-term supply, the selling and leasing of a state's unused apportioned water for use in another state by any entity is inconsistent with The Law of the River and would severely injure other river users. It would allow a party with no Colorado River water rights to obtain priorities to and take Colorado River water away from entities and states with long standing rights.

As an example of the importance of The Law of the River apportionment and priority scheme one only needs to review the testimony and reports leading up to the passage of Public Law 90-537, the Colorado River Basin Project Act, which among others authorized the Animas - La Plata Project and the Central Arizona Project. The feasibility of the Central Arizona Project was and

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is dependent upon receiving all water that is not needed in the Upper Basin. If this water is sold, it would diminish the yield of the Central Arizona Project. The Congress was keenly aware of this in its authorization of the project.

The Indian reservations involved in the Settlement Agreement are located in Colorado and transfer of their rights as set forth in the agreement outside Colorado to another state within the Colorado River system would be inconsistent with and therefore not permitted by The Law of the River.

Attached to this statement is a more in depth review of The Law of the River with regard to the Settlement Agreement. The key provisions of The Law of the River on this issue are the Colorado River Compact of 1922, the Boulder Canyon Project Act of 1928, the Upper Colorado River Basin Compact of 1948 and several Supreme Court decisions and decrees in Arizona v. California. Running through each of these is the basic theme of protecting the rights and interests of the two basins and each of the states to the use and priorities of their apportioned share of Colorado River water. The apportionment and priority scheme is comprehensive in dealing with the waters of the river, designates quantities and priorities for use within each of the states, and identifies which state will be charged with the use involved.

The foundation document is the 1922 Colorado River Compact which divided the water of the Colorado River System between the Upper Division states of Colorado, New Mexico, Utah and Wyoming

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and the Lower Division states of Arizona, California, and Nevada. The Compact apportions from the Colorado River System to each of the two Basins "the exclusive beneficial comsumptive use to 7,500,000 acre-feet of water per annum". It requires the Upper Division states to allow at least 75,000,000 acre-feet of water to arrive at Lee Ferry every ten years. It also provides:

> "The States of the Upper Division shall not withhold water, and the states of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses." [Article III (e)].

The development of the Lower Basin and apportionment of its 7,500,000 acre-feet share under the Compact began with Congressional passage of the 1928 Boulder Canyon Project Act. In so doing, Congress explicitly approved the Compact and made the rights of the United States to Colorado River System water, "as well as the rights of those claiming under the United States," subject to the Compact. This presumably makes Indian reservations claiming Colorado River System waters, such as the Ute Mountain Ute and Southern Ute Tribes, subject to the Compact.

This Act, in addition to authorizing construction of Hoover Dam and the All-American Canal, preempted state water rights administration of the mainstream of the River within the Lower Basin and made a contract with the Secretary mandatory for any diversion of water.

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The Supreme Court, in Arizona v. California, supra, 373 U.S. 546 (Opinion) 376 U.S. 340 (1964) (Decree), adopted the apportionment scheme of the Boulder Canyon Project Act and also recognized broad discretion in the Secretary of the Interior to allocate and distribute waters from the mainstream of the Colorado River available for consumptive use in the Lower Basin.

Unlike the Lower Division States, which had to rely on the Supreme Court to finally apportion the Lower Basin share of Colorado River Compact waters, the states with claims to the Upper Basin share were able to agree on a division among them. The 1948 Upper Colorado River Basin Compact was signed by Arizona, Colorado, New Mexico, Utah, and Wyoming.

These documents and others making up The Law of the River bar the interstate and interbasin transfer of the Winters water rights of the Ute Indian reservations. They require that the user basin or user state be charged with the use of the water under the water accounting system they establish. They do not recognize or establish any procedures whereby such transfers could be accommodated or dealt with or the transferring state could be charged with the water use. In addition, while priority dates are set forth in the Settlement Agreement for use of these waters within the State of Colorado, there is no process for evaluating priorities across state lines and accommodating the impact on those in other states.

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The sale of Winters water within the State of Colorado has been considered in some detail in the Settlement Agreement. Priority dates and administrative problems have been settled and the rights of junior appropriators have been protected. The opposite is true with regard to interbasin and interstate sales. The disclaimer language in Article V of the Settlement Agreement does not begin to answer these questions and essentially abandons all of them once again to the courts, a result none of the states wish to contemplate. The purpose of the Settlement Agreement was to eliminate litigation.

We therefore believe that this provision is ill conceived and will only serve to disrupt the entire structure of rights and priorities to and use of Colorado River water developed and relied upon over the past 65 years since the Compact was agreed upon. We ask that the legislation be amended to prohibit interstate and interbasin sales and to protect states and individuals not signatory to the Settlement Agreement. We have attached proposed amendments to Sections 4, 5 and 11 of H.R. 2642 to accomplish these results.

As I have indicated, we are greatly concerned about the actual impact and legal implications of Congressional endorsement of the off-reservation use of Winters water rights. The proponents of H.R. 2642 assert that section 5 of the bill is designed solely to avoid the possible applicability of the general restrictions against alienation of Indian land in the Indian

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Non-Intercourse Act (25 U.S.C. 177). However, the broad authorization of section 5 to transfer Winters water "in accordance with Article V of the Agreement" grants unqualified Congressional "approval" of the off-reservation use which is our principal concern. The present disclaimer language in subsection 5 (c) does not adequately negate the implications of such a legislative "authorization". Consequently, we propose simply to modify subsection 5 (a) to remove the possible impediment of the Indian Non-Intercourse Act, which is the proponents' stated objective. This direct approach leaves the validity of the off-reservation use dependent on a source other than the statute, while new subsection 5 (c) (2) expressly negates the Settlement Agreement and the statute as the course of that authority, except as to parties to the Settlement Agreement.

With respect to our second concern, that off-reservation use might violate The Law of the River, we have proposed a two pronged defense to that possibility. We believe that out-of-state uses, which present the most serious problem for the reasons I have already outlined, should be prohibited and would add a new subsection 5 (b) (3) to so provide. This should be acceptable to the Tribes, since their representatives advise us that they have no plans for any such transactions.

For in-state uses, we propose in a new subsection 5 (b) (4) that the Secretary be required to give notice and an opportunity to comment on such a proposal in order to permit public evaluation

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of a specific proposed transaction to determine whether it conflicts with The Law of the River. This is a fair procedure and should not impose any undue burden on the Tribes.

We propose to amend section 5 (c) to conform to our proposed amendment of subsection 5 (a), i.e., that this Act would not constitute a statutory authorization for off-reservation use. Subsection 5 (c) (1) would be amended to make it clear that the bill is not intended to amend The Law of the River. Since the Boulder Canyon Project Act, the Colorado River Storage Project Act and the Colorado River Basin Project Act are all supplemental to the "reclamation laws" which are "waived" by Section 4 (b), the latter section is also made subject to the disclaimer language in section 5 (c) (1).

The legal attributes of any existing federal implied water rights that may attach to the Tribes' reservations can only be determined by the courts. Consequently, new subsection 5 (c) (2) of our amendment makes it clear that the legislation and the Settlement Agreement (1) do not validate any claim by the Tribes of their legal right to make off-reservation uses under any reserved water right which may attach to their reservations, (2) shall not constitute a defense to any claim or injury by a party who is not signatory to the Settlement Agreement and (3) shall have no precedential value with respect to any other legislation or litigation.

Because of the implications in Article V of the Settlement Agreement which our proposed amendments to H.R. 2642 are designed

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to neutralize, we propose an amendment to section 11 of the bill to reverse the specified rule of construction by providing that the Settlement Agreement shall be construed in a manner consistent with the Act, not vice-versa.

Mr. Chairman, the three Colorado River Basin states that I speak for today have indicated that they may wish to submit additional materials on this important piece of legislation. I, therefore, request that the record be held open to allow for this.

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Proposed Amendments to H.R. 2642
(Deletions struck through; additions underscored)

SEC. 4. PROJECT RESERVED WATERS.

(a) WATER FROM ANIMAS-LA PLATA AND DOLORES PROJECTS.--The Secretary is hereby authorized to use water from the Animas-La Plata and Dolores Projects to supply the project reserved water rights of the Tribes in accordance with the Agreement.

(b) APPLICATION OF FEDERAL RECLAMATION LAWS.--With respect to the project reserved water supplied to the Tribes or their lessees from the Dolores and Animas-La Plata projects and subject to the limitations of subsection 5(c), Federal reclamation laws shall not apply to those project reserved waters except to the extent that those laws may also apply to the other reserved waters of the Tribes. Federal reclamation laws shall not be waived or modified by this subsection insofar as those laws are required to effectuate the terms and conditions contained in article III, section A, subsection 1 and 2, and Article III, section B, subsection 1 of the Agreement.

* * *

SEC. 5. TRIBAL WATER USE CONTRACTS.

~~(a) GENERAL AUTHORITY.--Subject to the approval of the Secretary and to the provisions of its constitution, each Tribe is authorized to enter into water use contracts to sell, exchange, lease, or otherwise temporarily dispose of water in accordance with Article V of the Agreement, but the Tribes shall not permanently alienate any water right.--The~~

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~~maximum-term-of-each-such-water-use-contract,-including-all renewals,-shall-not-exceed-50-years-in-duration.~~

(a) WAIVER OF INDIAN NON-INTERCOURSE ACT - No otherwise valid contract entered into by either Tribe for the sale, exchange, lease or other temporary disposition of water to which it may be entitled under existing law shall be subject to the provisions of 25 U.S.C. 177; provided that (1) the Tribes shall not permanently alienate any water rights or enter into Tribal water use contracts which exceed 50 years in duration, including all renewals, and (2) such Tribal water use contracts shall be subject to approval by the Secretary as provided by subsection (b) of this section.

(b) APPROVAL BY SECRETARY.-- (1) The Secretary shall approve or disapprove any water use contract submitted to him within 180 days after submission or within 60 days after any required compliance with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) whichever is later. Any party to such a contract may enforce the provisions of this subsection pursuant to section 1361 of title 28, United States Code.

(2) In determining whether to approve or disapprove a water use contract, the Secretary shall determine if it is in the best interests of the Tribe and, in this process, the Secretary shall consider, among other things, the potential economic return to the Tribe and the potential

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environmental, social, and cultural effects on the Tribe. The Secretary shall not be required under this paragraph to prepare any study regarding potential economic return to the Tribe, or potential environmental, social, or cultural effects, of the implementation of a water use contract apart from that which may be required under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(3) No Tribal water use contract shall be approved or implemented for the use of that water outside the State of Colorado pursuant to this statute or the Agreement.

(4) Whenever the Secretary is requested to approve a Tribal water use contract for off-reservation use of water within the State of Colorado, he shall publish a notice of such request in the Federal Register and afford interested parties not less than 60 days within which to comment on such proposal. The Secretary shall make written findings in support of his decision and publish the text of his decision in the Federal Register, which decision shall not become effective until 60 days thereafter. The Secretary's decision to approve or disapprove any proposed contract shall be subject to judicial review in accordance with the Administrative Procedure Act.

~~(3)~~ (5) Where the Secretary has approved a water use contract, the United States shall not thereafter be

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directly or indirectly liable for losses sustained by either Tribe under such water use contract.

(c) ~~SCOPE OF AUTHORIZATION~~. LIMITATIONS--(1) The ~~authorization provided for in subsection~~ provisions of subsections (a) and (b) shall not amend, construe, supersede, or preempt any State law, Federal law or contracts, interstate compacts, United States Supreme Court decrees, or international treaty that pertains exclusively to the Colorado River or its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.

(2) Neither this statute nor the Agreement to which it relates validate or are intended or shall be construed to validate any claims with respect to the Tribes' ability to make off-reservation use of water, nor shall this statute or that Agreement constitute a defense to a claim by any party not signatory to that Agreement. The provision of the Agreement which permits the Tribes to enter into water use contracts for the delivery of water outside the reservation and within the State of Colorado, pursuant to the Agreement and subject to its restrictions with respect to conformity to State administration of water rights, is made explicitly for the purpose of settling the existing and prospective lawsuits among the signatory parties. This tribal opportunity shall have no precedential value in any

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other legislation or litigation.

(d) PER CAPITAL PAYMENTS.--The Proceeds from a water use contract may not be used for per capita payments to members of either Tribe.

* * *

SEC. 11. RULE OF CONSTRUCTION.

(a) IN GENERAL.--~~This Act~~ The Agreement shall be construed in a manner consistent with ~~the Agreement~~ this Act.

(b) INDIVIDUAL MEMBERS OF TRIBES.--Any entitlement to reserved water of any individual member of either Tribe shall be satisfied from the water secured to that member's Tribe.

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ATTACHMENT TO
JOINT STATEMENT
OF
DEPARTMENT OF WATER RESOURCES
OF ARIZONA, COLORADO RIVER BOARD
OF CALIFORNIA, AND COLORADO
RIVER COMMISSION OF NEVADA
ON
HOUSE BILL 2642
REGARDING "THE LAW
OF THE RIVER"

September 16, 1987

The current, proposed legislation seeks to implement the Colorado Ute Indian Water Rights Final Settlement Agreement, dated December 10, 1986. Article V(B)(b) of that Settlement Agreement authorizes the Ute Mountain Ute and Southern Ute Indian Tribes to use their water rights secured under said agreement not only outside the boundaries of their reservations, but "outside the State [of Colorado] to the extent permitted by any:

"(i) State law;
"(ii) Federal law;
"(iii) interstate compact; or
"(iv) International treaty

that pertains to the Colorado River or its tributaries. . . ." (Settlement Agreement, p. 60.) However, the aforementioned collection of laws (part of what is referred to as "The Law of the River") do not permit out-of-state transfers to any extent and therefore the language of the agreement creates a false impression by implying that such transfers may be legally permitted.

"The Law of the River" is that collection of interstate compacts, international treaties, court decrees, federal and state statutes, and contracts that control Colorado River operations and the rights and priorities to Colorado River water. The Law of the River is based on a scheme that apportions water rights among states and between basins within the Colorado River System, and a priority system to the use of Colorado River water. A basic premise of the river's priority to use system is that water which cannot be beneficially used by a Colorado River right holder becomes available to meet the needs of lower priority right users, which needs may not otherwise be met. By the same token, unused apportionments of one state can be beneficially used by another state until such time that those waters are needed by the state for which the water was apportioned.

The two Indian Tribes involved herein are located in Colorado,

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and any possible transfer of their rights outside Colorado to another state or to another basin within the Colorado River System would impact upon, be contrary to, and thus not be permitted by the apportionment and priority scheme of The Law of the River.

I. The Law of the River

a) The Colorado River Compact

The foundation document is the 1922 Colorado River Compact by which the seven western states in the Colorado River System divided the waters in that system between two basins. The Compact defines the Colorado River System as that portion of the Colorado River and its tributaries within the United States [Article II(a)]. It defines Upper and Lower Basins of the Colorado River System according to where waters from those areas drain into the Colorado River. Those parts of Arizona, Colorado, New Mexico, Utah, and Wyoming that naturally drain into the Colorado above Lee Ferry are defined as the Upper Basin; those parts of Arizona, California, Nevada, New Mexico, and Utah that drain into the Colorado below Lee Ferry are defined as the Lower Basin [Article II(e)(f)(g)]. As is apparent, three of the seven states--Arizona, New Mexico, and Utah--contain areas in both the Upper and Lower Basins. However, Utah and New Mexico, along with Colorado and Wyoming, are defined as Upper Division states while Arizona, along with California and Nevada, are defined as Lower Division states [Article II(c)(d)].

The Compact apportions from the Colorado River System to each of the two Basins "the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum [Article III(a)]. It requires the Upper Division states to allow at least 75,000,000 acre-feet of water to arrive at Lee Ferry every ten years [Article III(d)]. It also requires:

> "The States of the Upper Division shall not withhold water, and the states of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses." [Article III(e)].

The Compact also protects "present perfected rights" to Colorado River System waters and provides that such rights in the Lower Basin be satisfied out of the stored water once a storage capacity of 5,000,000 acre-feet has been provided on the main Colorado River within or for the benefit of the Lower Basin [Article VIII].

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b) Lower Basin Allocations and Development

The development of the Lower Basin and apportionment of its 7,500,000 acre-feet share under the Compact began with Congressional passage of the 1928 Boulder Canyon Project Act (BCPA). In so doing, Congress explicitly approved the Compact [Sec. 13(a)] and made the rights of the United States to Colorado River System water, "as well as the rights of those claiming under the United States," subject to the Compact. [Sec. 13(b).] Indian reservations, such as the Ute Mountain Ute and Southern Ute Tribes, which claim Colorado River System waters under the United States, are therefore subject to the Compact. Congress not only made the Act subject to the terms of the Compact [preamble] but also made the Act effective only upon one of two contingencies: 1) ratification of the Compact by all seven states; or 2) ratification by six of the seven states, including California, plus California's enacting a law limiting its consumptive use share of the Lower Basin apportionment to 4,400,000 acre-feet per year plus not more than one-half of any surplus or unapportioned waters available to the Lower Basin [Sec. 4(a)]. Congress also authorized the three Lower Division states (Arizona, California, Nevada) to enter into an agreement apportioning among them the Lower Basin share and providing for use of tributary water [Sec. 4(a)]. Six states, including California, did ratify the Compact, and California did pass the California Limitation Act, thus making the BCPA effective. However, the three states never agreed on an apportionment of the Lower Basin's share, leaving it to the United States Supreme Court, in Arizona v. California (1963) 373 U.S. 546, to rule that Congress had indeed apportioned the Lower Basin share itself in section 4(a) of the BCPA.

The BCPA promoted Lower Basin development by authorizing construction of what came to be known as Hoover Dam and the All-American Canal. In authorizing construction of the dam, Congress was providing for storage capacity on the main Colorado River, both within and for the benefit of the Lower Basin, far in excess of the 5,000,000 acre-feet mentioned in Article VIII of the Colorado River Compact. The BCPA again mentioned the need to satisfy present perfected rights (sec. 6), but also gave the Secretary of the Interior even broader authority to contract for the delivery of water stored behind the dam to the whole variety of claimants in the Lower Basin, not just to present perfected rights holders. Congress made a contract with the Secretary mandatory for any use of stored water: "No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated." (Sec. 5).

The Supreme Court, in Arizona v. California, supra, 373 U.S. 546 (Opinion) 376 U.S. 340 (1964) (Decree), adopted the apportionment scheme of the BCPA and also recognized broad discretion in the Secretary of the Interior to contract and distribute Colorado

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River System waters available for consumptive use in the Lower Basin. In the 1964 Decree, the Court defined "mainstream" as the mainstream of the Colorado River downstream from Lee Ferry, including reservoirs [Art. I(B)], and defined "waters controlled by the United States" to include all waters in that "mainstream," including reservoirs [Art. I(E)]. The Court then enjoined the United States (i.e., the Secretary of the Interior) from releasing any "waters controlled by the United States" except in accordance with a high priority accorded to the satisfaction of present perfected rights without regard to state lines [Art. II(A)(2-3)] and only in accord with the aforesaid apportionments and "only pursuant to valid contracts" between the Secretary and any "users" in Arizona, California, or Nevada [Art. II(B)(1-3, 5)].

It is thus apparent that any and all Colorado River mainstream and reservoir water below Lee Ferry is controlled by the United States and can only be allocated and distributed in the three Lower Division states pursuant to contract. This is even true as to present perfected rights, where an ongoing process seeks to let contracts to holders of such rights recognized in the Court's 1979 Supplemental Decree (Arizona v. California (1979) 439 U.S. 419. But the vast majority of the three Lower Division states' apportionments had been contracted for years earlier, even before the Court's 1963 decision. In California, prioritized contracts for 5,362,000 acre-feet of consumptive use were made in the early 1930's pursuant to the Seven Party Agreement entered into by major California users in 1931. Similar contracts were entered with Arizona and Nevada in the early 1940's. The Lower Basin's full 7,500,000 share, and more, has been contracted for with priority dates no later than the 1930's and 1940's, and the Secretary must distribute mainstream water in accordance therewith under the Court's mandate in the 1964 Decree in Arizona v. California.

To reaffirm United States administration in accord with the "Law of the River," Article III of the 1964 Decree explicitly enjoins Arizona, California, and Nevada, as well as the major California water user parties to the case, from interfering with "releases and deliveries in conformity with Article II of this decree, of water controlled by the United States;" [Art. III(B)] and

> "From diverting or purporting to authorize the diversion of water from the mainstream the diversion of which has not been authorized by the United States for use in the respective states; and provided further that no party named in this Article and no other user of water in said states shall divert or purport to authorize the diversion of water from the mainstream the diversion of which has not been authorized by the United States for its particular use;" [Art. III(C)]
>
> "From consuming or purporting to authorize the

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> consumptive use of water from the mainstream in excessof the quantities permitted under Article II of the decree." [Art. III(D)].

The 1964 Decree also provides that:

> "Consumptive use of water diverted in one state for consumptive use in another state shall be treated as if diverted in the state for whose benefit it is consumed." [Art. I(K)].

and enjoins the United States as to charging water use:

> "Any mainstream water consumptively used within a state shall be charged to its apportionment, regardless of the purpose for which it was released;" [Art. II(B)(4)].

Articles I(K) and II(B)(4) both mandate charging the apportionment of the State in which water is consumptively used for any water taken from the Colorado River system. These two articles would apply to the five states which were parties to Arizona v. California--Arizona, California, Nevada, New Mexico, and Utah--as well as to the United States on behalf of Indian reservations.

The 1964 Decree allows each Lower Division State the use of its own Lower Basin tributaries [California has none] without diminishing its share in the mainstream apportionment. "Tributaries" are defined as all stream systems which naturally drain into the mainstream below Lee Ferry [Art. I(F)] and the United States is enjoined from reducing "the apportionment or delivery of mainstream water to users within the States of Arizona and Nevada by reason of any uses in such states from the tributaries flowing therein;" [Art. II(C)].

c) Upper Basin Allocations and Development

Unlike the Lower Division States, which had to rely on the Supreme Court to finally apportion the Lower Basin share of Colorado River Compact waters, the five states with claims to the Upper Basin share were able to agree on a division among them. The 1948 Upper Colorado River Basin Compact was signed by Arizona, Colorado, New Mexico, Utah, and Wyoming.

Unlike the Lower Basin apportionment, the Upper Basin Compact charges each state for use of its tributaries. It defines the "Colorado River System" as that portion of the Colorado River and its tributaries within the United States [Art. II(a)], the "Upper Colorado River System" as that portion of the System above Lee Ferry [Art. II(i)], and then apportions the Upper Basin's 1922 Compact share in the Upper System by awarding Arizona up to 50,000 acre-feet of consumptive use per annum and dividing what

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is left between the other four signatory states on a percentage basis [Art. III(a)(1,2)]. These apportionments are based on the requirement that "Beneficial use is the basis, the measure and the limit of the right to use;" [Art. III(b)(2)]. The Upper Basin Compact establishes a multi-state Upper Colorado River Commission to administer these apportionments as well as its other provisions [Art. VIII].

Article IX(a) of the Upper Basin Compact provides, in part:

> "No State shall deny the right of the United States of America and . . . no State shall deny the right of another signatory State, any person, or entity of any signatory State to acquire rights to the use of water . . . in one State . . . for the purpose of diverting, conveying, storing or regulating water in an upper signatory State for consumptive use in a lower signatory State, when such use is within the apportionment to such lower State made by this Compact. . . ."

The Upper Basin Compact contains specific provisions similar to Articles I(K) or II(B)(4) of the 1964 Decree in Arizona v. California requiring the apportionment of the State in which water is consumptively used to be charged for any such water taken from the Colorado River System. First, it applies to water use by the United States:

> "The consumptive use of water by the United States of America or any of its agencies, instrumentalities or wards shall be charged as a use by the State in which the use is made. . . ." [Art. VII].

Second, it applies to use of water from five different Colorado System rivers which flow in more than one State -- the La Plata, Little Snake, Henry's Fork, Yampa, and San Juan:

> "All consumptive use of water of [the river] and its tributaries shall be charged under the apportionment of Article III hereof to the state in which the use is made. . . ." [Arts. X, XI, XII, XIII, and XIV].

The Upper Basin Compact contains language concerning rights of the United States:

> "Nothing in this Compact shall be construed as:
>
> ". . . .
>
> "(C) Affecting any rights or power of the United States of America, its agencies or instrumentalities, in or to the waters of the Upper Colorado River System. . . ." [Art. XIX (b)].

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This language does not refer to Indian reservation rights or power. Indian reservations are neither "agencies" nor "instrumentalities" of the United States. When reservations are to be included, the term "wards" is used, as in Article VII, infra, where the language ". . . its agencies, instrumentalities, or wards" (emphasis added) is used. Therefore, Indian reservations rights can be affected by this Compact.

Once the 1948 Upper Basin Compact apportioned the Upper Basin's 1922 Colorado River Compact share, major development could proceed. The result was the 1956 Colorado River Storage Project Act which authorized four major dam/reservoir storage projects in the Upper Basin -- Flaming Gorge on the Green River, Curecanti on the Gunnison, Navajo on the San Juan, and Glen Canyon on the mainstream Colorado above Lee Ferry.

d) **The Colorado River Basin Project Act and the Operating Criteria**

Following the Arizona v. California decision fixing Arizona's share of the Lower Basin apportionment, Congress passed the Colorado River Basin Project Act in 1968. It authorized construction of the Central Arizona Project along with several Upper Basin projects. It also limited the apparent discretion given the Secretary of the Interior by the 1964 Decree [Art. II(B)(3)] to apportion water among Lower Basin users in times of shortage, that is when less than 7,500,000 acre-feet of mainstream water is available for consumptive use in the Lower Basin. The 1968 Project Act provides that in time of such shortage, the satisfaction of California's full Lower Basin apportionment (4,400,000 acre-feet of consumptive use), plus early priority uses in Arizona and Nevada, shall take priority over any mainstream releases to the Central Arizona Project [Sec. 301(b)].

The 1968 Project Act also provides:

> "Rights of the upper basin to the consumptive use of water available to that basin from the Colorado River system under the Colorado River Compact shall not be reduced or prejudiced by any use of such water in the lower basin." [Sec. 603(a)].

This section appears related to Articles I(K) and II(B)(4) of the 1964 Decree in Arizona v. California and to the provisions in the 1948 Upper Colorado River Basin Compact under which consumptive is charged against the apportionment of the state of use. Under this section 603(a), the Upper Basin rights cannot be "reduced" by any Lower Basin use of Colorado River System water. This would apply to any attempt to transfer an Upper Basin right or diversion for consumptive use in the Lower Basin and would preclude diminishing the Upper Basin's 7,500,000 acre-feet share

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under the Compact by the amount of such consumptive use, necessarily implying that the Basin (and State) of actual use is the Basin (and State) to be charged.

Finally, the 1968 Project Act also requires the Secretary of the Interior to develop operating criteria for the storage reservoirs authorized by the Boulder Canyon Project Act (Lake Mead) and the Colorado River Storage Project Act (Lake Powell and the Flaming Gorge, Curecanti, and Navajo storage reservoirs) toward meeting the 1944 Mexican Treaty obligation, the Upper Division States' 75 million acre-feet every ten years delivery obligation at Lee Ferry, and other goals [Sec. 602(a)]. This requirement reinforces the prior conclusion that the United States controls and administers all mainstream water below Lee Ferry in accordance with the Law of the River and establishes that such control also extends to the major Upper Basin storage reservoirs.

There is much, much more that could be discussed about the "Law of the River," including reference to the Mexican Treaty of 1944 and the 1974 Colorado River Basin Salinity Control Act, but the previous discussion should provide sufficient basis for analyzing the issues raised by the potential off-reservation transfer of Indian reservation Winters rights.

II. Off-Reservation Transfers of Ute Mountain Ute and Southern Ute Indian Reservation Water Rights For Use Outside of Colorado

a) Transfers For Use in the Lower Basin

The Colorado River Compact of 1922 allocates water between the Upper and Lower Basins and controls interbasin transfers. It reserves to each basin, "respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum" (emphasis added) [Article III(a)], and thus bars the transfer of an Upper Basin right, such as that of one of the Ute Tribes, to any user in the Lower Basin.

The key words in Article III(a) are "exclusive . . . consumptive use." Even were "use" not qualified, how could it possibly refer to the transfer of a portion of the Upper Basin entitlement to an entity in the Lower Basin whereby that entitlement is consumptively used in the Lower Basin? The Upper Basin is only entitled to water it can use, but how can it be deemed to have used water that is consumptively used elsewhere? The words "exclusive" and "consumptive" only reinforce this conclusion. The Upper Basin's right is to "consumptive use" of the water and this use must be "exclusive." Not only must the water be consumptively used by the Upper Basin, but that use must be exclusive, thus precluding any consumptive use in the Lower Basin.

The water rights of the two Ute Indian Tribes are part of

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Colorado's share (under the 1948 Upper Colorado River Basin Compact) of the Upper Basin entitlement (under the 1922 Colorado River Compact). Any attempted interbasin transfer of tribal water rights would thus violate the Colorado River Compact and be prohibited by it. These tribal rights are subject to the Compact by virtue of the Boulder Canyon Project Act, in which Congress explicitly approved the Compact [sec. 13(a)] and provided that the "rights of those claiming under the United States" were subject to the Compact [sec. 13(b)].

Even if interbasin transfers were not prohibited outright by Article III(a) of the 1922 Compact, the only types of transfers that would be desirable and attempted would be illegal pursuant to other provisions of the Law of the River. The central issue is which basin's entitlement would be charged for the water use.[1/] The transfer of a water right makes sense only if the entitlement of the transferor (which may or may not be the diverter) is charged, not that of the consumptive user/transferee. And where the transfer is interbasin, it makes sense only if the entitlement of the transferor basin is charged, not that of the transferee basin. The idea is to transfer a right that might otherwise go unused to a user who would not otherwise be able to get water at all, easily, or with such a high priority. But if the user's apportionment is charged, that cannot work. In the present case, if the user/transferee is an entity in the Lower Basin, where the 1922 Compact entitlement is already apportioned between three States and oversubscribed, the user cannot both take water and charge that use against the Lower Basin's entitlement without illegally displacing its higher priority claimants. And if the user/transferee state's apportionment of the Lower Basin entitlement were not oversubscribed but instead still available for appropriation, then there would be no need for a transfer from another Basin and such a transfer would not be attempted. The point is that the only interbasin transfers that would be advantageous, and thus attempted, would be illegal.

This can best be analyzed by looking at the two methods by which any off-reservation transfer of tribal water rights could be effected. Either the reservation earmarks as its entitlement a certain amount of water in the river system so that an entity in another basin, state, or off-reservation in the same state can divert and use that amount of water under a transferred claim of right; or the reservation diverts water itself and physically transfers it to an entity for use in another basin, state, or off-reservation in the same state.

For interbasin transfers, the first method is doubtless the cheaper, more desirable, and perhaps only practical way to

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1. The same issue is central to the analysis of interstate transfers, as we shall discuss, infra.

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proceed. But even assuming such earmarking could occur in the Upper Basin, the Secretary can release such water for use in the Lower Basin only pursuant to valid contract and only in accord with the respective apportionments of Arizona, California, and Nevada under the 1964 Decree [Arts. II(B)(1-3, 5)]. Moreover, these three states and other parties to the lawsuit, including all major Colorado River water users in California, are specifically enjoined from interfering with the Secretary's operations and from diverting or purporting to authorize any diversion of water outside the system of contracts with the Secretary or in excess of the respective apportionments [Arts. III (B,C,D)]. The Secretary has already long since entered contracts with water users in the three states for the full amounts of their respective apportionments. (Seven Party Agreement contracts in California and the 1940's contracts with Arizona and Nevada). Therefore, any proposed Lower Basin user/transferee of an Upper Basin Indian reservation right could enter into a contract, if at all, with a very low priority and therefore a water entitlement only in years of extreme surplus. The user/transferee would be no better off than if it had simply attempted to contract directly with the Secretary without any transfer of right, so the transfer would be of no advantage. Any attempt by the user/transferee to divert water under the Indian reservation early priority without contract would be illegal as would be any action by the Secretary allowing a diversion without contract or awarding a contract with a priority date ahead of those already contracted for years earlier by other users in the respective state.

Moreover, Article II (B)(4) of the 1964 Decree and section 603(a) of the 1968 Colorado River Basin Project Act make it clear that the apportionment of the State/Basin where the water is consumptively used will be charged for such use, thus defeating the whole purpose of the transfer, as discussed supra. Article II (B)(4) requires the Secretary to charge the apportionment of the State (Arizona, California, or Nevada) in which the mainstream water is consumptively used. Section 603(a) applies this same rule as to use in the Lower Basin rather than a particular state. It provides that Upper Basin consumptive use rights under the Colorado River Compact shall not be reduced by any use of Colorado River system water in the Lower Basin, which necessarily implies that any use in the Lower Basin must be charged to the Lower Basin, not the Upper Basin. These two requirements preclude any advantage in an interbasin transfer of an Upper Basin Indian reservation water right. Such a transfer is desirable only if the transferor State and Basin are charged with the water use.

The second method to make such a transfer is for the Indian reservation itself to divert the water and transport it directly, physically to the user/transferee in the Lower Basin without the water ever entering the mainstream below Lee Ferry and thus coming under control of the Secretary. Such an alternative might

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avoid some legal obstacles, but would encounter others, not to mention the practical, financial problem of arranging an alternative (to the river system) means to transport the water hundreds of miles to the user/transferee.

Article III(e) of the Colorado River Compact would prohibit such transfer. It does not allow states of the Upper Division to "withhold water" or States of the Lower Division to "require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses." Just as with "use," discussed supra, the common sense meaning of this requirement is that the Upper Division cannot withhold water that cannot be put to reasonable use by the states (or entities thereof) who withhold it. Putting water to reasonable use does not mean diverting it and transporting it hundreds of miles away from it to be used somewhere else. If the initial diversion without consumption constitutes the "use," what about the actual consumption? Surely the water is "used" when it is actually consumed. So does that mean it can be "used" twice as a legal proposition? Such a reading of "reasonable use" simply makes no sense. The common sense reading of Article III(e) prohibits an Upper Division state diversion for interbasin transfer and consumptive use in the Lower Basin.

Even if Article III(e) of the 1922 Compact did not bar this second method of interbasin transfers from Upper Division States, Article I(K) of the 1964 Decree in Arizona v. California defeats the purpose of such transfers. It provides:

> "Consumptive use of water diverted in one state for consumptive use in another state shall be treated as if diverted in the state for whose benefit it is consumed."

This language is directly applicable to the situation at hand. The state (and basin) of consumptive use would be charged for said use, thus rendering the transfer pointless. It is clear that the Decree intends that all Colorado River System waters (excepting Lower Basin tributaries) reaching Lower Basin users be subject to its provisions and that transferring Upper Colorado River System waters around the mainstream cannot avoid the Decree's provisions as long as that water is used by a party to, or in a state that is party to, that Decree.

b) **Transfers For Use in Another State in the Upper Basin**

Just as Article III(a) of the 1922 Colorado River Compact bars interbasin transfers, so does Article III(b)(2) of the 1948 Upper Colorado River Compact bar interstate transfers within the Upper Basin. Under Article III(b)(2), each state's apportionment under the Upper Basin Compact is based on the requirement that "[b]eneficial use is the basis, the measure, and

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the limit of the right to use." This does not include the words "exclusive" and "consumptive" as does Article III(a) of the 1922 Compact, but its meaning is clear. It means that vis-a-vis other states with Upper Basin apportionments, a state only has the right to use that portion of its apportionment that it puts to beneficial use. But what does beneficial use mean? Can "use" possibly refer to the transfer of right to an entity in another state whereby the water entitlement is consumptively used in another state, especially when that state has its own apportionment under the Upper Basin Compact? Any suggestion that "beneficial use" can occur at some point other than the actual point of beneficial consumptive use of the water is simply manipulation of words. Of course, the term "beneficial use" can be explicitly defined as, for example, in the California Water Code section 1011 where conservation of water (i.e. nonuse) is classified as a "beneficial use." But when legislatures (or interstate compacts) do not speak, and the Upper Basin Compact does not in the present matter, "use" in "beneficial use" must be given its common sense meaning which is to use, not to divert for someone else's use, and not to transfer a right so that someone else can divert and use. It is thus clear that any of the five states with an apportionment under the Upper Colorado River Basin Compact can exercise that right only to the extent that the particular state beneficially uses that right.

If an Indian reservation in the Upper Basin attempts to divert water for use in another Upper Basin state or transfer its water right for exercise in another state, then that right has not been put to beneficial use by the state in which the reservation is located and cannot come within that state's apportionment under the Upper Basin Compact. As such, the Indian reservation's exercise of control over that water, by either diverting it or transferring a right to use it, would put its state in violation of the Compact vis-a-vis other Upper Basin states. To the extent the Indian reservation right has been established and quantified, as part of its state's allocation scheme, then exercise of that right would be subject to that scheme so as not to violate the Compact, and an interstate transfer would thus be prohibited. Even had the Indian reservation Winters right been judicially established independent of the state scheme, it is arguable that the United States, in approving the Upper Basin Compact [63 Stats. 31] has bound the Indian reservations to its terms, including the beneficial use requirement that would bar interstate transfers and thus not extinguish the Winters right but merely put limits on the extent (if any) of its transferability. This conclusion is buttressed by comparing Articles VII and XIX(b) of the Upper Basin Compact. As noted, supra, Article XIX(b), exempting rights of the United States, its agencies, and instrumentalities from the requirements of the Compact does not apply to Indian reservations because of the absence of the word "wards," which does appear, as in Article VII, when reservations are to be included.

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Even if Article III(b)(2) of the Upper Basin Compact were not an outright bar to interstate transfers within the Upper Basin, other provisions of that Compact indicate that the state of the transferor would not be charged for the water and thus render illegal the only type of transfer that would be advantageous. These other provisions do not authorize interstate transfers of any rights, including those of Indian reservations, but do indicate that in instances of multi-state involvement in the exercise of a water right, the state to be charged is the state in which the water is consumptively used.

Article IX(a) necessarily implies that a downstream state in the Upper Basin, or any person or entity in the state, can acquire rights to divert water in an upstream state for consumptive use in said downstream state as long as that use is within the downstream state's apportionment under the Upper Basin Compact. However, this article appears to be limited to the situation in which the diverter/right holder and ultimate user is the same person or entity, but who, for engineering or other technical reasons, needs to make its diversion in an upstream state rather than in the state where the water is to be used. This is not the same as a transfer of rights where the diverter/right holder and ultimate user are two different persons or entities, as would be the case involving one of the Ute Indian Reservations and some user in another state.

Even under the situation contemplated by Article IX(a), the language of that article requiring that the downstream use be within that state's Compact requirement clearly implies that the water use would be charged to the apportionment of the state of consumptive use, not that state in which the transferor held the right and/or diverted the water.

Several other Upper Basin Compact provisions contain the requirements of charging the user state. One applies to use by the United States or its agencies, instrumentalities, or wards, including Indian reservations [Article VII]; but such a provision is necessary to clarify the need to charge any federal use against the state in which it occurs and does not imply an interstate transfer. Five other provisions apply to rivers which flow through more than one state [Articles X-XIV]; and again, these provisions are occasioned by the flow of a river in two states and do not necessarily imply an interstate transfer of water right. Finally, various provisions of Article V dealing with water losses during reservoir storage provide that reservoir losses of water stored for use in particular Upper Basin States shall be assigned to those respective states.

What does seem apparent is that in every instance of multi-state involvement in the exercise of a water right explicitly dealt with by the Upper Basin Compact, the requirement to charge the user state is imposed. Thus, even if interstate transfers of Indian reservation water rights were permitted in theory, the

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only type of transfer that would be advantageous and thus attempted--where water use is charged to the transferor, not the transferee--would be illegal.

Conclusion
For the reasons stated herein, any interbasin or interstate transfer of the water rights of the two Ute Indian Reservations would be impermissible under The Law of the River.

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ATTACHMENT TO THE JOINT STATEMENT OF
THE DEPARTMENT OF WATER RESOURCES OF ARIZONA,
COLORADO RIVER BOARD OF CALIFORNIA,
AND COLORADO RIVER COMMISSION OF NEVADA
ON HOUSE BILL NO. H.R. 2642 REGARDING
FEDERAL RESERVED INDIAN WATER RIGHTS DOCTRINE
September 16, 1987

An issue of great concern today is whether Indian water rights, commonly referred to as Winters rights,[1] may be sold for use off the reservation and apart from the land. No case to our knowledge has so held. Moreover, a leading commentator has noted that there are no general federal statutes that authorize the sale or lease of Indian water rights apart from the land. (Cohen, Federal Indian Law Handbook, 1982.) An examination of the nature of the right, an implied right at the time of the reservation and the basis of the right, an adjunct to the land for the purpose of making the reservation a productive area, dictates that Winters rights should not be sold for use off and apart from the land.[2] Indeed, to allow the sale of the right for off-reservation use may well defeat the very purpose of the right, to add to the productivity of the reservation.

This issue is of particular significance to the lower Colorado River water users as the river has been apportioned by interstate compact, Supreme Court decrees, federal legislation, and federal contracts. Under that system, commonly referred to as "The Law of the River," what one user does not use is

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1. It is possible that some Indian tribes may have rights which are not derived from Winters v. United States, but based instead upon aboriginal or pueblo rights. (Tarlock, One River, Three Sovereigns: Indian and Interstate Water Rights (1987) Land & Water L. Rev., Vol. XXII, No. 2, p. 647.) The nature, extent and characteristics of such rights have not been litigated.

2. Indeed, 25 U.S.C. § 177 may prohibit such a sale without the approval of the United States. That section provides in part:

> "No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution."

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available to the next priority and what is unused in one state may, under certain circumstances, be used in another state. To the extent that reservations with Winters rights in the Colorado River Basin may market their rights, the entire federal scheme of water allocation will be undermined and there will be a gallon-for-gallon reduction of long-standing rights and contractual priorities. Those who have no rights, under the existing federal priority system, will be able to purchase the paramount priority and diminish the amount of water available pursuant to contracts made over 50 years ago with the Secretary of the Interior. As will be demonstrated, this long-standing federal allocation of an interstate stream should not be undermined by the sale of Winters rights. The very nature and intent preclude any implication that Winters rights should be sold for use off the reservation.

Winters rights were derived from the case of Winters v. United States, (1908) 207 U.S. 564 [52 L.Ed. 340], which was an action commenced by the United States to restrain non-Indians from constructing or maintaining dams or reservoirs or in any manner preventing the water of the Milk River, a non-navigable river, from flowing to the Fort Belnap Indian Reservation. The tribe had, by an 1888 agreement with the United States, relinquished its lands in return for a reservation for a permanent home. No water right was mentioned in the agreement, however, without such a right the land would be useless to the tribe. The Court found that it was the policy of the government and the desire of the tribe to change the tribe's habits and to become a pastoral and civilized people. In order to accomplish these objectives and on a smaller tract of land than they had previously occupied, the Court found that there would have to be a change in the physical condition of the land; i.e., water would have to be provided. Moreover, the Court followed the basic rule of interpretation of agreements with Indians, that is, ambiguities are to be resolved in favor of the Indians. The Court went on to examine the circumstances surrounding the creation of the reservation. Of apparent influence were the following: the United States in 1889 had expressly reserved 1,000 miners inches per year for domestic and irrigation uses and in 1898 the tribe itself had diverted another 10,000 miners inches per year to be used for agriculture. More importantly, perhaps, was the Court's view that the Indians had had command of all the land and water, and had now relinquished that claim, to do so without the promise, implied though it may be, of water would have made no sense. Thus, the Court held that the United States impliedly reserves water for the benefit of Indian reservations when water is necessary to fulfill the purposes of the reservation. In other words, intent is inferred if previously unappropriated water is necessary to accomplish the purposes for which the reservation was created.

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Three factors must be analyzed before a Winters right may be implied: the reason for the establishment of the reservation, the characteristic of the land of the reservation, and the needs of the Indians on the reservation. In examining these three factors, however, if the right is properly implied, the right arises without regard to the equities that might favor competing water uses. (Colville Confederated Tribes v. Walton (9th Cir. 1985) 752 F.2d 397, 405, cert. den. 106 S.Ct. 1183 "Colville II".)[3] However, Winters rights are an exception to the usual rule that the United States defer to state law in the area of water rights. (See United States v. New Mexico (1978) 438 U.S. 696, 715; 57 L.Ed.2d 1052.][4]

Thus, the purpose of the reservation, rather than an actual application to beneficial use, determines the quantity of water to which a reservation may be entitled. Arizona v. California, (1963) 373 U.S. 546, is the landmark quantification case. The Special Master determined that five Indian reservations, along the lower Colorado River, should be awarded water based on the number of practicably irrigable acres within the reservation.[5] The Special Master reasoned that the initial purpose of creating the reservations was to enable the tribe to develop a viable agricultural economy and that the intention of the United States was to reserve that amount necessary to satisfy the expanding water needs of each reservation. In speaking of the right, the Special Master wrote, "as pointed out above, the more sensible conclusion is that the United States intended to reserve enough water to irrigate all of the practicably irrigable lands on a reservation and that the water rights thereby created would run to defined lands, as is generally true of water rights".

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3. There are two possible conceptual underpinnings for the Winters rights, the tribe itself retained the right if it did not expressly relinquish the right, or the United States reserves the right when it created the reservations. In the case of the lower Colorado River reservations, the Special Master in Arizona v. California held that the United States had reserved that right.

4. Because federal reserved rights are an exception, the Supreme Court has emphasized the importance of the limitation of such rights to that essential to accomplish the purpose for which the land is reserved. (United States v. Adair (9th Cir. 1984) 723 F.2d 1394, cert. den. 104 S.C. 3536; see also infra at pp. 4, 6, & 7.)

5. In Arizona v. California, the Special Master extended Winters rights to reservations created by Executive Orders.

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(Report at 263.) Moreover, the Special Master later again emphasized the connection of the Winters right and the land and wrote, "[t]hey are of fixed magnitude and priority and are appurtenant to defined lands." (Report at 266.)[6/] Practicably irrigable acreage is not the only standard which a court may use to award Winters rights, for the Court must look to the purpose of the reservation. Thus in Colville Confederated Tribes v. Walton (9th Cir. 1981) 647 F.2d 42 ("Colville I") and Colville II, the Court found a right to water to maintain replacement fishing grounds, where the natural habitat had been destroyed. It would appear that a non-consumptive use, such as for fishing or hunting, cannot be later turned into a consumptive use, and such rights may not be transferred. (See United States v. Adair 723 F.2d 1394.)[7/] Regardless of whether the purpose of a reservation was agricultural or fishing, or some other purpose, the underlying rationale of Winters rights is to make the reservation itself more productive.

In determining the amount of water which is to be available to the Tribes, the Supreme Court has shown a trend toward practical limitations and a willingness to balance the equities of competing water uses with those Tribes under modern-day circumstances. Those cases have emphasized the scarcity of water and the lack of foreseeably that the resource would become scarce.[8/] Three cases of significance have been decided regarding quantity. Two of them deal with federal-reserved rights in general and not Winters rights specifically, but the courts have spoken approvingly of those cases in discussing Winters rights.

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6. The Special Master did not reach the question of whether the Tribes were entitled to change the use of the water on the reservation. (Report at 265.) However, the parties by a later stipulation agreed that the Tribes could use the water for purposes other than irrigation.

7. Interestingly, the Court in Adair found that even though the Tribe had transferred all their lands, that their hunting and fishing rights and the Winters right necessary to maintain hunting and fishing, survived.

8. These are obviously factors of importance of the case in the lower Colorado River basin. To the extent that the Tribes have been awarded water and may be awarded additional water in the lower Colorado River basin, that would mean a gallon-for-gallon reduction for certain public entities who serve Colorado River water within the State of California.

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In Cappaert v. United States, (1976) 426 U.S. 126 [48 L.Ed.2d 523], the United States asserted a federal-reserved water right for the Devil's Hole National Monument.9/ A pool within Devil's Hole was the home of a rare species of pupfish. By Presidential Proclamation, Devil's Hole had been withdrawn from the public domain. The Cappaerts were pumping groundwater some 2-1/2 miles from Devil's Hole, but the pumping had caused the level of the pool to decline. The reservation of Devil's Hole, of course, preceded the state permitted pumping of the Cappaerts. The Court held; "[t]he implied reservation of water doctrine, however, reserves only that amount of water necessary to fulfill the purpose of the reservation and no more". (Cappaert at 141.) Here, the purpose of the reservation was to preserve the pool for unusual features of scenic, scientific, and educational interest; therefore, the Court held that the amount of water which was reserved was only that amount which was necessary to preserve the pool for scientific interest, including a water level sufficient to serve as a natural habitat for the pupfish. The Cappaerts were required to curtail their pumping so that the reservation received its minimal needs, i.e., that which was adequate to implement the objectives of the reservation. Cappaert was followed by United States v. New Mexico, (1978) 438 U.S. 696 [57 L.Ed. 2d 1052], in which the United States asserted federal-reserved rights for the Gila National forest from the Rio Mimbres River. The United States sought water for among other purposes, the preservation of the forest, aesthetic, recreational, and fish preservation purposes. The Court recognized that in the federal-reserved right claims, which are based upon an implied right, that the courts had carefully examined the asserted right and the specific purposes for which the right is reserved and concluded that without water the purpose of the reservation would be defeated. However, the Court noted that prior cases had repeatedly emphasized that the amount of water which is reserved is that amount necessary to fulfill the purposes of the reservation and no more. The Court in New Mexico reasoned that where water is necessary to fulfill the very purpose of the reservation, that it is reasonable to conclude even in the case of express deference to state law, that the United States intended to reserve necessary water. However, where water is

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9. Some have cited Cappaert for the proposition that Winters rights are also applicable to groundwater. Such a citation is incorrect, since the Court in Cappaert specifically referred to the pool as surface water. To the extent that groundwater pumping affected the surface system, the Court found that the United States could enjoin the groundwater pumping.

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valuable for a secondary use, such as the in-stream uses which the United States had sought, then the inference is that the United States will acquire that water right in the same manner as any other public or private appropriator. Thus, the Court looked to the primary purpose of the reservation and determined that the United States intended to reserve the water to preserve the timber only.10/ This case importantly recognized that in instances of implied reserved water rights, that it frequently requires a gallon-for-gallon reduction and that this fact had not escaped Congress, and must, therefore, be weighed in determining what if any water Congress reserved for use in the national forest. It was noted that the federal reserved rights doctrine is built on implication and is an exception to Congress' explicit deference to state water law in other areas. The Court limited the right to the primary purpose of the reservation.11/

New Mexico was followed by the case of Washington v. Fishing Vessel Assn.'s, (1979) 443 U.S. 658 [61 L.Ed. 2d 823]. Washington involved the interpretation of treaty fishing rights. By treaty the tribe was allowed the right to take fish at all its usual and accustomed grounds and stations in common with all citizens of the territory. The issue in the case was focused on whether the treaty gave the tribe only access to or an actual portion of each run of fish.12/ The Court reasoned that when the contract was negotiated that neither party

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10. It could be suggested that courts should interpret intent strictly to include only those uses that were clearly contemplated in the land grant. (Indian Claims to Groundwater: "Reserved Rights or Beneficial Interest", 33 Stanford Law Review 103 (Nov. 1980).)

11. The primary purpose of a reservation is not limited to one purpose only. In U.S. v. Adair, 723 F.2d 1394, the Court held that it was not required to identify a single essential purpose, rather it found that fishing, gathering, and agriculture were all primary purposes.

12. In interpreting treaties, the Court reasoned that such a treaty is essentially a contract between two nations and unless the nations were at war and one is defeated, it is reasonable to assume that the contract was negotiated at arm's length. The Court found that standard applicable in this case. The principle must, however, be coupled with the usual deference accorded to Indians. These principles, taken together, lead to the principle that it is Indians' likely understanding which must prevail.

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realized nor intended that their contract would determine whether and how a resource thought inexhaustible at that time would be allocated between the Indians and incoming settlers when it became scarce. Therein the Court held:

> "As in Arizona v. California and its predecessor cases, the central principle here must be that Indian treaty rights to a natural resource that once was thoroughly and exclusively exploited by the Indians secures so much as, but no more than is necessary to provide the Indians with a livelihood that is to say, a moderate living." (Id. at 685).

The Court set the maximum amount of fish which could be taken by the tribe and left open the possibility that the tribe's share could be reduced. For example, if the tribe dwindled to a few members or if the tribe found another source of support, the right could be reduced, since the livelihood of the Tribes under such reduced circumstances could not reasonably require a large allotment of fish. The Court opened the door to allow a reduction but not an increase in the tribe's maximum entitlement. By awarding a maximum, the Court satisfied a certainty and finality standard, but also left room for some flexibility for changing circumstances.

While those cases discussed above were not Winters cases, the Ninth Circuit in United States v. Adair, 723 F.2d. 1394, cited with approval the Cappaert and New Mexico cases and held that two guidelines had been established by those two cases regarding Winters rights; water rights are implied only where water is necessary to fulfill the very purpose of the reservation and not for secondary uses; and the scope of the right is circumscribed by the necessity that calls for its creation in other words, it reserves only that amount necessary to fulfill the purpose of the reservation and no more.

Thus, these cases recognized the exceptional nature of federal-reserved rights and the need to limit such rights in the face of today's realities. Even though it appears to be well-settled law that the tribe can lease and sell, under limited circumstances, land and water together, that limited right to sell does not support the right to sell such right apart from the land. In Skeem v. United States, (1921) 273 Fed. 93, land had been allotted to individual Indian tribal members and subsequently leased to a non-Indian. The Court found that the patents under which the individual tribal member had received his allotment made no express indication as to whether or not the water right would be lost if the land was leased, therefore, the Court implied a right to lease a portion of the water with the land although the Court did not directly deal with the quantity or extent of the lessee's rights. The

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Court was of the view that treaties should be construed in light of the purpose to induce the Tribes to relinquish their nomadic ways, become farmers and that meaning should be given to such agreements which would enable the Tribes to cultivate all of the land so reserved.

In United States v. Hibner, (D. Ida. E.D. 1928) 27 F.2d 909, the Court relying upon Skeem, found that a non-Indian purchaser of an allotment receives what was actually used by the tribal member and what the non-Indian allottee can put to use with reasonable diligence. The water is accorded the same priority date as the other Indian water rights. The rationale for allowing an Indian allottee to sell his land and the associated water right was expressed by the Court in Colville I, where the Court reasoned that because the use of the reserved right was not limited to fulfilling the original purpose of the reservation, Congress had the power to grant reserved rights to individuals and to allow the transfer of such rights to non-Indians; whether it did so is a question of congressional intent. Since the Allotment Act was passed before Winters, the Court held that Congress did not consider transferability and, therefore, the Court must determine what Congress would have intended. The Court adhered to the principle that the diminution or termination of an Indian right requires express legislation or a clear inference of Congress of its intent to do so. Here, the Court was unable to find such an intent for it was often the water right which gave the land value. Therefore, the Court held that an allottee may convey its ratable share of the reserved right and that the non-Indian successor acquires a right to water which is being appropriated by the allottee at the time title passes plus the amount which the non-Indian successor puts to beneficial use within a reasonable period of time, but no more than the Indian allottee was entitled. Indeed, the Ninth Circuit has two restrictions on the transfer of Winters rights, the non-Indian right is limited by the number of irrigable acres owned, and if the non-Indians fail to use the water, it is lost and cannot be reacquired by the tribe. (United States v. Anderson (9th Cir. 1984) 736 F.2d 1358.) Thus, the rationale of these cases wherein tribes or individual Indian allottees lease or sell a Winters right do not support the sale of water apart from the land. Indeed, if they were separated, the land could be valueless which would defeat the very purpose of Winters.

To allow the sale of Winters rights off the reservation would be contrary to the very intent and purpose of the right. Winters rights were created as an adjunct to land and have no existence apart from the land. ("Considerations and Conclusions Concerning The Transferability of Indian Water Rights" 20 Natural Resources Law Journal 91, January 1980, Jack D. Palma II.) Indeed, surplus water is beyond the scope

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of retained water rights for although the Tribes are entitled to water rights, they are entitled to only the minimum amount necessary to satisfy the purposes for which the reservation was created. Moreover, Winters is an exception to the rule that the United States defers to state law in the acquisition of water rights and the intent to reserve such rights is implied. Can it really be said that at the time of the creation of the reservations that the United States or the Tribes contemplated that water would be sold for use off the reservation? It is clear that at the time of creation, the parties were seeking to change the way of life of the Tribes by making them pastoral and agricultural entities. To be sure, some of them also retained fishing and hunting rights, but it is most unlikely that the parties would have contemplated that the Tribes would sell water as they sold crops. The intent was to make the reservation, which was a reduced amount of land, productive enough to allow the Tribes no less than the same standard of living as that which they enjoined on their larger reservation. They were not intended to benefit third parties unrelated to the reservation, which would be the case if other non-Indian users were allowed to purchase the tribe's water rights for use off the reservation.

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Mr. CAMPBELL. Do the other gentlemen have statements, or are you just open for questions? Let me ask a few. Congressman Rhodes will be back in a few minutes. I am sure he had a couple, too.

First of all, you have a number of reservations within the State boundaries of Arizona. Do you know how many negotiated settlements on water there have been in that area between the tribes and either municipalities or State government?

Mr. HUNSAKER. I am aware of two.

Mr. CAMPBELL. So I assume you support negotiated settlements rather than litigated settlements with tribes?

Mr. HUNSAKER. We in Arizona definitely support the negotiated settlements, as long as they are settlements which affect only the State within which they are made.

Mr. CAMPBELL. Governor Romer of Colorado indicated that the Western Governors Association resolution, perhaps you were here when he talked about that, do you know if the Governor of Arizona mentioned voting for that resolution?

Mr. HUNSAKER. I don't know that.

Mr. CAMPBELL. Also in your testimony you were concerned that you had not been involved in the negotiated settlement within Colorado. It made me wonder how many times the State of Colorado has been involved in negotiated settlements with tribes in Arizona. Do you know?

Mr. HUNSAKER. I am unaware of any as such except that none of those settlements contain provisions indicating that sales of water can be made to other States and across basin boundaries, and those are our concerns today. As I said, we have no difficulty with the Indians in Colorado.

Mr. CAMPBELL. That is the way you interpret 5(c)?

Mr. HUNSAKER. Yes, we do.

Mr. CAMPBELL. Colorado, as you heard the testimony, interprets it to remain neutral.

Mr. HUNSAKER. We don't see it as being neutral when it specifically suggests the concept of selling out of State, which could mean in any other State and interbasin, and we don't see that it is neutral when the legislation which has been propounded to implement the agreement authorizes the Secretary's approval when he is already a party to the agreement.

Mr. CAMPBELL. I will defer to Congressman Rhodes if he has some questions.

Mr. RHODES. Mr. Chairman, it is kind of scary to ask Ralph Hunsaker questions. Generally he has the answers. I might note, Mr. Chairman, for the benefit of the committee, that when Ralph talks about the law of the river, it is worth first of all to note that he helped write it or a good portion of it. Ralph was a significant member of the legal team that argued and won *Arizona* v. *California,* and was involved in Colorado River matters for the State of Arizona for many years, including representing the Central Arizona Water Conservation District which owns and operates the Central Arizona project, and I think the committee should take special note of his testimony because he is never wrong.

Mr. HUNSAKER. Thank you, Congressman.

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Mr. RHODES. Ralph, will you explain in a little more detail your concerns as to the curtailment of downstream users rights to Colorado River water and the impact on the priority systems if one of these interbasin transfers were to take place?

Mr. HUNSAKER. I will. Our concerns are probably illustrated by first of all referring to the fact that each State in the Lower Basin, and for that matter, each State has a specific entitlement to water. Let's take 100,000 acre feet as being the amount that may be sold, either to Arizona, California or Nevada. If that 100,000 acre-feet had caused us to exceed our entitlement, then somebody could legitimately say that you have to cut back by 100,000 acre-feet, and we then would be concerned in our State by reason of what occurred in the State of Colorado with trying to decide who should cut back, and we have developed priorities within our State as has California and Nevada, and our concern in regard to the priority system might be that the purchaser of this water or lessee of this water could possibly argue that I have taken a water right now that has a priority of 1980, let's say for purposes of illustration.

Consequently, I am a higher user of this water, an earlier user of this water than other persons within your State, so I am the last to cut back, and people with long existing uses of Colorado River water in our State may have to cut back prior to this water. We feel this is only going to foster litigation which will be greater, it will be basin water rather than just the southwestern part of Colorado, and we are trying very hard to avoid that.

Mr. RHODES. Your concern is among other things that the downstream purchaser of that water will assert the claim that he not only bought the right to use the water but bought the priority as well?

Mr. HUNSAKER. That is our concern, and if I were paying for the water, I think I might make that assertion.

Mr. RHODES. Would you speculate as to what the reaction of the Upper Basin States might be to sale to a Lower Basin States? They have a right to consumptive use of a certain portion of the flow of the Colorado River by virtue of the compact. Wouldn't you say that the Upper Basin States would have as much concern about such a sale in interbasin transfer as the Lower Basin States might have?

Mr. HUNSAKER. I think legitimately they should have. Some have expressed that concern.

Mr. RHODES. Can you tell us which ones have expressed such concern. Remember, you are never wrong.

Mr. HUNSAKER. I think all have expressed the concern about that.

Mr. RHODES. I thank you for clarifying that position. It is a very important one, and one that this committee needs to be especially aware of and concerned of, and I agree with you, if I were a purchaser of water at the prices that are obviously going to be charged for that water, I would certainly assert that I purchased not only the right to use the water but the priority as well. And I have no other questions of this witness, Mr. Chairman. Thank you.

Mr. CAMPBELL. Thank you.

Let me ask a couple of others, since you raised the point about priority right and beneficial use too. As I understand it, under the entitlement given in the 1968 agreement legislation, since that

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time both southern California and Arizona have been using surplus water that if the Animas-La Plata project were to go through, they would not be able to use. Do you have any comments on that?

Mr. HUNSAKER. My only comment is that the principle that no State could withhold water and no State could demand to use water, that it could not put to beneficial use, was recognized in 1922, so if that has been the concept for use of this water for 65 years, and indeed there have been States which have used unused water pursuant to that concept since that time.

Mr. CAMPBELL. Is Arizona now using a surplus of water or more water than they were entitled to?

Mr. HUNSAKER. When there is surplus water, the Central Arizona project may receive some of that water.

Mr. CAMPBELL. And so if this project were to go through, regardless of the 5(c) which might give the tribes authority to lease it, if this project were to go through, then feasibly you would not be able to use that water in surplus that you have been using; is that correct?

Mr. HUNSAKER. That is correct, and if the water can be used in the state that has the entitlement to it, we would not object to that one bit. We feel that that is entirely appropriate, if it is used within that State.

Mr. CAMPBELL. Even if you have to give up what you are now currently using?

Mr. HUNSAKER. That is the concept upon which the Central Arizona project was authorized, we agreed to it, we will live by it, and we would accept it, and indeed be in favor of it when it can be used by that state.

Mr. RHODES. Will the chairman yield?

Mr. CAMPBELL. Yes.

Mr. RHODES. It is worthy to note also that under the agreement between Arizona and California, in times of shortage, Arizona is the first to be cut back, so Arizona's water use planning has long been based upon first of all recognition that in time of shortage we lose first, and secondly that as the Upper Basin States develop, there will be less surplus, which we will be able to put to use, so that is something that has been long recognized and planned for with the State of Arizona.

Mr. CAMPBELL. I will be happy to defer to my friend from northern New Mexico, Congressman Richardson.

Mr. RICHARDSON. Yes, Mr. Chairman, thank you very much. I apologize for not being here earlier, and to my New Mexico constituents, for not appearing here when they were testifying. I had a previous markup, and I know my dear friend Senator Wirth is here to give his testimony.

Let me just say that I am a cosponsor of this bill, I believe the second cosponsor. I think this is an important bill not just for two States but for the Southwest, and perhaps the line of questioning here does not coincide with the schedule of the chairman, because I know Senator Wirth has to appear, but I fail to simply see why passage of this legislation and this important agreement adversely affects the interests of the State of Arizona. It seems to me that the agreement represents binding agreement only among the signato-

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ries. The agreement can't change the law of the river, and therefore I guess I fail to see the way it adversely affects the interest.

Mr. Chairman, I wish to thank you for letting me intervene like this. I have no questions of this witness, given the schedule of the subcommittee.

Mr. CAMPBELL. Thank you, Congressman Richardson.

Is there any further thing you would like to add?

Mr. HUNSAKER. Only, Mr. Chairman, that we have no objection to the State of Colorado and their water interests in settling and agreeing to the amounts of water that they will distribute among themselves. That is not our problem. We would encourage that kind of concept.

Mr. CAMPBELL. Thank you very much.

Before we go on to the next panel, I would like to take two out of context of speakers. First Senator Tim Wirth, who is on a tight schedule. If Senator Wirth would like to take the table. And then when he is done, if we could have Mr. George Orbanek, who has also a very tight schedule, we will take him next.

You may proceed, Senator Wirth.

STATEMENT OF HON. TIMOTHY E. WIRTH, A U.S. SENATOR FROM THE STATE OF COLORADO

Mr. WIRTH. Thank you very much, Congressman Campbell. I greatly appreciate your managing the schedule in such a way to allow me to go over and chair the Senate, where I have to be as we are in the middle of debate over another enormous issue. If we could have as much agreement on the ABM treaty as you and others have been able to forge on Ute water rights, we would be a lot further ahead.

We had the potential in this, I think, for an extraordinary shootout. A lot of people thought it was going to happen over water rights. But instead, the Federal Government and the State government, the Indian tribes, the State of Colorado and the State of New Mexico sat down worked out an agreement that everyone can support. The legislative effort which you have sponsored here and which Bill Armstrong and I have sponsored along with Senator Domenici and Senator Bingham on the Senate side is certainly testament to the fact that clearly this job can be done and can be done very well. We will do everything that we can on the Senate side to move forward as expeditiously as possible on the enabling legislation. I have a longer statement which I would like, with your permission, to have included in full in the record.

Mr. CAMPBELL. Without objection, it will be done.

[Prepared statement of Mr. Wirth follows:]

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STATEMENT OF THE
HONORABLE TIMOTHY E. WIRTH

BEFORE THE HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE

September 16, 1987

Mr. Chairman, I appreciate the opportunity to testify before you today on this important legislation that Congressman Campbell has introduced. Senator Armstrong has introduced identical legislation in the Senate, with unanimous support from the Colorado and New Mexico delegations.

It is a pleasure to be with you this morning. We have worked together on many conservation issues in the past, and I know that you have also been a tireless advocate for Indian tribes across the West. I am looking forward to working with you on this legislation, which ratifies a precedent-setting agreement between the Ute Mountain and Southern Ute Indian Tribes, the state of Colorado, many conservancy districts, and the United States Departments of Justice and Interior.

Many people in my own state of Colorado and in New Mexico have worked long and hard to put together the water rights agreement and the cost-sharing agreement that are embodied by this legislation.

The Ute Mountain Ute and the Southern Ute Indian Tribes have done what many people thought could not be done -- they have negotiated an agreement that settles their water rights claims in the Animas, Mancos, La Plata, and other river systems in southwestern Colorado. The agreement that they worked out will provide these tribes with the water they need to develop their reservations and to provide some of the basic services that almost everyone else in this room takes for granted.

For its part, the State of Colorado has demonstrated that it is possible to sit down with Indian tribes, conservancy districts, and cities and work out a fair solution to water rights disputes -- and all of us from the West know that there are few issues that can so easily provoke a march to the courthouse as a water rights dispute.

I want to emphasize Colorado's commitment to these agreements. The state legislature has appropriated the funds to begin implementing these agreements, and is <u>already</u> constructing a

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pipeline to carry water from the Dolores Project to the Ute Mountain Indian Reservation.

Now the ball is in the federal government's hands. I hope that the Congress will recognize the importance of these agreements and this legislation. This legislation was the product of many long, tough hours of negotiations. The legislation will satisfy the tribes' reserved water rights without disrupting the water rights of others in the drainages. And the legislation comes with significant cost-sharing agreements from the states of Colorado and New Mexico.

I urge your support for this legislation, Mr. Chairman, and I look forward to working with you and the members of this Committee.

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Mr. WIRTH. I greatly appreciate the support and help as well from Congressman Richardson and look forward to working with Congressman Rhodes, whose wife's family's history and my family's history goes way back, in fact, to northern New Mexico up above Los Alamos and Santa Fe. I hope in the spirit of that history, Congressman Rhodes, we will find your involvement, your commitment and your support of this very important piece of legislation.

With that, Congressman Campbell, I would just hope that your great commitment carries over into a sweeping support for this particular piece of legislation from all of your colleagues on the subcommittee and the full committee. We look forward to working with you, and once again I thank you very much.

Mr. CAMPBELL. Thank you, Senator Wirth.

Any questions, Congressman Rhodes?

Mr. RHODES. Senator, I would simply like to request that if you are going to involve your father and my father-in-law in lobbying on this legislation, that you have them appropriately registered.

Mr. WIRTH. They in fact need no registration, when you are correct on the issue, Mr. Rhodes. I am sure that they together would be delighted to have us both here working together on this legislation.

Mr. RHODES. Senator, I am comforted by the fact that we probably can, and let me just briefly state that in fact my only problem with this legislation is the interstate transfer or interbasin transfer. As Mr. Hunsaker indicated earlier, I not only have no objection to the settlement itself, I applaud it. There are dozens of situations like this around the Southwest, as you well know, including in Arizona where we have to get issues resolved, and I want to work with you and with Mr. Richardson and Mr. Campbell to see whether we can resolve the situation.

Mr. WIRTH. I think this is an ingenious solution. This also reflects upon the Dolores River project which is of great importance to us in Colorado, and I think this will have a salutary effect on the success of that program. That is right in your back yard, Congressman Campbell. I know how much that means to you, and I think this can certainly help on that front.

Congressman Richardson, thank you very much for your kind comments and thoughtfulness and approach to this whole issue as well.

Mr. CAMPBELL. Senator Wirth, thank you for your testimony and appearance.

Mr. WIRTH. Thank you very much. I look forward to working with you. Thank you, gentlemen.

Mr. CAMPBELL. We are going to take out of context one group who have to leave early. Mr. John Fetcher, president of Colorado Water Congress; Mr. Girts Krumins, president, Colorado-Ute Rural Electric; and Mr. Herrick Roth, member, Colorado Forum, accompanied by Mr. George Orbanek, member of the Colorado River Forum.

Try and remember we are trying to keep our time down to 5 minutes and we will put all of your written testimony in the record.

Mr. Fetcher, if you would like to start, just go ahead.

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PANEL CONSISTING OF JOHN FETCHER, PRESIDENT, COLORADO WATER CONGRESS; GIRTS KRUMINS, PRESIDENT, COLORADO-UTE RURAL ELECTRIC; AND HERRICK ROTH, MEMBER, COLORADO FORUM, ACCOMPANIED BY GEORGE ORBANEK, MEMBER OF THE COLORADO FORUM AND EDITOR OF THE GRAND JUNCTION DAILY SENTINEL

Mr. FETCHER. I will not take advantage of your time.

My name is John Fetcher. I saw in the original agenda it was spelled Fletcher, which reminds me I was giving my name over the phone the other day to a lady and I said, "My name is Fletcher without the 'L,' " and she said, "Oh, Mr. Letcher."

Thank you for receiving us. I am presently president of the Colorado Water Congress. It is a broad based membership organization composed of units of government, water organizations and individuals and municipals, industrial and irrigators, both large and small, and of course I am very glad to appear here on behalf of the Colorado Water Congress.

The Congress supports without any equivocation the Indian water rights fund settlement agreement of 1986, and the associated cost sharing arrangements for the Animas-La Plata project. CWC is squarely behind it, and toward that end, in connection with my written testimony, which I assume will be made a part of the record, there is a resolution to that effect that was passed at our convention last January.

I won't repeat much of the testimony that you have heard today. We all know that the Animas-La Plata project is a vital component of the agreement, and as you are aware, I think Colorado perhaps naively thought that it was going to get five projects back in 1968, together with the central Arizona project. Well, we all know that CAP is delivering Colorado water right now, and all we have is the Dolores, and a token appropriation for Animas-La Plata last year. This settlement, of course, offers our government not only to meet its responsibilities to the tribes but also to meet a portion of its obligation to Colorado under the 1968 Colorado River Basin Project Act. I think surely you will agree that the proposed cost sharing agreement is eminently fair.

My son and I and our wives own and operate a cattle ranch north of Steamboat Springs. This year we are in a drought. In 1980, the district of which I happen to be the manager, built a reservoir called Yamkola. This year, without that reservoir, the ranchers in the upper Jampa Basin could not have put up their crop of hay needed to carry our cattle through the winter, so I know the importance of water. On our own ranch we ran out of water this year, so that we know its importance, and as Wayne Aspinall, who is looking down on us so eloquently, said, in the arid West, the only way to have water during the dry months is to store the spring run-off. Animas-La Plata will do just that.

Thanks a lot.

Mr. CAMPBELL. Thank you, Mr. Fetcher.

[Prepared statement of Mr. Fetcher, with attachment, follows:]

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STATEMENT OF JOHN R. FETCHER
PRESIDENT OF THE COLORADO WATER CONGRESS
before the
HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
concerning
THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987-HR2642
September 16, 1987

Mr. Chairman and members of the committee. My name is John Fetcher. I am currently president of the Colorado Water Congress, a broad based membership organization composed of local units of government, public and private water user organizations, and private individuals. Our membership is widely distributed throughout the state and is composed of municipal,industrial, and irrigation water users, both large and small and represents their common interest.

I am glad to appear before you today on behalf of the Water Congress to express its support for the Colorado Ute Indian Water Rights Final Settlement Agreement of December 1986, and the associated cost sharing arrangements for the Animas-La Plata Project. The Water Congress is squarely on record in support of the Agreement and the Animas-La Plata Project. Our formal resolution in that regard is attached to my written statement.

The Colorado Water Congress wishes to ask you to consider favorably the legislation for the settlement agreement. The State, the two Tribes and our water users in southwestern Colorado have reached an Agreement which is fair and equitable. It advances both the interests of the Tribes and of their non-Indian neighbors, and promotes the development and conservation of Colorado's water resources.

We find particularly important the fact that Animas-La Plata is a vital component of the Agreement. Colorado has waited many years for the fulfillment of the compromise reached in the 1968 Colorado River Basin Project Act between the Upper and Lower Basin states. In that Act, it is specified that construction of five Colorado projects shall proceed "... concurrently with the construction of the Central Arizona Project...." Deliveries to CAP have, of course, already commenced. However, of the five Colorado projects, only the Dolores Project is under construction. Animas-La Plata received just a token appropriation last year. The settlement offers the United States not only an opportunity to discharge its trustee responsibilities to the Tribes, but also to discharge its obligations pursuant to the 1968 Act.

We believe that the cost sharing agreement for Animas-La Plata is fair. Congress has laid down a challenge to non-federal parties to increase their financial contributions to federal projects. The State of Colorado and local water users have, we believe, met that challenge and then some. While a substantial portion of state financial resources available for water project development has been committed to this project and this settlement, we other water users throughout Colorado firmly support the state's decision in this regard.

My son and I and our wives own and operate a cattle ranch north of Steamboat Springs in northwest Colorado. It so happens that in our part of the State we are now in a drought. In 1980 the Upper Yampa District of which I am manager, built Yamcolo Reservoir. Without this storage the ranchers of this area would not have been able to raise the hay necessary to carry their cattle thru our long winters. As Wayne Aspinall so often said, "in the arid West, to provide water during the dry months we must store the spring runoff." Animas-La Plata will do just that. Thank you for hearing us out.

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RESOLUTION OF THE COLORADO WATER CONGRESS

1987-13 COLORADO UTE INDIAN WATER RIGHTS AGREEMENT

WHEREAS, as evidenced by the "Colorado Ute Indian Water Rights Final Settlement Agreement" dated December 10, 1986, the United States Government, the State of Colorado, local water conservancy districts and municipalities, the Southern Ute Indian Tribe and the Ute Mountain Ute Indian Tribe have reached a negotiated compromise of Indian reserved water rights claims presently pending in the District Court for Water Division No. 7; and

WHEREAS, said Agreement quantifies and establishes the water rights of said Tribes on streams that cross the reservation of said Tribes; and

WHEREAS, said Agreement protects the interests of water users who have long relied upon said water for domestic, agricultural and municipal uses; and

WHEREAS, said Agreement utilizes as its primary vehicle for resolving said disputes, the water to be obtained from construction of the Animas-La Plata Water Reclamation Project, first authorized for construction by the United States Congress in 1968; and

WHEREAS, the construction of the Animas-La Plata Water Reclamation Project in addition to facilitating settlement of the Ute Indian Reserved water rights claims, will also provide additional water for municipal, industrial, agricultural, and recreational uses in southwestern Colorado and northern New Mexico; and

WHEREAS, the provisions contained in the "Colorado Ute Indian Water Rights Final Settlement Agreement" are the product of extended discussions and arduous negotiation in which each affected party modified its position for the ultimate benefit of the Four Corners Region and the residents of the State of Colorado, either Indian or non-Indian.

NOW, THEREFORE, BE IT RESOLVED that the Colorado Water Congress endorses and supports the "Colorado Ute Indian Water Rights Final Settlement Agreement," while also recognizing that it is a compromise solution; and

BE IT FURTHER RESOLVED that the Colorado Water Congress urges the passage of implementing legislation and appropriations by the United States Congress and the Colorado General Assembly so that the Animas-La Plata Water Reclamation Project may be constructed, and so that the provisions of this unique settlement agreement may be performed for the benefit of all residents of the State of Colorado.

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Mr. CAMPBELL. Girts Krumins will continue.

Mr. KRUMINS. Thank you, Mr. Chairman. I would be pleased to summarize my written testimony that has been submitted to the record.

My name is Girts Krumins. I am the president and chief executive officer of Colorado-Ute Electric Association, which is a cooperative engaged in the generation and transmission of electric power and energy in the State of Colorado, where our members serve over 190,000 customers in 47 of the State's 63 counties. Together we constitute the second largest supplier in Colorado serving a population of about 600,000.

The thrust of my testimony is that the Colorado-Ute Electric Association supports the proposal in H.R. 2642 that would impose a 30-year straight line amortization schedule for repayment of the irrigation assistance costs. We believe that such a schedule is eminently reasonable under the present conditions, particularly in view of the fact that the power rates to the customers of the Federal hydroelectric power from the Colorado River would not be significantly affected by this change.

In short, we support this legislation and we ask you to look at it favorably. We believe that the construction of the Animas-La Plata project will fulfill commitments made by the United states Government not only to the Ute Indian Tribes but also to customers of Colorado-Ute's member systems. We ask you to look at it favorably, and we appreciate your consideration.

Thank you very much.

Mr. CAMPBELL. Thank you.

[Prepared statement of Mr. Krumins follows:]

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STATEMENT OF
GIRTS KRUMINS, PRESIDENT
COLORADO-UTE ELECTRIC ASSOCIATION, INC.
BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
regarding
H.R. 2642
THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987
WASHINGTON, D.C.
September 16, 1987

My name is Girts Krumins. I am President and Chief Executive Officer of Colorado-Ute Electric Association (Colorado-Ute). Colorado-Ute is engaged in the generation and transmission of electric power and energy to fourteen rural electric cooperatives serving over 190,000 customers in 47 of the 63 counties in the state of Colorado. Colorado-Ute is itself a rural electric cooperative owned and controlled by the 14 distribution cooperatives it supplies at wholesale. Colorado-Ute and its member systems constitute the second largest supplier of electricity in Colorado, serving a population of about 600,000.

HR 2642 proposes a thirty-year straight-line amortization schedule for repayment of the irrigation assistance costs of the Animas-La Plata Project in Colorado. Some power interests associated with federal reclamation projects in western United States are concerned because, if enacted, this proposal would change existing irrigation assistance repayment policy. Colorado-Ute Electric does not share this concern, and supports the proposed amortization schedule.

The Western Area Power Administration, which oversees the distribution and marketing of federal hydroelectric energy produced at the

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hydroelectric power plants on the Colorado River, was asked to study the impact the proposed change in repayment policy under HR 2642 would have Colorado River Storage Project power rates. The Western Area Power Administration concluded that the 30-year straight-line amortization could be accomplished without a significant impact on the power rates charged to CRSP customers. This is indeed a fortunate and unique circumstance. The partnership between water and power interests in western United States has been one of mutual cooperation and benefit. Power customers have historically met their commitment to repay the irrigation costs of federal reclamation projects such as projects built under the Colorado River Storage Project Act. Water and power interests have cooperated to maximize power production at all of the major mainstem hydroelectric producing reservoir sites on the Colorado River. This cooperation has enabled both interests to maximize the benefits available from multi-purpose water storage projects. The ultimate benefits have accrued, not only to power customers, but also to farmers and other citizens of the United States who have shared the economic benefits of water development in the West.

Colorado-Ute Electric Association urges members of the Committee to view this legislation favorably. Construction of the Animas-La Plata Project will fulfill commitments made by the United States Government not only to the Ute Indian Tribes but also to customers of Colorado-Ute's member systems. The citizens of Colorado will benefit from the electric energy supplied by the hydroelectric power plants on the Colorado Rvier and be able to make beneficial use of their share of the waters of the Colorado River. This beneficial use was promised to them under the provisions of the Upper

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Colorado River Compact and the previous enactments by the United States Congress. Passage of H.R. 2642 is necessary if past commitments are to be honored.

Thank you very much for your consideration.

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Mr. ROTH. I am Herrick Roth, and George Orbanek who is with me jointly represent the Colorado Forum, and the statement which we filed with the committee and which we trust will become a matter of the record.

Having said that, Mr. Orbanek is going to lead off our sharing of this 5 minutes.

Mr. ORBANEK. Thank you, Mr. Chairman, once again for your indulgence of some of our flight schedules. I only have a couple of very brief personal observations, and they are these.

Mr. Chairman, I am an outdoorsman and an avid fly fisherman. I love rivers. I love free flowing rivers. That being the case, I am not the type of person who is always presumptively sympathetic to major Western reclamation projects. However, that is immaterial. It is not hyperbole to suggest that there is a moral imperative at issue here, and that is the fulfillment of the Federal Government's trustee responsibilities to the native American peoples of this land.

I would urge this committee to keep that fact uppermost in mind, and expeditiously pass this legislation.

Thank you.

Mr. ROTH. Let me continue by saying, since each of you has our statement, and it is distinguished, I suppose, primarily by the unusual color, which represents droughts. It is Chatham tan paper that it indicates why the Colorado Forum, as a public leadership group as contrasted with the water managers and the political leaders who are primarily those testifying before you today, has a rather broad public interest that goes across the entire State of Colorado and has members in every part of the State living and/or owning businesses related to their leadership in Colorado and every one of our major water basins and every tributaries of the headwaters of the Colorado River.

For the last 6½ years we spent our primary attention on water policy on what we called the upper Colorado River. I know Congressman Rhodes in particular will be appreciative of the fact that the Colorado Forum has done more than that. We have met with every business interest, every water management interest in southern California, in the State of Arizona over a period of 3½ years by either their visiting us or we with them.

The first time we even had an inkling that there is anyone questioning something is just right now. I think if the forum were gathered together today, they would simply say the public interest is served, because do you know why we went for the Animas-La Plata project on the assumption that the balance of the projects that Wayne Aspinall and subsequently Mo Udall and others have been involved in allocating and appropriating to in the Congress of the United States? It wasn't to have more projects in Colorado. It was because the Indian rights question could indeed be negotiated and could be settled, and it is not settled just in terms of the State of Colorado. That is a very narrow point of view, and the blinders are on, if that is where the point of view is going to be.

I read the language in this bill today. As Ben Campbell knows, I have been in both Houses in the legislature and chaired committees and have served on sufficient capacity to know what goes on here in the Congress by having been back here for one purpose or another for over 40 years. That language is so clear in that subsec-

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tion (c) that nobody can misconstrue the language as to how many other laws are in effect with regard to the river, and when you say it this way, one other thing that I think occurs to me that I think if the forum in toto were here today, it would have to say to you that there are two kinds of surplus water.

There is only one way to quantify water. That is on expected normal flow. It has been properly said today that the normal flow of the river has not been as great as was predicted in the compact since the legislation in the Colorado when we voted on the Upper Basin Compact in 1949, so we are not unaware of what this is all about, but if there are two kinds of surpluses, one is the surplus of excess flow and the other is surplus of unused entitlements from the head of the ditch, and Colorado is 92 percent of the head of the ditch, and therefore the water has freely been used, and the Colorado Forum's point of view is we have a total system of a river. Everybody who lives downstream is entitled to their entitlements, and should not be raising narrow questions at this time about an Indian rights settlement which should be the supreme law of the land. I am certainly pleased that both Senator Domenici came to this room and you, Mr. Chairman.

Congressman Campbell, you both raised the question appropriately on where is the Department of the Interior at this point because the Colorado Forum has met with them on four times on this, three with the Secretary of the Interior, and it has been clear to us that there was an agreement. Apparently, as you well know, and we want this testimony in the record because somebody who is not the Secretary himself was sent to Denver to sign it on a precise date, it is as if the Secretary were signing, the same as if the President of the United States authorizes somebody to sign on his behalf within his command and jurisdiction.

The Department of the Interior has agreed to this, and I hope that you will on behalf of the Colorado Forum at least all of you expedite the agreement that has to come to you. We have overused our 5 minutes by virtue of my tenacity and attempt to make it clear that his is totally Federal interest, totally public interest. Don't get provincial.

Mr. Rhodes and Mr. Udall, we are going to need your support, and it is important that you do support it, and it has really nothing to do with whether you do or do not negotiate with Indian tribes totally within a State, because some Indian tribes reservations cross State boundaries.

If there are any questions, of course we will be glad to answer them.

[Combined prepared statements of Mr. Roth and Mr. Orbanek follow:]

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JOINTLY PRESENTED BY GEORGE ORBANEK, EDITOR AND PUBLISHER , THE DAILY SENTINEL, GRAND JUNCTION, COLORADO; AND HERRICK S.ROTH, PRESIDENT, HERRICK S. ROTH ASSOCIATES INC., DENVER, COLORADO, ON BEHALF OF THE CO-CHAIRMEN OF THE WATER POLICY COMMITTEE OF THE COLORADO FORUM, WILLIAM D. LORING OF GRAND JUNCTION AND WILL F. NICHOLSON, JR., OF DENVER,

BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

regarding
H.R. 2642

THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987
WASHINGTON, D.C.

Background

The COLORADO FORUM is a not-for-profit, non-political, unincorporated association of the chief executive or principal officers of the key business and professional firms in Colorado's private sector. Their names and a brief description of the purpose of the FORUM and the process which the FORUM utilizes are on the reverse side of this letterhead. The business leaders of the FORUM represent a diversified base of our State's principal economic sectors as well as a geographical representation which truly represents the intermix of our trade areas -- urban and rural; agriculture, manufacturing, mineral production, tourism, communications, law and services in all of our major river basins in both mountains and plains.

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The COLORADO FORUM, since its inception nine and one-half years ago, has proceeded to address problems of growth and quality of life in our State in an effective manner because of a deliberate structural (as well as non-structural) design. The participants are the members, themselves, not their intergovernmental and public affairs staff. Members must be in regular attendance at monthly meetings or else a new member takes his/her place. Membership is limited to thirty-four individual firms and three out-State business leader consortiums. No more than three major public policy issues are on the program agenda so that the FORUM's attention can be focused rather than spread thinly across-the-board. All agreements must be unanimous for programs to be put on the agenda and conclusions reached as the respective programs are evaluated. Public advocacies (like this statement) are made when appropriate but the FORUM, itself, retains no professional advocate or lobbyist at any level of governmental policy concern.

The FORUM applies pre-mediation processes when meeting with adversaries in major public policy areas with the hope of finding "common ground" for such adversaries. If found, a strategy is proposed for the parties to pursue the solution required to solve the problems that run counter to the general community interest.

The FORUM has no officers and can deal with no client problems -- only public policy issues. The FORUM has a "sunrise". It must have unanimous consent to continue its existence from year to (more)

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year or else it will terminate itself, automatically, any December 31st. Subject to that consent, the FORUM will extend into its eleventh year in 1988.

Understanding Our Commitment to H.R. 2642

Given this background, we believe Members of your Committee will better appreciate the commitment the FORUM has to both the Agreement among the parties and the proposal resulting from that Agreement now before you for passage into public law.

We have in nine years involved ourselves in work on problem areas relating to only seven public policy issues in Colorado. Two of these we have kept on our agenda for seven of our nine years and have just elected to continue to do so for the year ahead -- (1) the relocation and establishment of the world's fifth busiest airport and (2) water policy and the Colorado River Basin. The latter we address appropriately for your consideration today.

Five years ago the FORUM published under one cover a total review of the historic development of water resources on the Colorado River. We evaluated what the River now means and could further mean to Colorado in particular and to the Southwest in general. It has been updated once but is again out-of-print. But out of that report, the FORUM focused, first, on a major reclamation project that we determined had a sufficient community of interest to warrant its construction, namely, Animas-La Plata. (more)

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Simultaneously, but to a lesser extent, we determined that the Colorado River had to be considered as a total system. Because the greater number of its utilizers are in the Lower Basin States, we determined that even we in Colorado had to view the River's resources on a more global basis. We therefore have had during the past three years, communication in a limited manner with business leaders in Arizona and Southern California, and with water management officials to a greater degree.

Let us look briefly at the second part of our focus. We have visited with and have had official visitors come visit with the FORUM in Colorado from the Los Angeles Metropolitan Water District, the Colorado River Board of California, the San Diego County Water Authority, the Arizona Department of Water Resources, the Salt River Project, the Central Arizona Project, the Colorado River Commission, the Bureau of Reclamation, the Western Area Power Administration and the Central Arizona Project Association. Additionally, we have conferred with the principal director or state engineer relating to water resources in five of the seven Basin States, not to mention a number in both the Missouri and Columbia River Basins. We have also participated in both water marketing and water quality environmental issues discussions and conferences in California, New Mexico, Utah and Colorado.

Out of it, we continue to maintain and stress a very paramount consideration in the measure before you, namely, that THE (more)

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COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987 must be viewed as one of Federal interest and not one of provincial interest of any of the seven States in the Colorado River Basin. You must not lose sight of this.

Why Significant -- Indian Water Rights

Why did we focus, then, on Animas-La Plata ? Several reasons, of course, but the one of greatest significance to us was the question of negotiating, not litigating, Indian water rights. We not only developed that theme but have had the entire FORUM membership, four times in the past four years, visit directly with three successive Secretaries in the Department of the Interior, with the OMB and with the leaders from the Congressional delegations of New Mexico, Arizona, California and Colorado.

Indian water rights problems are a common thread throughout the West. Indian water rights claims versus non-Indian water rights claims have caused, and will continue to cause, extreme social and economic problems. The present day problems which arose out of the 1907 Supreme Court decision in Winters vs. United States, a case which has been often referred to as the genesis of Indian water rights, have been compounded by the inability or refusal of public officials to deal with those problems over the last 80 years. The luxury enjoyed by our predecessors, basically a policy of ignoring or overlooking the rightful claims which our Indian tribes have to many of the streams in the West can no (more)

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longer be enjoyed. Indian tribes have gone to court and have successfully demonstrated their entitlement to water under the laws of the land. Litigation, however, has proven to be a very ineffective tool.

The Cost Sharing Agreement entered into on June 30, 1986, together with the December 10, 1986 COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT, represent a win-win solution to the Indian water rights problems -- or more appropriately referred to as the non-Indian water rights problems -- in the State of Colorado and should serve as a model agreement for other states throughout the West who are faced with Indian versus non-Indian water conflicts. The Cost Sharing Agreement represents Colorado's commitment and good faith effort to join with the Federal government in bringing about a new method of financing water resource development in the West. The Cost Sharing Agreement represents a significant departure from the historic and accepted methods of financing water projects in the West. The negotiated settlement presented by the Colorado Ute Indian Water Rights Agreement allows each of the parties involved to meet some or all of their major concerns. It allows for unique and creative arrangements to meet as many of each party's concerns as possible. It secures commitment from all the parties to take action and provide the funding to implement the agreement according to an agreed upon time schedule. In general, the Agreement will maximize economic opportunities by allowing the Southern Ute and Ute Mountain Ute Indian Tribes to progress toward becoming viable, self-sustaining

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communities and will at the same time protect the considerable investments of the non-Indians in the San Juan Basin in their water use.

In addition, the Agreement allows the Federal government to fulfill its trustee obligations to the Tribes and avoid payment of damages for breach of trust responsibility or of claims for compensation for lost rights from non-Indians. Negotiated settlements are clearly preferable to litigation. Congress' approval of this legislation will send a strong message to areas in the West where these disputes are still pending that Congress is enunciating a policy of Federal participation in favoring negotiated settlements as a method of resolving these disputes. The approval of the Agreement will bring certainty to water rights disputes through a negotiated settlement process. The approval of the legislation will ensure fulfillment of a unique Federal responsibility that the Federal government has to Indian tribes. Just as the Congress mandated that states should share the cost of water resource development, Congress should signal the Indian tribes in other states that negotiated settlements will be reviewed and accepted as the favored policy of Congress.

The COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT is strongly supported by both Indians and non-Indians in the State of Colorado. The Federal government is asked and should be willing to make a fair and just contribution to the settlement in fulfillment of its obligations to tribes. The settlement is (more)

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compatible with existing water rights conditions in Southwestern Colorado and Northwestern New Mexico and will prevent a dislocation of water rights which have been used and vested in non-Indian water users over a significant length of time. There does not appear to the COLORADO FORUM to be any detrimental effects that would flow from approval of this legislation. We believe that by approving the legislation, Congress will be adopting a policy which can be emulated by others in the West to the benefit of all the citizens of the United States.

Concluding Emphasis

Let us conclude, then, by underscoring that this is a Federal responsibility, not that of the seven States of the Colorado River Basin. Provincial interests among us should not override this heavy responsibility.

Let us also reemphasize that having eight parties sit at a four-sided negotiations' table ably chaired by a woman mayor in the San Juan Basin/Four Corners area is proof of the kind of negotiated settlements that can be achieved. Common grounds were found both in general and specific settlements. Patience, humor, purpose and fairness were interwoven into this good faith process. A new day has been born in this process, a day not often understood by those who do not always readily sense that the process of judiciousness can prevail in the historic legacy of representative government and move us ahead into the new world, even within the framework of what old timers refer to as (more)

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the law of the River, seemingly unaware that the law of the River was at work in the Agreement that was reached on June 30, 1986, that brings this measure before you today.

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A SUPPLEMENTARY STATEMENT PRESENTED BY HERRICK S. ROTH, ON BEHALF OF THE CO-CHAIRMEN AND MEMBERS OF THE WATER POLICY COMMITTEE OF THE COLORADO FORUM, WILLIAM D. LORING OF GRAND JUNCTION AND WILL F. NICHOLSON, JR. OF DENVER, AND ALL MEMBERS OF THE COLORADO FORUM

TO THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

regarding
H.R. 2642

THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987
WASHINGTON, D.C.

In response to the request of the Presiding Chairman, the Honorable Ben Nighthorse Campbell, following discussion between Congressman Rhodes and the COLORADO FORUM presenters of the FORUM's position on H.R. 2642 at the hearing convened by the Committee on Interior and Insular Affairs, Wednesday, September 16, 1987, the COLORADO FORUM extends its testimony under date of October 7, 1987, for the Committee and its Members, re: "Cost in lieu of constructing Animas-La Plata and its relationship to settlements that might be anticipated by the Government of the United States through litigation initiated, appropriately, by the Ute Mountain Ute and the Southern Ute Indian Tribes."

At the hearing, in response to the Presiding Chairman's question, Mr. Roth indicated that the "round number figure we were using when we began our work on the courses to follow to meet the

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legitimate demands of the Ute Indian tribes was $170,000,000, minimally" and that was five years ago.

Let us begin with established fact. The Supreme Court decision in Winters vs. United States dates back to 1907, eighty years ago. The fact is that this judicial law provides the Ute Indian tribes both the benefit and the costs of eighty years. That is a fact that would be confronted, carefully, by legal advocates before the courts if the Tribes involved decided that the time has come to litigate.

The next fact to be confronted relates to irrigable land which is available to (1) the Ute Mountain Utes on the Mancos and La Plata Rivers and the (2) Southern Utes on the Mancos, La Plata, Animas and Florida Rivers. The former is recorded as 45,873 acres; the latter is recorded as 17,878 acres. Currently, 13,300 of these acres are irrigated by "white" or "Anglo" (both terms have been used over the years) farmers and ranchers on the Mancos; 10,000 acres on the La Plata. Because there is a slight excess of supply (capacity) on the Animas River, only in years of less than normal flow would the municipal use of water in Durango and downstream New Mexico cities adversely affect the Southern Ute Tribe. Even though the latter use has value and properly could be paid to the Tribe an estimated 30% of the time in each decade, we will omit that cost or benefit in the calculations which follow. (more)

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After reviewing several alternative evaluations of the value of the rights of the two Indian tribes, we find our oral response to Congressman Campbell's question very conservative.

On the assumption that the Winters doctrine had been applied by the Federal Government upon its statement in 1907, devlopment of the Tribes water rights most likely would have taken place in the decade that followed. Our evaluation, therefore, relates to the seventy year period between 1917 and 1987, when the beneficial application of those rights could have been applied.

Applying the market value of lands and the earning power on the productivity of irrigable lands in the San Juan Basin of Colorado, there has been, minimally, a cumulative dollar loss to the two Tribes of $162,400,000. Admittedly, this dollar amount is not corrected for unusual periods of inflated values and/or high market sales dollars following the mid-1930s and subsequent to World War II. Some economists would argue that the loss more closely touches $320,000,000, but even the most conservative, using the discount tables established over the years by the United States Bureau of Reclamation, would argue against the figure we have stated here. If one were to take the volume of data utilized, the criteria applied and the results stated in the Animas-La Plata Irrigation Projects, "A Re-examination of Regional Benefits and Costs" completed and published in September, 1984, our $162 million figure stated here is indeed (more)

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well below what both methods and data in that ninety-six page document will reveal upon careful examination.

Another way to approach an evaluation is the earning power denied a minimum of 2500 adults as Tribal members who would have been involved in the agricultural productivity, through good times and bad (economically), since 1917, under developed water rights applied solely to agricultural economics. Here, we also come up with a most conservative number, since it is not unlikely that the Tribes would have also utilized their water rights in the production of minerals in the region, if not in the refining of mineral production by industrial plants on their respective reservations. If we had assumed that even 25% of this period had been applied equally between agricultural production and industrial mining and production, the figure that we state here would expand in a quantum manner.

However, let us apply the wage and salary loss to the least productive economy - agricultural labor and management wages and salaries. Over and above the earning power that can be expertly evaluated since 1952, alone, the increased earned personal income would have been, minimally, $218,750,000. In the period prior to 1952, utilizing local data sources relating to the Four Corners area, that loss was no less than $85,000,000. Wages and salaries denied by virtue of a non-fulfillment of a Federal obligation can be minimally stated as $306,250,000. (more)

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It is not our intent to shock the Committee by pointing out that, technically, you can add together the personal income loss and the market value/capital earnings loss. That figure would shock you because it exceeds the Federal cost of the proposed cost-shared development of the Animas-La Plata Reclamation Project: namely, $468,650,000. Including the cost-sharing contribution of the States of New Mexico and Colorado and repayment provisions, the Committee must respectfully note that a figure in excess of $500,000,000 will be required by the completion of the Project.

However, the COLORADO FORUM emphasizes that if the Indian Tribes litigate, we have found no agency, yet, which will assert that the cost of litigation will be less than $15,000,000. The reason is clear - the present landholders who are "white" or "Anglo" and have been irrigating 23,300 acres of the 63,571 acres of record in the current agreement as "irrigable" lands will be parties, both individually, corporately and/or collectively to court suits which probably will demand several hundred separate settlements in equity. Add to that the conservative estimate of $62,000,000 of claims for present land and real property values for those who would be displaced, not including "damages" which indeed courts do award. Then, you have $77,000,000 minimally to add to either of the prior figures or to both of the figures, which indeed the COLORADO FORUM still considers the "conservative" approach.

In short, you can end up with three "minimum totals" - the first two of which omit its opposite counterpart. Candidly, we must (more)

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say that in equity and moral equivalency, the two Indian Tribes could not and would not omit one or the other of the "base totals" noted heretofore. We do so only to indicate to you how very, very conservative our $170,000,000 to $200,000,000 figures were in fact.

(1) Minimum total (market value loss + displacement costs): $239,400,000;

(2) Minimum total (earning power loss + displacement costs): $383,250,000; or

(3) Minimum (combined market/earning loss + displacement): $545,650,000.

The Real Responsibility

However, the COLORADO FORUM must emphasize once again, please face up to your real responsibility to (1) recognize the uniqueness of the negotiated eight-party agreement which deals with the Indian Tribal rights settlement proposed in H.R. 2642 - this requires no litigation, an achievement in itself; and (2) the overriding necessity of the Federal Government through Congress and Executive Departments to address the Indian Rights question as superior to any other local, regional or provincial interest expressed by any of the Basin States of the Colorado River.

Let us further state that the COLORADO FORUM has been addressing itself in depth to this precise problem area and the project that deals with the problem area, Indian Tribal Rights under the United States' system of justice and equity, for four and one-half years. In this process, we have met with business, water management and elected leaders in both Arizona and California. (more)

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If the water management teams at all levels of government in the Lower Basin States and the U.S. Department of Interior, itself, cannot work out agreements relating to how the Indian Tribes might market from 25,000 to 60,000 acre feet of their own water without adversely affecting any other right claimed by any of the preceding entities noted in this sentence, then we can assure you that business leaders of good conscience in all three States -- Colorado, Arizona, and Southern California - can indeed mediate and conciliate in this arena of concern. This assertion relieves no one of you, however, from the reponsibility that is indeed yours as our elected Federal Representatives.

We are very much counting on your own statesmanship and political conscience, collectively prevailing, with regard to the early mark-up and passage of H.R. 2642.

FOR THE COLORADO FORUM

Herrick S. Roth, Member/Director
(The names of our members appear on the reverse side of the initial page of this supplementary statement)

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Mr. CAMPBELL. I have no questions, but I want to thank you for that very strong and eloquent statement.

I know as well as you do that sometimes when you deal with water out there in the arid West, regardless of which State it is in, it gets distracted somewhat when we easily talk about how we need to share the water, but if I think I might have to give up a portion of mine, then we take a little different perspective, don't we?

Mr. ROTH. Yes.

Mr. CAMPBELL. That is just Western people, I think.

Mr. ROTH. Yes.

Mr. CAMPBELL. Being Western, I understand the deal.

Mr. ROTH. I have lived through a drought of 7 years, 4 years in Colorado and 3 years in western South Dakota. 7 years in South Dakota, only 4 years in Oklahoma, Texas and Colorado. The Dust Bowls were terrible under this. If you don't store water at the appropriate place, isn't it wonderful we have had excess flow so that two huge reservoirs that are down basin for all practical purposes are filled. Isn't that a blessing. That is a blessing to everybody who wants to live in Arizona, southern California and Nevada.

They weren't filled by normal water flow. If they had not been filled, nobody would have taken it out for the Los Angeles metropolitan water district, nobody could have taken it out for the interests of the Colorado River Board of California. Nobody could take it out for the ditch known as CAP. It is there, and it is because it is excess flow it is there. It is because both of those reservoirs, if you want to look at the facts of quantification, were filled years before their time in this second go-around after Glenn Canyon intervened between there and Boulder Dam and Lake Mead. People have to look at those quantifications, and the people's interests have to be served here, not the technical interests of what is surplus, because nobody wants to take it away from anybody in Los Angeles County, San Diego County or the Central Arizona project. We love those States.

Mr. CAMPBELL. The forum is, to my knowledge, a group that deals to a great degree with civic responsibility issues. Have you at all in the forum talked about the alternative, if that is not built, in terms of litigation costs and social disruptions and the damage that it might do?

Mr. ROTH. The answer is yes. When we consulted enough lawyers and found out it might be worth $170 million and that was 3 years we would assume that it would be more than $200 million today, to do all the litigation, we can't be any more specific than that, but the point is the $200 million is better invested in a project that has beneficial use, and incidentally controls beneficial stream flow. I don't think anybody downstream is ever going to have to worry about how much water the two Indian tribes might lease out across basin lines, law of the river notwithstanding, because it won't be significant enough to handle the influx of population into the fastest growing State in the country and the fastest growing county in the country, both of whom are on the Colorado River.

Mr. CAMPBELL. If you have some authoritative statistics that back up this $170 million figure or $200 million figure——

Mr. ROTH. I guess we can get a number of lawyers to sign that statement for us and send it to you, and we would certainly be

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pleased to do that. In fact, I think fees are higher now. We will do that, and since you have given other people a 3-week period, let's see if we can do it and try to develop a better statement on that than my off the top of the head. But we started with the $170 million figure 3 years ago.

Mr. CAMPBELL. I know some of us on the committee, the contention is it is a pay now or pay later deal.

Mr. ROTH. Exactly. This is an investment that is worthwhile and productive as opposed to one that simply solves nothing but simply drives other people up the tree.

Mr. CAMPBELL. Thank you, gentlemen.

Congressman Rhodes, do you have any questions or comments you would like to make?

Mr. RHODES. Let me just say that there are only two aspects of this situation that trouble me. I guess the only one we are dealing with right now with this panel is the situation with section 5(b), and that is the extent of my objection to the situation.

As I stated earlier, I am pleased that the interests have reached settlement on this Indian claim. I have absolutely no opposition whatsoever to the Animas-La Plata project. It is a project that is needed for the Upper Basin States. Viewed strictly on its own merits, it is a project I can and will support.

I think that if I were being parochial, that instead of sitting here and raising questions about the section, I would be very quietly encouraging its passage and at the same time sending agents of the State of Arizona to the reservations to negotiate for the purchase or lease of that water, so we can send it downstream and use it there, so I want to make clear that I support the concept of the settlement, and of the Animas-La Plata project, and this issue and, in another context, amortization questions and the payoff period are where my problems are with the proposal.

Thank you.

Mr. ROTH. I appreciate your statement.

Mr. CAMPBELL. I want to thank all four of you gentlemen, because most of the people that we have testify obviously, as you know, almost all have some vested interest, and from my perspective, it is good to see people that are in the business community that are trying to take an objective viewpoint, because knowing all of you, I don't think any one of you is going to be hurt or helped in one way or the other if the Animas-La Plata project gets built, but certainly from what is good for Colorado and the Indians out there——

Mr. ROTH. Thank you for the opportunity to testify. Incidentally, we do have six chief executive officers who are women, so our chief executive officers include 37 men and six women.

Mr. CAMPBELL. It will be noted for the record.

The next committee will be Mr. Ernest House, chairman of the Ute Mountain Ute Tribe and Mr. Chris Baker, chairman of the Southern Ute Tribe.

While they are taking their seats, there is one person I would like to introduce who just came in. That is Lieutenant Governor Michael Callihan in the back. Thank you for appearing, Mike. We have a 5-minute rule. Your complete testimony will be included in writing.

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PANEL CONSISTING OF ERNEST HOUSE, CHAIRMAN, UTE MOUNTAIN UTE TRIBE OF COLORADO, ACCOMPANIED BY DAN ISRAEL, COUNSEL, UTE MOUNTAIN UTE TRIBE OF COLORADO; AND CHRIS BAKER, CHAIRMAN, SOUTHERN UTE TRIBE OF COLORADO, ACCOMPANIED BY SCOTT McELROY, COUNSEL, SOUTHERN UTE TRIBE OF COLORADO

Mr. HOUSE. I am honored to be here, Mr. Chairman, and to testify before this committee. I think we will have to add that what we are talking about is us right here at the front desk, the Ute Indians, how we feel, how we see and project the future for our generation.

First let me say I am here to support the Colorado Ute Indian Water Rights Settlement Act of 1987, H.R. 2642. With the time limit that I have got, I would like to be very brief. I would like to emphasize some points and highlights of my testimony. We would like to see council and tribal rights that we have under the Constitution of the United States which we are celebrating today, the commerce clause within the United States Constitution.

There are three items that the committee has. One is my testimony, statement from Council of Energy Resources Tribe, statement from AIO, American Opportunity.

No. 1, I would like to just emphasize the December 10, 1986, agreement, H.R. 2642. The Ute Indian people have sat at a table and discussed the various rights that we have, issues on the water, issues that we have that are so complex that we had to have several meetings to understand what we are talking about. The bottom line to this whole thing is what are the Utes going to do with the water that we have?

We work with the non-Indian community friends within the areas of southwest Colorado and northwest New Mexico. We didn't just come up with this idea. It took time for both the Mountain Utes and the Southern Utes to go over this complex issue that we are talking about. But what the tribe has done has foreseen the generation that is going to be coming up and has foreseen the generation that has past.

I would like to say that I am the third generation to the Dolores project and Animas-La Plata project. My grandfather has testified before Wayne Aspinall on the Dolores projects, and my father has testified when he was a tribal leader, and I, as tribal chairman am testifying before this committee. It has taken that many years to settle this water agreement that we have got.

No. 2, the United States bears the large responsibility in resolving these claims. Three, if this legislation is not enacted, the agreement is lost. Both the tribes and the non-Indian neighbors will be affected greatly and will be involved in painful litigation for years to come.

The cooperative support and the uniqueness that we all sit down at the table with our non-Indian neighbors to get this Indian claim satisfied. The tribe tends to utilize the water resources which we have agreed to, because there is an interest with my tribe, the foresight that we have that we set for generations to come.

Finally, the tribe has made the rulings, intends to live by the law of the river and preserve the rights of neighboring States as well as

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its non-Indian neighbors. We seek your assistance and in the future it will provide significant economic opportunity for both the Indians and the non-Indian residents of southwest Colorado and northwest New Mexico.

Since we are celebrating the Constitution, the activities that are going on now, we are the only ethnic group mentioned in the Constitution of the United States, where it says Congress will make treaties with the Indian tribes. Therefore, I am asking this committee that the laws have already been set. It is in the Constitution. Therefore, we need to work on it and progress with what we have, both for Indian and non-Indian neighbors.

Thank you, Mr. Campbell.

[Prepared statement of Mr. House, with attachments, follow:]

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STATEMENT OF ERNEST HOUSE, CHAIRMAN, UTE MOUNTAIN UTE INDIAN TRIBE IN SUPPORT OF H.R. 2642

I. SUMMARY OF TESTIMONY

The purpose of my statement is to seek congressional approval of H.R. 2642. H.R. 2642 is required to implement the December 10, 1986 Colorado Ute Indian Water Rights Settlement Agreement (the "Agreement") entered into by the United States, the State of Colorado, the State of New Mexico, the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, and a large group of local water users in Southwest, Colorado (the "Agreement").

The Agreement is historic in three ways. First, it resolves a long standing clash between Indian and state water rights owners which if not settled and litigated would have unquestionably "closed down" several farming communities in Southwest, Colorado and Northwestern, New Mexico. Second, it creates a rare opportunity for an isolated, rural, and very beautiful portion of the West to generate an economy that will prevent a permanent loss of population and hope. In the absence of this Agreement which is designed to utilize the region's principal economic resource -- namely the unappropriated waters of the Colorado River -- this rural area like other isolated areas in the West will suffer from stagnation and widespread emigration. Third, the Agreement represents a significant technical accomplishment of integrating complex State and federal law, water resources, and administration. The Agreement is entitled to the full support of the United States Congress.

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II. THE BACKGROUND

This Agreement ends a 100 year conflict between two Ute Indian Tribes and their non-Indian neighbors. In 1868, the United States set aside large portions of Southwest, Colorado as permanent reservations for the Ute Indians. Those reservations encompassed federal Winter's Doctrine federal reserved water rights to nearly all of the streams and rivers which flow out of the San Juan Mountains into the Colorado River system.

During the last ten years the United States, the State of Colorado, the local water users, and the two Indian Tribes began to prepare for what would certainly be time consuming and injurious court litigation to resolve once and for all the scope of the Ute Indians' federal reserved rights vis a vis the competing state water rights relied upon by the non-Indian communities. Worried that inevitably big losers would emerge from such litigation, the Attorney General of the State of Colorado proposed in April of 1985 that the parties make one last run at achieving a negotiated settlement. As a result of that invitation, an intensive two years of negotiations generated the final Agreement of December 10, 1986 signed not only by the Tribes, the State of Colorado, and local water users, but also by the United States Department of Justice, and United States Department of Interior.

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III. SUMMARY OF THE AGREEMENT

First and foremost the Agreement quantifies the Tribes' reserved water rights from available streams and rivers passing through the Reservations and from the partially completed Dolores Project as well as the yet to be constructed Animas-La Plata Project. The Tribes are provided with significant amounts of water for irrigation, municipal and industrial purposes. Their water rights will be administered pursuant to specific and detailed terms, and the administration of the Tribes' reserved water right is incorporated into the general administration of state water rights in Southwest, Colorado.

The Agreement of December 10, 1986 also incorporates a cost sharing arrangement satisfactory to the Secretary of Interior necessary to permit the long promised, but yet to be constructed Animas-La Plata Project to become a reality. Both the Dolores and the Animas La-Plata Projects are required to create a sufficient reservoir of stored water so that the competing claims for Indian water and non-Indian water can both be satisfied. Congress understood years ago that these two projects would be required to support the water requirements existing in Southwest, Colorado and Northwest, New Mexico. That is why in 1968 Congress enacted the Colorado River Basin Project Act, 43 U.S.C. § 61(a)(1) to assure that the Dolores and Animas-La Plata Projects would be constructed on a timetable roughly comparable to the construction of the much larger Central Arizona Project.

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Of course, in the years since 1968, the Central Arizona Project has been generously supported by Congress, and much of that mammoth and important project is nearing completion.

Hence, the agreement of December 10, 1986 not only resolves long standing federal vs. state water rights claims, but also renews a commitment by and to the States of Colorado and New Mexico, the Tribes, and the thousands of non-Indian water users to complete Congress' original plan to build adequate water storage facilities to assure a future economy utilizing Colorado and New Mexico's allocations of Colorado River water.

IV. RESOLUTION OF THE TRIBES' FEDERAL WATER RIGHTS CLAIMS

Federal law, notably Winters v. United States, 207 U.S. 564 (1908) and Arizona v. California, 373 U.S. 546 (1963) recognize that when the United States sets aside the Indian reservations a sufficient amount of water is deemed to have been reserved in order to allow the reservation Indians to develop a permanent economy. While typically these so-called Winter's Rights federal water claims are measured on the basis of the amount of irrigable acreage on such reservations, federal law recognizes that waters once secured may be used for a variety of purposes.

In United States v. Akin, 424 U.S. 800 (1976), the United States Supreme Court ruled that the Winter's Rights claims of the two Colorado Ute Tribes secured by the Treaty of March 2, 1868 were to be litigated in the state courts of Colorado. As a

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result of that decision an enormous number of claims have been filed throughout the rivers and streams passing through and adjacent to the two Ute Indian Reservations. If these broad reaching federal reserved water rights claims were prosecuted to their finality, it is estimated that a number of agricultural communities in southwest Colorado and northwest New Mexico would be deprived of the water which is the life blood of their economies. Hence, the need for an amicable and fair settlement of these claims taking into account water made available as a result of Congress' authorization of the Dolores and Animas La-Plata projects has spurred the creation of the Colorado Ute Water Rights Settlement Act. With this Act, all Winter's Rights federal water claims of the two Tribes not expressly secured in the legislation will be extinguished.

V. RESOLUTION OF THE TRIBES' BREACH OF TRUST CLAIMS AGAINST THE UNITED STATES

Wholly independent of the Winter's Rights federal water claims now being prosecuted in the state courts of Colorado against non-Indian water users, are independent federal breach of trust claims which the Tribes have asserted against the United States. These claims arise out of 100 years of dealings by the United States with the Tribes water resources.

These breach of trust claims include the Ute Mountain Ute Tribe claim that the United States in constructing in the 1940's the Mancos Reclamation Project knowingly and intentionally

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subordinated the senior water rights claims of the Tribe to the benefit of non-Indian farmers upstream from the Ute Mountain Ute Reservation. The unlawful appropriation of power revenues by the United States for its own purposes utilizing the Winter's Rights water of the Tribes constitutes a second breach of trust claim. The failure of the United States to deal impartially with its upper basin and lower basin Indian beneficiaries which emerges from the failure of the United States to construct the Dolores and Animas La-Plata projects on the same timetable with the Central Arizona Project constitutes a third breach of trust claim. These claims, and others, will be finally extinguished once the Settlement Act is enacted.

VI. FULFILLMENT OF CONGRESS' 1968 COMMITMENT TO COLORADO AND NEW MEXICO

The legislation implements a sixty year national obligation to develop the waters of the Colorado River for Indians and non-Indians living both in the upper and the lower Colorado River basin states. Both Congress and the United States Supreme Court have confirmed that the responsibility for development of the resources of the Colorado River constitute a national challenge and a national problem. See Fall Davis Report, S. Doc. No. 142, 67 Cong. 2d Sess. (1922) and Arizona v. California, 373 U.S. 546, 555 (1963). Congress and the Supreme Court have understood that a national plan must be implemented to overcome the competing interests of the various states, and under the national plan the

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Secretary of the Interior has been authorized to construct and to maintain water resource projects for the benefit of municipal, industrial and agricultural users throughout the upper and lower basins.

Congress' mandate to the Secretary to proceed to develop the Colorado River resulted in the 1928 Boulder Project Act for the Lower Basin, the 1968 Colorado River Project Act, 43 U.S.C. § 1501-1556 authorizing the construction of the Central Arizona Project, and in the 1968 Colorado River Storage Project Act, 43 U.S.C. § 620, mandating that parallel projects in the Upper Basin be built on the same timetable as the Central Arizona Project.

In the Boulder Project Act, the Secretary was directed to allocate the rivers of the Lower Basin and to proceed to construct and develop Hoover Dam and in the 1968 Colorado River Project Act, the Secretary was directed to build the Central Arizona Project, again for the Lower Basin. But in the 1968 amendment to the Colorado River Storage Project Act, the Secretary was directed to proceed to develop comparable facilities in the Upper Basin. In all cases Congress intended the Secretary to be the driving force behind a national plan to develop the Colorado River. As the Supreme Court noted in Arizona v. California, 373 U.S. at 589, Congress insisted that there be "unitary management" and a "coordinated plan," in order to accommodate the often conflicting interests of the Colorado River basin states.

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The same desire to create a unfettered national scheme for the Colorado River was expressly revealed in the 1968 amendment where Congress directed the Secretary to "proceed as nearly as practicable with the construction of the Animas-La Plata ... Project concurrently with the Central Arizona Project, to the end that such project(s) shall be completed not later than the date of the first delivery of water from the Central Arizona Project." The legislative history confirms that Congress "required" the Secretary to plan and accomplish both pre-construction and construction activities of the Upper Basin Projects, including the Animas-La Plata, in such a manner that the projects would be capable of operation not later than the date of the first delivery of the Central Arizona Project water. See H.R. Rep. No. 1861, p. 26 (1968).

The special authorization given the Animas-La Plata Project was for the very same purpose Congress had early on identified to justify the development of the Boulder Dam project and the Central Arizona Project -- namely, to strengthen the economies of the area served by the project and to provide a dependable water supply to meet the ever growing needs for agricultural, municipal and industrial uses for all of the Colorado River states. See H.R. Rep. No. 1312, p. 22, 55.

> The attainment of this object can resolve one of the major facets of the aged old conflict over use of Colorado water. Thus, by providing for concurrent construction of these projects the Committee is also expressing its desire that they

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> be adequately funded through support of the executive branch and appropriations of moneys by the Congress. (emphasis added)

H. Rep. No. 1861, p. 26 (1968).

The 1968 legislation not only carries forward Congress' plan to have the Secretary implement a national strategy free of conflicting state interests for the Colorado River. It also carries forth the United States commitment to the various Indian Tribes that were established along the tributaries and the main stream of the Colorado river. As was noted in Arizona v. California, when each of the Indian Reservations in the Upper and Lower Basins were created, and most were created before the territories were divided into separate states, the United States expressly set aside sufficient amount of waters to sustain the Reservations. As the Supreme Court in Arizona v. California noted:

> Most of the land in these Reservations is and always had been arid. If the water necessary to sustain life is to be had, it must come from the Colorado river or its tributaries. It can be said without overstatement that when the Indians were put on these Reservations they were not considered to be located in the most desirable area of the nation.

373 U.S. at 598.

Hence, when in 1968 Congress directed the Secretary to establish on a priority schedule a number of Upper Basin projects, including the Animas-La Plata Project, Congress was carrying forth a commitment of the United States made to the Ute

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Indians of Colorado in 1863, 1868 and in 1895, when the United States entered into treaties and agreements to set aside a permanent homeland in Colorado for the Ute Indians containing sufficient water to allow the Indians to live securely.

To conclude, Congress' 1968 commitment to the Upper Basin States and to the Ute Indians in Colorado to build the Animas-La Plata Project established what Congress believed to be a critical Upper Basin component to its national plan to develop the Colorado River. That 1968 commitment also guaranteed fair treatment for both Upper Basin Indian and non-Indian users of Colorado River waters.

VII. ANIMAS LA-PLATA PROJECT COST SHARING

While the overall Colorado Ute Indian Water Rights Final Settlement Agreement was signed on December 10, 1986 and requires the Settlement Act as set forth in H.R. 2642 to implement its provisions, a related development occurred on June 30, 1986. That related development was the execution of an agreement for cost sharing and financing of the Animas La-Plata project in satisfaction of the requirements of Congress in IV of Pub. L. 99-88. That June 30, 1986 agreement, expressly undertaken in coordination with the water rights settlement, provides the precise federal, state and local contributions to the construction of the Animas La-Plata project and to the overall settlement of Colorado Ute Indian water rights. Under the cost

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sharing arrangement, the non-federal contribution equals nearly 240 million dollars and represents 38% of the combined cost of the construction of the Animas La-Plata project and the settlement of the Tribes' Winter's Rights federal water claims.

VIII. TRIBAL DEVELOPMENT FUNDS

An important component of the Settlement Act and a significant focus of cost sharing is the establishment of two tribal development funds designed to allow the Ute Mountain Ute and Southern Ute Indian Tribes to put their water resources to practical and economic beneficial use. The development funds totaling 60.5 million dollars are created by state and federal contributions. The funds will be managed by the Secretary of the Interior, will be utilized by the Tribes to develop water and other natural resources on the Reservations, and will become significant contributors to the federal goal of making the two Ute reservations in Colorado permanent and viable homelands for the Ute Indians.

The State of Colorado is contributing 11 million dollars to the development funds and the United States is contributing 49.5 million dollars. Six million dollars of the State of Colorado contribution has already been allocated for construction of the Cortez-Towaoc pipeline -- designed to bring for the first time water for domestic purposes to the Ute Mountain Ute Reservation. In addition, the State of Colorado in the Agreement committed 5

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million dollars to be put into the Tribes' two development fund for economic development purposes. The federal government's 49.5 million dollar contribution will be made in three appropriations, the first one of 19.5 million, the second one of 15 million, and the third one of 15 million.

As noted above, the development funds are intended to establish in the Tribes the financial capability to utilize their water resources to create a permanent Reservation economy. The amount of the development funds reflects a recognition of (i) the money saved by the State and its local subdivisions by foregoing the costs of litigation (ii) and the injury to the local economy caused by the Tribes' assertion of their senior water rights in court, and (iii) the Tribes' willingness in the Agreement to relinquish successful breach of trust claims against the United States.

As noted above the federal monies will be added to the State contribution to establish two permanent economic development funds -- one for the Ute Mountain Ute Tribe and one for the Southern Ute Tribe. As we describe below, the development funds will be used to take the wet water achieved by the settlement and begin to develop a viable and long term economy for the Reservations.

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IX. PROJECTED USES OF THE UTE MOUNTAIN UTE TRIBE DEVELOPMENT FUNDS

A. Tribal Pilot Project.

Currently the Tribe is developing with its own monies a demonstration project for irrigation development on the Reservation in anticipation of water to be delivered from the Dolores Project. Side roll sprinklers are being used to irrigate 80 acres of alfalfa, a center pivot sprinkler system is irrigating 50 acres of alfalfa, and over 300 acres of land is being flood irrigated for pasture hay on the Reservation. The purpose of these demonstration projects is to provide the Tribe with some practical experience utilizing the Reservation's soils, climate, costs, and market, so that when the Dolores Project water begins to be delivered in approximately 1993, the Tribe will be in a good position with "hands on" experience, professional capability, and monies from the development funds to commence the development of a viable agricultural economy on the Reservation.

The following project descriptions are preliminary in nature. They are provided as a guide to the probable use of the Ute Mountain Ute Tribe's development funds, but we can provide no assurances at the present time that these projects will each prove to be sufficiently economically feasible so as to justify an allocation of monies from the Tribe's development fund.

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B. Dolores Project Development.

The Dolores Project will supply municipal and industrial water through the Towaoc pipeline and a significant amount of agricultural water through the combined Highline Canal. One million dollars will be spent to develop a municipal and industrial water pipeline and distribution system within the Reservation once the Towaoc pipeline is built. In addition, a portion of the development fund will be allocated to an operation, maintenance and replacement ("OM&R") fund for the water treatment and water distribution system.

With respect to irrigation development, sprinkler systems, farm equipment, land preparation, installation of power lines, and construction of access roads must be undertaken in order to put the Dolores Project water to agricultural use on the Ute Mountain Ute Reservation. Based on 1986 cost estimates, to develop 7,500 acres of land for irrigation, a $10,200,000 commitment will be required. The OM&R costs for the irrigation facilities will be covered by the development fund during the first ten years, and after ten years income from the farming enterprise will cover the OM&R costs.

C. Animas-La Plata Project Irrigation.

Under the Agreement, Part II of the Animas-La Plata Project is to be developed by the Tribes, local water users, and the State of Colorado. As in the case of farm developments for the

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Dolores Project, an allocation from the development fund will be required for farm development, capital costs and for OM&R coverage at the time when the Tribe elects to develop the Animas-La Plata Reservation lands. Sprinklers, land preparation, farm equipment, facility OM&R, and pipe laterals must all be developed to bring the Animas-La Plata waters to the Reservation farm. The projected 1986 farm costs are $15,400,000 and the required pipe laterals are estimated at 1986 construction costs to equal $48,100,000. Moreover, a 1 million dollar a year OM&R cost with respect to these agricultural facilities will be covered by the development fund for ten years until farm income is fully developed.

D. San Juan River Project.

The Tribe will likely develop for agricultural purposes its water allocations from the San Juan River provided for in the Agreement, and the capital costs are estimated at $1.5 million in 1986 costs and a ten year $35,000 per year OM&R allocation.

E. Pilot Project Data Shows Reservation Farming is Profitable. The Tribe's ongoing farming operations demonstrate that Dolores and ALP waters can create profitable farming operations. The Tribe estimates that the 7500 acres of Ute Mountain Ute Reservation lands targeted to be served by the Dolores Project can be economically irrigated under the following cropping pattern:

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Acres Planted

Alfalfa	1,500 acres
Wheat	2,250 acres
Oats	380 acres
Beans	2,250 acres
Corn	750 acres
Barley	380 acres

Gross Income

Alfalfa	$495,000
Wheat	562,500
Oats	76,000
Beans	652,500
Corn	255,000
Barley	83,600

Expenses

Alfalfa	$312,700
Wheat	385,900
Oats	58,900
Beans	435,400
Corn	203,600
Barley	65,200

The expenses included here include the cost of acquiring and applying seed, chemicals and fertilizer; the cost of applying water; the cost of acquiring and operating farm equipment; the cost of operation and maintenance for project facilities; the cost of harvesting and marketing all crops; management costs; and all replacement costs except for on-farm sprinkler equipment. The expenses are based upon local Colorado actual cash experiences.

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*Net Income[1]	
Alfalfa	$182,300
Wheat	176,600
Oats	17,100
Beans	217,100
Corn	51,400
Barley	18,400

X. POTENTIAL OFF-RESERVATION WATER MARKETING.

It is the plan of the Ute Mountain Ute Tribe to commit as a first priority its reserved waters to agricultural development on the Reservation. If after full development of the agricultural operations on the Reservation, water secured to the Tribe under the Agreement remains unused, the Tribe's next priority is to market water off the Reservation within the State of Colorado. If the instate market does not utilize all of the Tribe's unused reserved water secured under the Agreement, the Ute Mountain Ute Tribe will then consider the feasibility of marketing its water out of State.

The possibility of out of State leasing has created concern among the states which utilize Colorado River water. The Agreement as well as H.R. 2642 expressly and unambiguously

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[1] This cropping pattern represents what the Ute Mountain Ute Tribe currently believes to be the most profitable and feasible farm operation utilizing the Dolores Project and Animas-La Plata Project waters. If necessary, the Tribe is prepared and able to successfully farm Reservation acreage with a cropping pattern that excludes wheat and corn and utilizes a substitute cropping allocation.

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provide that nothing in either document advances the Tribe's claims that it may under applicable federal and state law market its water out of State.

Whether or not the Tribe may market its water out of State depends upon a final federal court determination of whether the law of the Colorado River (that is, the federal and state law enacted over the years relating to how the waters of the Colorado River are to be utilized) will permit such use. The Ute Mountain Ute Tribe finds it particularly ironic that some current users of Colorado River water, such as the Metropolitan Water District in Los Angeles, California, want to condition their support for H.R. 2642 on the insertion of an outright prohibition on out of State leasing by the Ute Mountain Ute Tribe. We find this position of Metropolitan Water District to be particularly disturbing, because the Tribe's ability to market its water out of Colorado will turn on the Tribe's rights under the Commerce Clause of the United States Constitution (which of course all users of Colorado are subject to) and the 1922 and 1948 compacts allocating water along the Colorado River (again which all users of the Colorado River are subject to). That is, the Tribe will be able to market water out of Colorado only if the existing law created by long standing users of Colorado River water permits such marketing.

To conclude, the Agreement and the Act are truly "neutral" on the out of State marketing issues. The Ute Mountain Ute Tribe intends to play by the rules in terms of its ability to utilize

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its water. Since 1868 the Tribe has been willing to permit the courts of the United States to determine precisely where and under what conditions the Tribe may utilize its federal reserved water rights. The Tribe intends to follow the rule of law in the future. But, the Tribe is unwilling to allow water users such as the Metropolitan Water District to dictate to it and to its neighbors exactly how its federal reserved rights are to be managed.

XI. CONCLUSION

The Ute Mountain Ute Tribe requires the support of Congress to finally end its 100 year struggle to secure water which is essential to preserving the Reservation as a permanent homeland. Both the Agreement and H.R. 2642 represent a major accomplishment on the part of the Indians, non-Indians, State of Colorado and New Mexico officials, and officials of the United States Departments of Interior and Justice. We appreciate your consideration and your votes to enact this long overdue settlement.

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Council of Energy Resource Tribes

1580 Logan Street - Suite 400
Denver, Colorado 80203-1941
(303) 832-6600

Executive Committee:
Judy M. Knight
Chairman
Ute Mountain Ute
Edward T. Begay
Vice Chairman
Navajo
J. Herman Reuben
Secretary
Nez Perce
Hazel Umtuch
Treasurer
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Acoma Pueblo
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Jicarilla Apache
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Standing Rock Sioux

Board Members:
Blackfeet
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Cheyenne Arapaho
Cheyenne River Sioux
Chippewa Cree
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Crow
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Fort Peck
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Muckleshoot
Northern Cheyenne
Pawnee
Penobscot
Ponca
Rosebud Sioux
Santa Ana Pueblo
Saginaw Chippewa
Salish Kootenai
Seminole of Florida
Shoshone - Bannock
Southern Ute
Spokane
Tule River
Turtle Mountain Chippewa
Umatilla
Ute
Walker River
Zia Pueblo

Executive Director:
A. David Lester

September 4, 1987

The Honorable Morris Udall, Chairman
Interior and Insular Affairs Committee
1324 Longsworth Office Building
Washington, D. C. 20515

Re: Colorado Ute Water Settlement Agreement
H.R. 2642

Dear Congressman Udall:

The purpose of this letter is to urge your Committee to support H.R. 2642.

The Council of Energy Resource Tribes (CERT) is a tribal organization composed of 43 federally recognized Indian tribes, and dedicated to the protection, management, and development of their natural resources for the purpose of utilizing them to develop viable, stable, and diversified reservation economies. While much of CERT's focus is on maximizing the benefits to the Tribes of depletable energy resources, the member tribes that govern the organization have consistently maintained a significant interest in assisting Tribes to develop their renewable resources in order to assure that the reservations remain as permanent homelands. Chief, of course, among the Tribes' renewable resources are their valuable water rights.

We have watched with admiration the successful efforts of the Ute Mountain Ute and Southern Ute Indian Tribes to develop a consensus approach to resolving their long standing water rights claims in Colorado and New Mexico, which assists, and does not injure, their non-Indian neighbors. CERT considers the Agreement of December 10, 1986 between the states of Colorado, New Mexico and the two Ute Tribes as a model for how state and Indian resource conflicts in the West should be resolved. H.R. 2642 implements that Agreement and is entitled to the strong support of Congress.

Sincerely,

A. David Lester
Executive Director

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DATE: December 10, 1986 RESOLUTION NO. 3247

RESOLUTION
UTE MOUNTAIN TRIBAL COUNCIL
TOWAOC, COLORADO 81334

REF: Colorado Ute Indian Water Rights Final Settlement Agreement

WHEREAS, the Constitution and Bylaws of the UTE MOUNTAIN TRIBE approved June 6, 1940 and subsequently amended provides in Article III that the governing body of the UTE MOUNTAIN TRIBE is the UTE MOUNTAIN TRIBAL COUNCIL and sets forth in Article V the powers of the Council exercised in this Resolution;

WHEREAS, the Ute Mountain Tribe has federal reserved water rights claims on a large number of rivers in Southwest Colorado and Northwest New Mexico; and

WHEREAS, the United States and the States of Colorado and New Mexico have requested that the Tribe attempt to settle these reserved water rights claims in a fair and equitable manner, and

WHEREAS, the Tribe, through its Water Resources Task Force, its Water Rights Attorney, and the participation of Tribal leaders, including the Chairman and Vice-Chairman and Tribal Council, have been involved in extensive negotiations; and

WHEREAS, the United States and the two States, the Ute Mountain Tribe and the Southern Ute Indian Tribe have negotiated over the past two years a comprehensive and final water rights settlement which fairly protects the reserved water rights of the Tribe and provides for meaningful opportunities to develop such water rights;

NOW THEREFORE BE IT RESOLVED,

1. In response to the letter of the Assistant Secretary of the Interior for Indian Affairs, dated November 21, 1986, the Tribe being familiar with the terms and benefits of the Colorado Ute Indian Water Rights Final Settlement Agreement hereby approves such Agreement; and

2. Requests the United States to approve the Agreement on behalf of the Tribe.

BE IT FURTHER RESOLVED, that the Ute Mountain Tribal Council request that all the terms and conditions which require Congressional legislation as set forth within the "Agreement in Principle" must be fully ratified by the United States Government, in order for this settlement to fully benefit the members of the Ute Mountain Tribe.

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BE IT FINALLY RESOLVED, that the Chairman of the UTE MOUNTAIN TRIBAL COUNCIL is authorized to sign the resolution and is further authorized to take such action as may be necessary to carry out the intent of this Resolution.

Ernest House, Chairman
UTE MOUNTAIN TRIBAL COUNCIL

CERTIFICATION

This is to certify that there were present by telephone conference a quorum of 5 Tribal Council Members at the official meeting of the UTE MOUNTAIN TRIBAL COUNCIL held on the above mentioned date, that 4 voted for and 0 opposed the above Resolution, and that the above Resolution was duly adopted.

UTE MOUNTAIN TRIBAL COUNCIL

Res. No. 3247
Page 2 of 2

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Mr. CAMPBELL. Thank you, Chairman House. Chairman Baker.

Mr. BAKER. My name is Chris A. Baker. I am chairman of the Southern Ute Indian Tribe. Today I have with me Scott McElroy, our attorney from the Native American Rights Fund. Also four members of our tribal council. Vita Peabody, Lilly Ann Sybil, Leonard Birch, and Guy Penicusse.

I am testifying on behalf of the tribe and its governing body, the Southern Ute Indian Tribal council. The tribe strongly supports H.R. 2642. I ask that my complete written statement be made a part of the record. I will summarize some of our thoughts on this bill.

Mr. CAMPBELL. Without objection, that will be included completely.

Mr. BAKER. As you have heard, the bill would implement the December 10, 1986, agreement which was signed by the entire council. The agreement followed 2 years of negotiations and over 15 years of litigation concern the Winters rights claims of the tribes in southwest Colorado.

We are very proud of this agreement. It reflects a lot of hard work by our tribal council and our tribal staff.

The council and I have spent many days and nights working in Denver, Washington, and elsewhere on the ideas that form the foundation for the settlement. We made offer and offer and offer again with our lawyers from the Native American Rights Fund to discuss our position. We carefully considered the needs of the reservation, and our tribal members in the area of water development. The choices were not easy, but the council is confident that this agreement meets the tribal needs and will give the tribe the ability to develop the resources of the reservation.

It is encouraging that the system can work for the tribe. We have worked long and hard in support of the Animas-La Plata project, and the tribe is pleased that Congress authorized it in 1968. Now we are pleased that together with our neighbors we can use that project to solve what otherwise would be a long and bitter lawsuit affecting all of southwest Colorado.

The agreement provided the tribe with an additional water supply each year of about 40,000 acre-feet. It also provides for the admission of tribal and nontribal water rights in a cooperative manner, and settles substantial breach of trust claims by the tribe against the United States.

Fundamentally the agreement satisfies the valuable friendship that exists between the Indian and non-Indian communities of southwest Colorado, something that is very important and dear to us.

A key part of the settlement is the construction of the Animas-La Plata project, which will provide additional water to Indians and non-Indians. Without the additional water supply, I do not think settlement would be possible.

As you know, the La Plata River crosses the southern Ute Indian Reservation. Development on the reservation cannot take place without water from the La Plata River, and the tribe has a very strong claim to reserve water rights from that stream. Unfortunately, tribal water rights in the La Plata River have never been quantified, and non-Indians in Colorado and New Mexico have ap-

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propriated all the flow of the river. If the tribe is forced to litigate its rights, those users will be left with useless junior priorities on the water short stream. The Animas-La Plata project also played a key role in settling the tribal rights on other streams. Without the water available from the project, it would have been impossible for the tribe to accept the present compromise on the other rivers covered by the settlement.

Finally, the project is important since it will provide for the development of our farm lands in the La Plata River basin. As we all know, tribal lands are checker-boarded with non-Indian land in that area, and the project will provide water for all.

We could not hope to develop these areas for ourselves without the assistance and cooperation of the other project water users. For the present settlement to be acceptable, it must do more than provide another promise that the tribe will receive water in the future. It must help the tribe to put its water to use as well as recognize tribal water rights.

It is very important to our tribe. We are fortunate in that we knew how water projects work. The Pine River project on the reservation produced over $1 million worth of crops in 1985. The tribe also participates in the Fareta project, where our land produced over $100,000 in crops in 1985. Although over half our families have farm or ranch hands, our young people need land to farm and our ranchers need more irrigated land to support their needs. We cannot meet these needs without more water, more diversion works, and more farm equipment.

In order to meet these needs, we want to develop an economic plan to use our share of the development fund called for under the agreement, and authorized under H.R. 2642. Under a grant from the Administration for native Americans, the tribe has begun to update an inventory on its natural resources, and plan exactly how we can use the water provided under the settlement.

The final plan would be approved by the Secretary of the Interior, and would establish priorities for spending monies from the fund every time we are considering using the funds for the development of the water resources provided under the agreement for our agriculturally related activities and for other economic development such as recreational development on each side of our reservation, and for the use of the other natural resources of our reservation.

As you can see, these funds are obviously important to the future of our tribe. I want to talk briefly about one of the controversial parts of the bill. The negotiated agreement requires the enactment of Federal legislation before the settlement is final. Each of the legislative requirements is a vital part of the agreement. I want to give you our thoughts on one of these provisions, section 5 of H.R. 2642 would satisfy the Indian Non-Intercourse Act, which would otherwise stop the tribe from transferring or leasing its water rights off the reservation. Although we hope to use our water rights on the reservation for the development of reservation resources, we recognize that problems may arise in meeting that goal. Like water users everywhere, tribal interests may be better served by allowing others to use our water for short periods of time, in return for adequate payment. We don't think that the

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Non-Intercourse Act would keep us from receiving the full value of our water rights.

On the other hand, we know that some downstream users argue that the law of the river does not allow such transfers, and that the Winters doctrine did not give us a water right that could be transferred. Although our attorneys disagree with those who argue that the law of the river and the reserved rights doctrine forbid the leasing of our water out of state, we have agreed not to ask Congress to modify or clarify what it has previously said.

Instead, we are satisfied to have the courts answer these technical and legal questions about the scope of the rights given the tribe in 1968, and whether Congress has changed those rights over the years. In short, we do not ask the water users in the lower basin to agree to our position on these matters, but we are not willing to give up simply to make them happy.

During our discussions, we called this approach neutrality. We know that downstream water users like the Metropolitan Water District want Congress to take away from the tribe any opportunity to lease its water. I think that those people want to keep Colorado and the tribes from using our share of the Colorado River so that they can keep getting it for free like they do now. If Metropolitan kills the settlement, southwest Colorado will be fighting in court for years over these water rights. In the meantime, Metropolitan will continue to get our water. We think that neutrality is the only fair approach, and hope that Congress will agree with us.

As you know, the settlement is very important to all southwest Colorado and the Southern Ute Tribe. It will provide for a fair settlement of the tribe's Winter's rights claims and give a much needed boost to our agriculture and economy. We hope that you will favorably consider this bill. I want to thank you, Mr. Chairman and the committee, for your time.

[Prepared statement of Mr. Baker, with attachments, follow:]

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STATEMENT OF CHRIS A. BAKER, CHAIRMAN
SOUTHERN UTE INDIAN TRIBE ON H.R. 2642

My name is Chris Baker; I am the Chairman of the Southern Ute Indian Tribe. On behalf of the Tribe and its governing body, the Southern Ute Indian Tribal Council, I welcome the opportunity to testify in support of H.R. 2642 which will carry out the Colorado Ute Indian Water Rights Final Settlement Agreement dated December 10, 1986.

Although originally the Ute Indians claimed all of Colorado, large portions of Utah and parts of Arizona and New Mexico, the present Southern Ute Indian Reservation, located in the southwest corner of Colorado, measures only 15 miles by 73 miles. Our Reservation runs from the Continental Divide in southern Colorado westward to the boundary with the Ute Mountain Ute Reservation. It encompasses the stream valleys of the San Juan, Piedra, Pine, Navajo, La Plata and Animas Rivers. It is high, dry country with elevations ranging from a little less than a mile above sea level to 7500 feet. Not all of our Reservation land is owned by the Tribe or tribal members; rather we have a "checker board" reservation with non-Indians owning a substantial amount of land. The Tribe's rights to its lands were formally recognized in the Treaty of March 2, 1868, although later actions reduced the size of the Reservation.

The December 10 Agreement was signed by the State of Colorado, The Ute Mountain Ute Indian Tribe, the Southern Ute

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Indian Tribe, the Departments of Justice and the Interior, as well as many non-Indian water users in southwest Colorado. It follows two years of negotiations and over 15 years of litigation concerning the Winters reserved water rights claims of the Tribe in southwest Colorado.

We are very proud of the Agreement. It reflects alot of hard work by our Tribal Council and our tribal staff. The Agreement is strongly supported by the Tribe. Attached to my written statement are three tribal resolutions of the Southern Ute Indian Tribal Council endorsing and supporting the Agreement and its concepts. Over the years, we have carefully considered and weighed the needs of the Reservation and our tribal members in the area of water development. The choices were not always easy but we are comfortable that this Agreement meets the tribal needs and will give us the ability to develop the resources of our Reservation. It is encouraging to us that the "system" can work for the Tribe. We worked long and hard in support of the Animas-La Plata Project and the Tribe was pleased that Congress authorized it in 1968. Now we are pleased that together with our neighbors, we can use that Project to solve what otherwise will be a long and bitter lawsuit affecting all of southwest Colorado.

Through the Agreement, the disruptive and potentially bitter lawsuit over the Tribe's Winters reserved water rights

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claims is settled by providing the Tribe with an additional dependable yearly water supply of about 40,000 acre feet. The Agreement also provides for the administration of tribal and non-tribal water rights in a cooperative and responsible manner and settles substantial breach of trust claims by the Tribe against the United States. Finally, by protecting existing non-Indian water users and local economies, the Agreement saves the valuable friendship that exists between the Indian and non-Indian communities of southwest Colorado.

An important part of the settlement is the construction of the Animas-LaPlata Project which will provide additional water to Indians and non-Indians. Without that additional water supply, I do not think settlement would be possible. As you know, the La Plata River crosses the Southern Ute Reservation; development on the Reservation cannot take place without water from the La Plata River and the Tribe has a very strong claim to reserved water rights from that stream. Unfortunately, tribal water rights in the La Plata River have never been quantified and non-Indians in Colorado and New Mexico have appropriated all the flow of the River. If the Tribe is forced to litigate its rights, those users will be left with useless junior priorities on a water short stream. The ALP also played a key role in settling the tribal rights on other streams. Without the water available from the Project, it would have been impossible for the Tribe to accept the present compromises

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on the other Rivers covered by the settlement. Finally, the Project is important since it will provide the development of our farmland in the La Plata basin. As I mentioned, tribal lands are checker-boarded with Indian lands in that area and the Project will provide water for all. We could not hope to develop these areas for ourselves without the assistance and cooperation of the other project water users.

The negotiated settlement also calls for the establishment of a fund to assist the two Tribes in developing their reservation resources so that those lands can, in fact, become a permanent homeland for tribal members. The development fund provides $20 million to the Southern Ute Indian Tribe and $40.5 million to the Ute Mountain Ute Tribe. Of the total $60.5 million in the tribal development fund, the State of Colorado will contribute $11 million. The remaining $49.5 million of the fund is a federal obligation under the agreement to be paid as follows: "$19.5 million in year one; $15 million in year two; and $15 million in year three."

Let me explain the need for the development fund requested to the Southern Ute Tribe. The Winters doctrine is a promise by the United States that the Tribe will be able to develop its Reservation in order to give tribal members a chance to earn a living. Agriculture is very important to our Tribe but we are limited by our water supplies and the lack of facilities to put

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our water to use. Although over half our families have farm or ranch land, our young people need land to farm and our ranchers need more irrigated lands to support their herds.

We are fortunate that on behalf of the Southern Ute Indian Tribe, the United States went to court over the Tribe's reserved water rights from the Pine River and built irrigation facilities on the Indian lands which could be served from that stream. Today, that project produces crops valued at over $1 million. On the other streams, of the Reservation, the United States did not meet its commitments. Despite the Winters doctrine, the United States let non-Indian water users use water from those streams and rely on that water for their farms, ranches and towns. In fact, the United States, itself, has used our water to generate hydroelectric power which it sells to pay for the irrigation of other lands throughout the Colorado River basin. For the present settlement to be acceptable, it must help the Tribe put all its water to use, as well as recognize tribal water rights. The development fund is the only way to do this.

We want to develop an economic plan to use our share of the development fund. Under a grant from the Administration for Native Americans, the Tribe has begun the task of planning exactly how we can use the water provided under the Agreement. The final plan would be approved by the Secretary of the

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Interior and would establish priorities for spending monies from the fund. We are considering using the funds for the development of the water resources provided under the Agreement; for other agriculture related activities, perhaps the purchase of a grain elevator or the development of a livestock feedlot; for other economic development, such as recreational development on the east side of our Reservation; and for the use of the other resources of our Reservation. As you can see, these funds are obviously important to the future of our Tribe.

As you know, the negotiated agreement requires the enactment of federal legislation before the settlement is final. Under the terms of the Agreement, federal legislation is needed to provide the Tribes with relief from the Non-Intercourse Act, 25 U.S.C. §177, which prohibits leasing of tribal water; to relieve or defer tribal repayment obligations for the construction of the Animas La Plata and Dolores Project; to assure that Federal reclamation law will not restrict the uses of tribal water; to authorize the appropriation of the federal contribution to tribal development funds; to authorize the waivers of tribal breach of trust claims; and to direct the Secretary of the Interior to comply with the administrative provisions of the Agreement. In addition, action by the Colorado courts will be required to provide the Tribe with the amounts of water required by the Agreement.

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Each of these "requirements" is a vital part of the Agreement. For example, H.R. 2642 would satisfy the Indian Non-Intercourse Act 25 U.S.C. § 177 which otherwise would stop the Tribe from transferring or leasing its water rights off the Reservation. Although we hope to use our water rights on the Reservation for the development of Reservation resources, we recognize that problems may arise in meeting that goal. Like water users everywhere, tribal interests may be better served by allowing others to use our water for awhile in return for adequate payment. We don't think that the Non-Intercourse Act should keep us from receiving the full value of our water rights. On the other hand, we know that some downstream users argue that the "law of the River" does not allow such transfers and that the Winters doctrine did not give us a water right that could be transferred. Although we strongly disagree with those who argue that the law of River and the reserved rights doctrine forbid the leasing of our water, out of state, we have agreed not to ask Congress to modify or clarify what it has previously said. Instead, we are satisfied to have the courts answer these technical, legal questions about the scope of the rights given the Tribe in 1868 and whether Congress has changed those rights over the years. In short, we do not ask the water users in the lower basin to agree to our position on these matters. But we are not willing to give up, simply to make them happy. During our discussions, we called this approach

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"neutrality." We know that downstream water users like the Metropolitan Water District want Congress to take away from the Tribe any opportunity to lease its water. I think that those people want to keep Colorado and New Mexico and the Tribes from using our share of the Colorado River so that they can keep getting it for free like they do now. If Metropolitan kills this settlement, Southwest Colorado will be fighting in court for years over these water rights. In the meantime, Metropolitan will continue to get our water. We think that neutrality is the only fair approach and hope that Congress will too.

As you can see, this settlement is very important to all of southwest Colorado. It will provide for a fair settlement of the Tribes Winter's rights claims and give a much needed boost to our agriculture. We hope that you will favorably consider this bill. Thank you. I would be pleased to answer any questions you may have.

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RESOLUTION NO. 86-42

RESOLUTION
OF THE
COUNCIL OF THE SOUTHERN UTE INDIAN TRIBE

April 29, 1986

WHEREAS, authority is vested in the Southern Ute Indian Tribal Council by the Constitution adopted by the Southern Ute Indian Tribe and approved November 4, 1936, and amended October 1, 1975, to act for the Southern Ute Indian Tribe, and

WHEREAS, pursuant to Article VII of said Tribal Constitution, the Tribal Council is empowered to manage natural resources owned by the Tribe, and to develop natural resources in conformity with the best interests of the Tribe, and

WHEREAS, for approximately twenty years the Southern Ute Indian Tribe has actively supported construction of the Animas-La Plata Water Reclamation Project, and

WHEREAS, in response to demands of the United States Department of the Interior the Southern Ute Indian Tribe recently concluded negotiations with the State of Colorado, with participation of federal officials, to resolve tribal reserved water rights claims, and

WHEREAS, the Agreement in Principle signed by both the Southern Ute Indian Tribe and the Ute Mountain Ute Indian Tribe included as a critical and vital mechanism for settlement the construction of the long-awaited Animas-La Plata Water Reclamation Project, and

WHEREAS, the Animas-La Plata Water Reclamation Project as presently planned provides the only viable solution for settlement of tribal water claims and for maintenance of historical water supplies of our non-Indian neighbors, and

WHEREAS, rumors continue to circulate that suggest that the Department of the Interior, Bureau of Reclamation is belatedly developing Indian-only alternatives to construction of the Animas-La Plata Water Reclamation Project despite prior congressional authorization of said water reclamation project, and

WHEREAS, not only have alternatives of this nature been previously studied and rejected by the Tribe, but adoption of such alternatives would eliminate state cost-sharing support and would jeopardize the unparalleled good relations of the two Ute Tribes with their neighbors in the Four Corners Region,

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NOW, THEREFORE, BE IT RESOLVED by the Tribal Council that the Tribe continue to support construction of the Animas-La Plata Water Reclamation Project as presently envisioned,

BE IT FURTHER RESOLVED, that efforts of the United States Government to frustrate the cooperative efforts of the two Ute Tribes, the State of Colorado, and the State of New Mexico to resolve amicably the reserved water rights issues be actively opposed,

BE IT FURTHER RESOLVED, that attempts by the United States Government to pit the Tribes against the non-Indian neighbors be condemned as shortsighted and unproductive,

BE IT FINALLY RESOLVED, that every effort be made to obtain construction of the Animas-La Plata Water Reclamation Project because of its overriding and diverse benefits to the Four Corners Region.

This Resolution was duly adopted on the 29th day of April, 1986.

Clement J. Frost
Clement J. Frost, Acting Chairman
Southern Ute Indian Tribal Council

CERTIFICATION

This is to certify that there were five (5) of the regularly elected Southern Ute Indian Tribal Council members present at the above meeting at which 4 voted for and 0 against, it being a quorum and the above Resolution was passed, the Chairman not being permitted to vote in this instance due to a Constitutional provision.

Edna Frost
Edna Frost, Secretary
Southern Ute Indian Tribal Council

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RESOLUTION NO. 86-123

RESOLUTION
OF THE
COUNCIL OF THE SOUTHERN UTE INDIAN TRIBE

WHEREAS, authority is vested in the Southern Ute Indian Tribal Council by the Constitution adopted by the Southern Ute Indian Tribe and approved November 4, 1936, and amended October 1, 1975, to act for the Southern Ute Indian Tribe, and

WHEREAS, there has been negotiated an agreement called the Colorado Ute Indian Water Rights Final Settlement Agreement, and

WHEREAS, in the judgment of the Southern Ute Indian Tribal Council, said agreement will finally determine water rights to which the Southern Ute Indian Tribe is entitled, and

WHEREAS, said agreement will settle existing disputes and remove causes of future controversy between the Tribes and the state of Colorado, and between the Tribe and the United States, and between Indians and non-Indians residing in southwestern Colorado, concerning the rights to beneficially use water in southwestern Colorado, and

WHEREAS, said agreement will settle all claims by the Tribe, and by the United States on behalf of the Tribe, in pending water adjudication proceedings in the Colorado District Court for Water Division No. 7, and

WHEREAS, it appears to the Council of the Southern Ute Indian Tribe that said final settlement agreement is in the best interests of the Southern Ute Indian people.

NOW, THEREFORE, BE IT RESOLVED that the Tribal Chairman of the Southern Ute Indian Tribe be and is hereby authorized to execute on behalf of the Southern Ute Indian Tribe said final settlement agreement.

This Resolution was duly adopted on the 15th day of October, 1986.

Chris A. Baker, Chairman
Southern Ute Indian Tribal Council

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CERTIFICATION

This is to certify that there were 7 of the regularly elected Southern Ute Indian Tribal Council members present at the above meeting at which 6 voted for and 0 against, it being a quorum, and the above Resolution was passed, the Chairman not being permitted to vote in this instance due to a Constitutional provision.

Edna Frost

Edna Frost, Secretary
Southern Ute Indian Tribal Council

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RESOLUTION NO. 86-141

RESOLUTION
OF THE
COUNCIL OF THE SOUTHERN UTE INDIAN TRIBE

WHEREAS, authority is vested in the Southern Ute Indian Tribal Council by the Constitution adopted by the Southern Ute Indian Tribe and approved November 4, 1936, and amemded October 1, 1975, to act for the Southern Ute Indian Tribe, and

WHEREAS, pursuant to Article VII of said Tribal Constitution the Tribal Council is empowered to manage natural resources owned by the Tribe, and to develop natural resources in conformity with the best interest of the Tribe, and

WHEREAS, for approximately fifteen years, the Southern Ute Indian Tribe has been involved in litigation, both in Federal and State Courts, to quantify and adjudicate Tribal entitlement to water impliedly reserved for Tribal use at the time of creation of the Southern Ute Indian Reservation, and

WHEREAS, the parties affected by said litigation, including the United States Government, the Southern Ute Indian Tribe, the Ute Mountain Ute Indian Tribe, the State of Colorado, and various local water districts have worked diligently to resolve contested issues through negotiation and settlement, and

WHEREAS, the aforementioned parties have reached a settlement which quantifies Indian reserved water rights claims for the Southern Ute Indian Tribe and allows the Tribe to receive certain benefits from the Animas-LaPlata Water Reclamation Project, and

WHEREAS, The Southern Ute Indian Tribe has actively participated in said negotiations with the advice of legal counsel, and

WHEREAS, said settlement is embodied in the Colorado Ute Indian Water Rights Final Settlement Agreement to be executed on December 10, 1986, and

WHEREAS, pursuant to Tribal Resolution Number 86-123, adopted by the Tribal Council on October 15, 1986, the Tribal Council authorized execution of the Colorado Ute Indian Water Rights Final Settlement Agreement.

NOW, THEREFORE BE IT RESOLVED, by the Tribal Council that the Southern Ute Indian Tribe accepts the Colorado Ute Indian Water Rights Final Settlement Agreement.

BE IT FURTHER RESOLVED, that Tribal Resolution Number 86-123 is ratified and readopted.

BE IT FURTHER RESOLVED, that the Chairman of the Tribal Council be delegated the authority to execute said agreement, as well as, any other documents needed to carry out the intent of the resolution; provided, however, that nothing herein shall preclude the members of the Tribal Council from also executing said agreement.

BE IT FINALLY RESOLVED, that the Secretary of Interior be requested to execute and approve said agreement and that the Secretary be further requested to assist the Tribe in securing performance of the terms of said agreement.

This Resolution was duly adopted on the 9th day of December, 1986.

Chris A. Baker, Chairman
Southern Ute Indian Tribal Council

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CERTIFICATION

This is to certify that there were (7) of the regularly elected Southern Ute Indian Tribal Council members present at the above meeting at which (6) voted for, and (0) against, it being a quorum and the above Resolution was passed, the Chairman not being permitted to vote in this instance due to a Constitutional provision.

Edna Frost

Edna Frost, Secretary
Southern Ute Indian Tribal Council

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September 1, 1988

Hon. Morris K. Udall
U.S. House of Representatives
235 Cannon House Office Bldg
Washington, D.C. 20515-0302

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Dear Congressman Udall:

The La Plata County Board of Commissioners has passed a resolution supporting the Colorado Ute Indian Water Rights Settlement Act.

We ask that you vote in favor of this legislation (S.1415, H.R. 2642) when it comes to a vote on the floor this month.

It is crucial to the economy and culture of La Plata County and the surrounding communities that a peaceful settlement of the Indian water rights issue be passed this year by Congress. Our constituents and the two Ute Indian Tribes have worked diligently to resolve what might be a very volatile issue, but instead is a fair and friendly solution. Determination of water rights and storage and distribution of the water will mean a great deal to our future individually and as a region.

We once again ask for you vote, and urge you to contact Congressman Ben Campbell or Senators Wirth and Armstrong if you have any questions; all of our delegation supports this effort.

Sincerely,

Claude E. Deering, Jr.
Claude (Bud) E. Deering, Chairman

Doris A. Brennan
Doris A. Brennan, Vice Chairman

R A Roth
Rollin A. Roth, Commissioner

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Mr. CAMPBELL. Thank you, chairman Baker. I agree. Chairman House, you are what the bill is all about, and I want to tell you that when I moved to your area and you shared your homes with me, and since that time over the last decade, I really appreciate that. We are talking about a promise that was made in 1968, and you reminded me as I sat here listening to you talk about the great Kiawah Chief Tinbears, who was asked in 1890 about promises, and broken promises in treaties, and he had an interesting statement. He said talking about the U.S. Government, he said, "Well, they made us many promises, but they only kept one. They promised to take our land and they took it."

I hope that we are going to be able to prove Tinbear was wrong. Thank you for your testimony.

Mr. HOUSE. I would like to, for the record, say that up here with me is my tribal attorney Mr. Dan Israel.

Mr. CAMPBELL. I would like to ask him one question, and that is on the Non-Intercourse Act. I am not a water attorney and don't know all the subtlteties of it, but is it the tribe's position that the Non-Intercourse Act bars the tribal leasing of its resources, including water?

Mr. ISRAEL. Yes, Congressman, and therefore the Non-Intercourse Act is required in order to permit the tribe to use the water with a joint venture or anywhere on its own reservation or off the reservation.

Mr. CAMPBELL. Is that all? Are there any other statements?

Mr. HOUSE. We appreciate the time, Congressman.

Mr. CAMPBELL. Thank you for appearing. The next panel will be Mr. Fred Kroeger, president of the Southwest Water Conservancy Board, Mr. John Murphy, president, Animas-La Plata Water Conservancy District, commissioner Tom Colbert, president of the Mancos Water Conservancy District and Montezuma County commissioner, and Mr. Don Schwindt, vice president, board of directors, Dolores Water Conservancy District.

If I could remind you to keep your testimony to five minutes in summary and we will include all the written testimony as a matter of record. We will proceed in the orders that I listed.

PANEL CONSISTING OF FRED KROEGER, PRESIDENT, SOUTHWEST WATER CONSERVANCY BOARD; JOHN MURPHY, PRESIDENT, ANIMAS-LA PLATA WATER CONSERVANCY DISTRICT; TOM COLBERT, PRESIDENT MANCOS WATER CONSERVANCY DISTRICT AND MONTEZUMA COUNTY COMMISSIONER; AND DON SCHWINDT, VICE PRESIDENT, BOARD OF DIRECTORS, DOLORES WATER CONSERVANCY DISTRICT

Mr. KROEGER. Mr. Chairman and my own congressman, Ben Campbell, you must have known me when you put that warning on the 5-minutes.

Mr. CAMPBELL. I have heard some of the jokes.

Mr. KROEGER. My testimony is in, and I will be very brief, but I do want to make a few comments. One is that the Animas-La Plata is more than an agricultural project. My 40 years involved with this has seen the heartache when crops are planted and they

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wither and die when water runs out. And I have witnessed disaster that occurs in a year when farmers face financial devastation.

Animas-La Plata is more than a 2-State project that provides reliable water supplies for cities and numerous rural domestic water systems and it is more than a rich recreational facility with essentially no negative environmental impacts.

The Animas-La Plata is the vehicle to solve all of the Indian water rights claims for all of the State of Colorado. Both the Indians and the non-Indians have bent over backwards to reach these compromises. More than 65 areas have seen the compacts of 1922 and 1948, the acts of 1956 and 1968, along with agreements of June 20, 1986 and December 10, 1986.

Compacts, legislative acts and understandings have continued to be given full support with lip service, but no actions and solutions. This legislation is an opportunity to consummate areas of proposals that are just and are well overdue for both the Indian and Indian of southwestern Colorado.

Mr. Chairman, I would like to present a resolution that was given by our La Plata county commissioner and have it included in the record.

Mr. CAMPBELL. Without objection, that will be included.

[Resolution No. 1987-89 follows:]

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RESOLUTION NO. 1987-89

A RESOLUTION OF SUPPORT FOR H.R. 2642
COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987

WHEREAS, legislation has been introduced in the United States Congress entitled H.R. 2642 which is known as the "Colorado Ute Indian Water Rights Settlement Act of 1987"; and,

WHEREAS, the legislation is designed to facilitate and implement the settlement of Colorado Ute Indian reserved water right claims in southwest Colorado; and,

WHEREAS, the implementation of the Agreement will bring certainty of water rights to Indians and non-Indians in the San Juan Basin; and,

WHEREAS, the legislation is necessary to complete the construction of the Animas-La Plata Project in southwestern Colorado; and,

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of La Plata County, Colorado, that the Colorado Congressional Delegation be urged to support passage of H.R. 2642, and that a copy of this Resolution of Support be sent to each member of the Colorado Congressional Delegation and the Governor of the State of Colorado.

DONE AND ADOPTED in Durango, Colorado, this 14th day of September, 1987.

LA PLATA COUNTY SEAL COLORADO

BOARD OF COUNTY COMMISSIONERS
LA PLATA COUNTY, COLORADO

Claude E. Deering, Jr. Chairman

Rollin A. Roth, Vice-Chairman

Doris A. Brennan, Commissioner

ATTEST:

Deputy Clerk to the Board

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Mr. KROEGER. It says whereas legislation has been introduced in the U.S. Congress in title H.R. 2642 which is known as the Colorado Ute Indian Water Rights Settlement Act of 1987, and whereas the legislation is designed to facilitate and implement the settlement of Colorado Ute Indian reserve water right claims in southwest Colorado, and whereas the implementation of the agreement will bring certainty of water rights to Indians and non-Indians in the San Juan Basin and whereas the legislation is necessary to complete the construction of the Animas-La Plata project in southwestern Colorado now therefore been resolved by the board of county commissioners of La-Plata County; that the Colorado congressional delegation be urged to support passage of H.R. 2642 and that a copy of this resolution of support be sent to each member of the Colorado congressional delegation and the Governor of the State of Colorado. And it was adopted the 14th day of September and is signed by all three of the county commissioners. Thank you very much.

[Prepared statement of Mr. Kroeger follows:]

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STATEMENT OF
FRED V. KROEGER, PRESIDENT
SOUTHWESTERN WATER CONSERVATION DISTRICT OF COLORADO
BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
regarding
H.R. 2642
THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987
WASHINGTON, D.C.
September 16, 1987

My name is Fred Kroeger. I am President of the Southwestern Water Conservation District of Colorado. I am a life-long resident of southwestern Colorado and have been a member of the Board for over 30 years. I also served for 21 years on the Colorado Water Conservation Board.

The approval of H.R. 2642, together with continuing appropriations for construction of the Animas-La Plata Project, will change a dream into reality. The dream has been the ability of the people of southwestern Colorado to have the means to enjoy the beneficial use of the water resources of the Animas and La Plata Rivers. Farmers, ranchers, cities, towns, Indians and non-Indians have pursued this dream for over 50 years. Through good times and bad times, the Indian and non-Indian water users of southwestern Colorado have stuck together, cooperated even though at times that cooperation was painful, particularly to our Indian friends who were repeatedly urged by tribes of a different viewpoint to fight rather than negotiate. The reality is construction of the Animas-La Plata Project and a sufficient water supply for all in the San Juan Basin of southwestern Colorado and northwestern New Mexico. We in southwestern Colorado and northwestern New Mexico are entitled to have this legislation viewed favorably by this Committee and this Congress.

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That entitlement comes as a result of the many compromises and sacrifices that we as a district, as a region and as a state have made in times past when Congress was considering such legislation as the Colorado River Storage Act of 1956 and the Colorado River Basin Project Act of 1968. The 1956 ACT authorized the Animas-La Plata Project as a participating project and the 1968 Act authorized the construction of the project. We have stood in line with our Indian friends for a long time. We now feel that we have rightfully taken our place at the head of the line. The legislation you are considering, which we urge you to wholeheartedly support, will give needed Congressional approval to an agreement which has come about as a result of more than 30 years of close friendship and cooperation between the Southern Ute and Ute Mountain Ute Indian Tribes and the water districts of southwestern Colorado. We are proud of our achievement. We are aware of the bitter, divisive disputes in other parts of the west over Indian versus non-Indian water rights claims. We have overcome the temptation to have a cowboy and Indian war. What we achieved is neither a victory for the non-Indians nor a massacre for the Indians. It is a well-thought-out, reasonable, equitable and fair agreement which divides the use of the waters of the San Juan Basin in a manner which will be beneficial to all. H.R. 2642 is necessary legislation to implement these agreements. Your consideration and support will be appreciated.

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Mr. CAMPBELL. Thank you. And who is next on this? Mr. Murphy?

Mr. MURPHY. Thank you, Mr. Chairman, my own Congressman Campbell, other members of this committee. I will briefly summarize my remarks.

I am John Murphy, a lifelong resident of southwestern Colorado, a past mayor of the city of Durango, and the President of the Animas-La Plata Water Conservancy District. My involvement with this project has been really quite a long journey. It began in 1974 while I was a member of the Durango city council.

If you consider also, however, that I grew up on a farm in the North Lewis Mesa area, which is a beautiful mesa, very fertile soil where this irrigation of water will be used in the State of Colorado. Then you might say I guess I have been involved in this thing for a lifetime. Now, the only thing ever found lacking out there was a reliable supply of water.

If that area had a reliable supply of irrigation water, the people who have chosen to farm and to ranch out there could, I'm certain, be assured yearly of a bountiful harvest for their labors. Speaking of the journey we have—I might say I have come across many discouraging times during that period of time from 1974 to the present.

The thing, though, however, that has been the most encouraging to me have been the three agreements, so I want to just briefly speak to those. The first being the agreement in principal which was signed on March the 15, 1986, in Durango, Colorado. Now this agreement which was between the Colorado Ute Indians and the State of Colorado, was brought about by the extraordinary efforts of our Governor, our attorney general, our Indian tribes, our water conservancy districts, our cities and our towns.

We were able to accomplish that in a relatively short time period. This provided the foundation and the framework for a second agreement which was signed on June 30, 1986. That was the cost sharing agreement.

Now this was brought about by a lot of negotiations between Federal and non-Federal people, State level and once again, our Indian tribes, conservancy districts and so forth. So out of these meetings with this agreement on cost sharing, this should take care of the requirement by President Reagan, which was also required by past President Carter and mandated by the Congress, that we follow and that is that local entities have to cost share in these projects.

Now the last and what I think is a very important agreement was the Indian water rights settlement. Now, this is really an agreement of very significant proportions. I don't think people really realize how truly significant this settlement has been and in the future as they look back on this, they are going to say that this is indeed a remarkable document.

This was negotiated and there again with the many people, State people, Federal people, the Indian tribal leaders, government leaders, private citizens, farmers, ranchers, bureaucrats, State and Federal people who all recognize the value of cooperation and negotiation instead of litigation. I frankly thought when we started on that project, that that would be one we would never be able to accomplish.

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I would like to thank the leadership of both the Southern Ute Tribes and the Mountain Ute Tribes. I think they demonstrated real statesmanship and concern for the non-Indian neighbors in the—in agreeing to this settlement of the—and quantification of Indian water rights.

When you speak of—these settlements are spoken of in terms of being historic. I think they are historic in this respect, the respect it demonstrated what can happen if you sit down and talk to each other with the spirit of cooperation, negotiations and compromise.

How much better it is to reach an agreement that way than through the process of litigation. I think that is what is truly historic about these agreements. Anyway this committee and this Congress has an opportunity with the passage of H.R. 2642 to make these agreements a reality and the Animas-La Plata project a reality at long last.

I would like to express my appreciation and thanks to the chairman and the members of the committee for their time and hope that you will give favorable consideration to this bill.

[Prepared statement of Mr. Murphy follows:]

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STATEMENT OF
JOHN E. MURPHY, PRESIDENT
ANIMAS-LA PLATA WATER CONSERVANCY DISTRICT
BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
regarding
H.R. 2642
THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987
WASHINGTON, D.C.
September 16, 1987

I am John Murphy, a life-long resident of southwestern Colorado, former Mayor of the City of Durango, Colorado, and the President of the Animas-La Plata Water Conservancy District. The value of water in the west has never been disputed nor can it be disputed by any person knowledgeable about the history of the west. Our successes and failures are best described in those chapters of history which are written about water resource development.

This Committee and this Congress have an opportunity with the passage of this legislation to complete one of the most important and vital chapters in the history of the state of Colorado and the San Juan Basin of Colorado and New Mexico. Through the extraordinary efforts of our Governor, our Attorney General, our Indian tribes, our water conservancy districts, our cities and our towns, we were able in a relatively short time in the year 1986 to accomplish a monumental task. An Agreement in Principle was signed on March 16, 1986, between the Colorado Ute Indian Tribes and the State of Colorado. That Agreement in Principle provided the foundation and the framework for continued negotiations with the federal government to arrive at a "suitable cost sharing arrangements with the non-federal entities" as mandated by this Congress in the appropriations bill affecting

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the Animas-La Plata Project in 1985. That cost sharing agreement was signed by the federal and non-federal parties on June 30, 1986. That was an historic agreement in the annals of Colorado water history because it marked for the first time a fair and equitable agreement whereby the state, local and Indian interests joined with their federal counterparts in the Department of the Interior to provide a major portion of the funding for a water resource development project. President Reagan requested cost sharing, as did President Carter before him, and this Congress mandated that we comply. The cost sharing agreement of June 30, 1986, demonstrates our concerted commitment to the Animas-La Plata Project.

The third historic document which was negotiated during the water mark year of 1986 was the Colorado Ute Indian Water Rights Settlement Agreement of December 10, 1986. This Agreement is a monument to the dedicated individuals in our state, Indian tribal leaders, government leaders, private citizens, farmers, ranchers, bureaucrats, state and federal, who all recognize the value of cooperation and negotiation instead of litigation. To single out one person or group as the most important ingredient would be impossible. You cannot complete a jigsaw puzzle without all the pieces. We in Colorado are fortunate that we had all of the pieces to the puzzle. We are also fortunate that we had the necessary people totally committed to putting those pieces together, which enabled us to arrive at an agreement which is fair to the Indian and fair to the non-Indians. Passage of this legislation will complete terms of the agreement. We believe that the Indian tribes in southwestern Colorado are entitled to their water as we have demonstrated by our agreement with the tribes. We believe farmers,

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ranchers, cities and towns are entitled to their water as set forth in the compacts of the Colorado River and in the various legislation enactments of Congress over the past 50 years.

The history of the west, indeed, the history of the world, has been written with the wise utilization of our water resources. The history of the Animas-La Plata Project will note that it was accomplished only through cooperative efforts of reasonable minds seeking reasonable solutions to seemingly insolvable problems. This Committee and this Congress can by passage of this legislation prevent wrongs of yesterday from becoming the folly of tomorrow.

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Mr. CAMPBELL. Thank you, John. Next commissioner Tom Colbert.

Mr. COLBERT. Thank you, Chairman Campbell. I appreciate you allowing us to come here today to testify and tell our story, which in my case is somewhat simple. I am Tom Colbert, Democratic commissioner in Montezuma County, and I am also a rancher/farmer on the Mancos River.

The Ute Mountain Tribe is also within Montezuma County, so we are interested directly in the economic impact that litigation in these—in the court costs and all these kinds of things would have on Montezuma County. But I would like to speak today more from a personal point to the fact that I live and irrigate out of using waters out of the Mancos River and in 1986 a treaty was made with the Ute Mountain Tribe whereby they would receive water out of Mancos River to irrigate all the irrigatable lands upon the reservation, Ute Mountain Reservation.

And I can tell you today that the Ute Mountain Reservations is considerably larger than the Mancos Valley where we irrigate approximately 13,000 acres of land, which involves 200 farmers. So it scares me to think that the Ute Mountain Tribe has a number one priority according to treaty on all the irrigatable lands that was given to them with the treaty, enough water to irrigate those lands and so I am elated at the fact that we have reached an agreement with the two tribes, the Ute Mountain Tribe and the Southern Ute Mountain Tribe whereby they receive water out of the Animas supply and out of the Dolores McCarran amendment project in lieu of water out of the Mancos River, and they give up the number one priority and they allow us to continue to irrigate 13,000 acres of land that we have irrigated for three generations.

I don't know how you mesh three generations of work in monetary values. I don't know what value to put on that. We can probably add up the dollars we spent on the land, but we can never mesh those three generations of work that is going into developing that land and using it as we do today. We're using sprinkler systems and where we have got that land to produce 4½ to 5 and 6 tons of hay, which bring us pretty good income, if we manage it right as managers, so we like what we do and without the water which we cannot give up—we cannot give up the water that we use today, and it should not be our determination to have to give it up because the problem was created years ago.

In 1986 the treaty was made and as early as 1874 the Governor encouraged settlers to come and settle it and to develop the land and through the generations that land had been developed, and this is a Federal Government problem, and though we have been and are willing to cost share today and we will continue to be, this is a thing now that the Federal Government has got to help us settle and we appreciate the efforts, Congressman, that you have made to this point, and notice that you will continue to make those efforts and we will get our settlement and we will get necessary action and legislation from this Congress that it takes to settle this problem, and let's go on about our lives and the Lord knows that the Indians on the Ute Mountain Reservations—I would just like to say that I want to trade my land for what theirs looks like today,

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and Lord help us if it ever comes to happen that this land has to give up its water to put it on to the Ute Mountain Reservations.

Thank you very much, Mr. Campbell.

[Prepared statement of Mr. Colbert follows:]

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STATEMENT OF
TOM COLBERT, COUNTY COMMISSIONER
MONTEZUMA COUNTY, COLORADO
MEMBER, MANCOS WATER CONSERVANCY DISTRICT
BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
regarding
H.R. 2642
THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987
WASHINGTON, D.C.
September 16, 1987

My name is Tom Colbert, and I am here today representing the Mancos Valley water users. The people in the Mancos Valley have a larger stake in this legislation than do any other non-Indian group of citizens. Over eighty years ago, the United States Government opened up the Mancos Valley for homesteading, and for that entire period of time the Federal Government has allowed a conflict to develop over reserved Indian water rights by encouraging non-Indian water development and by overlooking Indian water development.

The Ute Mountain Ute Indians have water rights which are senior to those of the non-Indian water users in the Mancos Valley. We non-Indians have made investments in good faith to put the water which our grandfathers first diverted to beneficial use. However, since 1972, when the Federal Government first filed claims for Indian water rights in the San Juan Basin of Colorado, there has been a great uncertainty about the validity of our water rights versus those of the Indian rights. We face the loss of our investment and our livelihood to senior Indian rights. It was for this reason that we urged a negotiated settlement of the water rights disputes. Litigation clouds non-Indian rights, prevents development, adversely impacts real estate values, and causes hostility

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between Indian and non-Indian neighbors. The negotiated settlement which we have successfully pursued, as embodied in the 1986 Colorado Ute Indian Water Rights Settlement Agreement, allowed us to adopt a flexible process for resolving the disputes between Indians and non-Indians. The Agreement recognizes the rights of the non-Indians to continue to use their water as they have in the past. The Ute Mountain Ute Indian Tribe was willing to subordinate their senior rights to our vested rights in return for other valuable considerations, both in terms of money and water. This type of flexibility is not possible in a litigation setting.

We in southwestern Colorado do not want to have a water war which will not benefit either side. We recognize and believe that the Indians, whose rights are senior to those of most non-Indians, have been deprived of opportunities in economic gain which could have come from being able to put the water to which they have rights to beneficial use. At the same time, the Indian tribes have recognized from the beginning the need to cooperate and recognize the good faith investments and long-term utilization of the water by their non-Indian neighbors. Passage of this legislation will insure that the Indian tribes have every opportunity to maximize their economic benefits and fulfill their goal of becoming viable, self-sufficient and self-sustaining communities. The legislation will fulfill the Federal Government's trustee obligation to the tribes and avoid massive potential damage claims for breach of trust responsibility on behalf of the Indians, and also potential claims for compensation for lost rights from non-Indians.

Both the Indians and non-Indians in southwestern Colorado are entitled to have their water rights determined with certainty. The certainty will facilitate economic growth both on and off the reservation,

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and will allow both Indian and non-Indian to continue to live side-by-side as friends and neighbors, not as constant competitors for a too short supply of water. This negotiated settlement agreement is unique to our situation in southwestern Colorado. We believe, however, that it could be used as a possible model for other Indian versus non-Indian water conflicts in the West. We would certainly recommend it to the people in other states as being preferable to the heart-wrenching uncertainty of litigation. We ask for your support in helping make the agreement become a reality by approving H.R. 2642.

Respectfully submitted

Tom Colbert, County Commissioner,
Montezuma County; Member, Mancos
Water Conservancy District

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Mr. CAMPBELL. Mr. Schwindt?

Mr. SCHWINDT. I want to thank you first for the opportunity to be here and speak today. It is nice to be in front of you, Congressman Campbell.

My name is Don Schwindt. My wife, Jody, and I are commercial alfalfa hay producers. We began farming on a shoe string, with no help when we finished college 15 years ago. We now own and lease 300 acres of irrigated land in the lower Montezuma Valley, which is south of Cortez. Our land gets to within 100 yards of the Ute Mountain Ute Indian Reservation boundary. Water is the sole basis for my livelihood.

Because of that, I became interested in how water was administered. Being where we are on the "end of the ditch," at times I thought I was not always getting my water entitlement. That transferred directly to a loss of dollars to my pocket. That concern, coupled with an interest in broader community issues, led to my initial involvement on water boards. I became a director of the Montezuma Valley Irrigation Company. While serving in that capacity I was appointed in 1982 to the Dolores Water Conservancy District Board and my scope of water responsibilities greatly expanded.

I have had an opportunity to be a part of this, I think, historic—or negotiation session that led to the Indian water rights agreement which was signed in December of 1986. Enough other people have spoke to that issue today.

I am not going to repeat other than to say that our board, the Dolores Water Conservative District Water Board, is a signatory to that agreement, and we heartily recommend that the Congress pass this legislation so that that agreement can go forth. There has been some recent controversies regarding the value of water from the Dolores McCarran amendment project going to convert dry agricultural land to irrigated land that has received some national media attention.

It is to that issue I want to devote my testimony today. There is such a similarity between the Animas-La Plata project and the Dolores McCarran amendment project we feel it was appropriate to address this issue in this testimony. In order to do this, I want to first give a brief history of that situation around the Dolores McCarran amendment project, then give our board's proposal I have on the process and lastly relating figures and facts showing its estimate of the project to date.

In 1977, 170 farmers in the full service area of the Dolores McCarran amendment project who had been farming as dry land farmers petitioned for water pursuant to the Water Conservancy District Act of Colorado, asking for an allotment of water from the Dolores McCarran amendment project. Based upon this guarantee of sale of water, the U.S. Bureau of Reclamation began construction of the Dolores McCarran amendment project in December 1978.

Delivery of that water first began this year, 1987. During the past 18 months or 2 years as this delivery was drawing near, some farmers began to have some second thoughts. Their concerns were basically fivefold. No. 1, the presently depressed national agriculture economy; No. 2, a lack of understanding on how the initial

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water deliveries and associated cost would begin; No. 3, they were posturing for a better deal with the district and the Government; No. 4, in the lapse of time between signup and water delivery many had retired and are using income from leasing their land as their nest egg; and No. 5, the last concern over natural social change a project like the Dolores McCarran amendment brings. It will change a way of life.

I am, and the district is, sympathetic to their fears. We are making and will continue to make every effort to accommodate their concerns as long as we don't damage the integrity of the project. The project has certainly not injured their financial interest in any way at this point in time. Since we have many more water petitions than we have water to allocate, it might appear that the simple solution is just for us to take some water back. Our board would like nothing better than that. Construction configuration at this late date simply does not allow that easy resolution.

The movement to "turn this water back," in my opinion has a direct link to the movement in Durango to stop the Animas-La Plata project. Individuals involved in that effort are manipulators of the Dolores McCarran amendment project farmers. The movement began with a petition, signed by over 100 individuals who represented 69 of the 172 separate land ownerships that will receive our water in the full service area of the Dolores McCarran amendment project. Stated simply, that economics in the Dolores McCarran amendment project area had changed and the interested parties needed to sit down and talk.

The language made it easy for any concerned individual to sign. We did sit down and talk. And out of that talking process many of the fears that the full water charge and the first delivery of water were allayed. Subsequent to the first petition, there were two more petitions, each worded stronger, were less signers, until we got down to 15 land ownerships or 8 percent of the land owners represented on a final intent to sue and the same 15 land ownerships would have sued the district.

Mixed in with the above-mentioned process was the necessary adoption and the individual water petitions. The asking for the water had not been consummated awaiting final design data from the Bureau of Reclamation. This process allowed the objectors another forum to be heard. The hearing allowed final water allocation for the full service area to take place.

Of the 41 objectors, 11 stated explicitly that they wanted their water but only under some better terms. The hearing was held 2 weeks after construction allowed tentative water deliveries in the first block of land so the stage was set for actions to speak instead of words.

The board's perspective during this process has been based on several premises. First and foremost we want to be as fair as possible to all of our Dolores McCarran amendment project beneficiaries. That included the many full service farmers who wanted their land, who wanted their water and it included the MVI farmers who are getting supplemental water from the project, and it included the municipalities of Cortez and Dove Creek.

They are counting on a firm water supply for their future. It also included the Ute Mountain Ute Tribe.

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Mr. CAMPBELL. Can I interrupt 1 minute? We have still got a number, about 10 people. Could I ask you to summarize the remainder of your testimony? It will be be included in anyway.

Mr. SCHWINDT. Certainly. Our assessment of the concerns has been—a lot of it is in the human characteristic of being resistant to change. These people are afraid of changes. The change is coming and the change will solve the problems today that we have—with water coming in mid summer of 1987, we have got 43 irrigation systems already on the ground.

Some of the very farmers who objected to the distribution acceptance of their water petitions in the July hearings today have Dolores McCarran amendment project water irrigating their farms. These actions are optimistic financial actions of the farmer. They should speak much louder than the national media attention than headlined the pessimistic views of the small minority in our area.

The sale of the land, the sales indicate that land is worth a lot more with the water, so in summary the project farmers are responding to an opportunity to make a transition to irrigation that will give them an agricultural future. I think that the speed with which these farmers are putting the water to their land in spite of it being a difficult agricultural time for agriculture just speaks louder than my words can.

[Prepared statement of Mr. Schwindt follows:]

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Donald W. Schwindt
Montezuma County, Cortez, Colorado

Introduction

My name is Don Schwindt. My wife, Jody and I are commercial alfalfa hay producers. We began farming on a shoe string when we finished college fifteen years ago. We now own and lease, 300 acres of irrigated land in the lower Montezuma Valley, south of Cortez, just 100 yards north of the Ute Mountain Ute Indian Reservation boundary. Since water is the sole basis for my livelihood, I became interested in how water was administered. I live on the "end of the ditch" and thought I was not always getting my water entitlement. That transfered directly to a loss of dollars in my pocket. That concern, coupled with an interest in broader community issues led to my initial involvement on water boards. I became a Director of the Montezuma Valley Irrigation Company. While serving in that capacity I was appointed in 1982 to the Dolores Water Conservancy District Board and my scope of water responsibilities greatly expanded.

On December 10, 1986 in the "Old Supreme Court Chambers" of the Capitol Building of the State of Colorado, an historic document was signed, which if the appropriate legislation can now be consummated in Congress, will put to rest a classic confrontation between Indian and Non-Indian neighbors in Southwestern Colorado. Not only was I present at that ceremony but I attended many of the negotiating sessions over the past two years. I know how each one of the participants to the negotiation, on behalf of their constituencies, toiled, deliberated, compromised, sacrificed and suffered to accomplish what I believed in the beginning was an impossible task. I would like to take this opportunity to thank each interest represented in this agreement for its diligence, its far sighted perception, and for its cooperative spirit. Absent those positive factors, we would not be here today asking for your assistance.

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Historically, from a Non-Indian, water user, farmer point of view I have always understood that not only was there a potential "cloud" over my water rights to the Dolores River, but water rights belonging to my friends and neighbors in the Mancos River Valley were in real jeopardy because that river farther downstream traverses the Ute Mountain Ute Indian Reservation.

I have also historically understood that as the Dolores Project was being planned, water which was originally intended to be delivered to Non-Indian farmers in the Dove Creek area of the Project, was diverted to Ute Mountain Ute Indian land near Towaoc to satisfy Indian Claims to the Mancos River.

My farm and residence are immediately adjacent to the Ute Mountain Indian Reservation. Therefore, without hesitation, I can testify to the urgent need the Towaoc community has for a dependable source of water.

Background

My testimony today is based on the following premises: **One**, that we have the potential through this federal legislation and appropriations along with two States' legislation and appropriation coupled with local participation to solve long standing water rights, natural resource and human need issues that are festering in my area; **Two**, that the legislation we are seeking here today is an integral part of a much larger picture, that being the completion of the Dolores Project, the implementation of the December 10, 1986 Colorado Ute Indian Water Rights Final Settlement Agreement, and the construction of the Animas-LaPlata Project via the June 27, 1986 Binding Agreement For Animas-LaPlata Project Cost Sharing; **Three**, the conviction that agriculture will remain the foundation of rural America's economy and in our area agriculture requires developed water. My personal experiences and knowledge are based in the Dolores and Mancos River areas therefore, my remarks will reflect that perspective.

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Summary of Statement

I am testifying on behalf of this legislation because I believe it will allow us as taxpayers to commit our resources to a project that will benefit mankind rather than spend our money on expensive litigation. It will settle a long standing dispute that has created doubt over our water rights and land values. It will provide the Ute Tribes the "where-with-all" to develop their resources, giving them the opportunity to establish a self sufficient economy, thus benefiting us all. It provides much needed environmental enhancement for the Ute community of Towaoc. Finally, it is an important factor in allowing the construction of the Animas-LaPlata Project to proceed after these many years of delay.

Testimony

Settles potential costly litigation: My understanding of the issue of Federal Reserved Winters Doctrine Indian Water Rights is that the Ute Mountain Ute Indians have a legitimate claim to much of the virgin flow of the Mancos River, since that river runs directly through their land. It is also my understanding that the Utes claims to the Dolores River are less clear. However, as a result of the Akin v. District Court the State Court was directed to quantify those claims. In the opinion of many learned legal minds that would require many years of litigation involving millions of dollars being expended by all of the parties. In addition to the time and money this process would have two detrimental affects. One, the various factions would be cast into adversarial roles pitting Indian against Non-Indian neighbors, with the States of Colorado and New Mexico and the Federal Government being forced to choose sides. Two, in all probability the outcome would result in a winner and a loser, as compared to the negotiated settlement which would give us all the chance to be a winner.

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Water From Dolores in lieu of Ute Claim to Mancos: While there is no documentation that verifies that the allocation of the expected average annual supply of 22,900 acre feet of Dolores Project water from McPhee Reservoir is in lieu of the Winters Doctrine Claim the Ute Mountain Ute Tribe has to the Mancos River, we all, Indians and Non-Indians alike, have verbally understood that to have been the case. There is documentation in the plans for the Dolores Project during the 1968-1972 period which show 48,000 acres instead of the present 28,000 acres being irrigated in the "full service" area of the Project. These plans also show no agricultural water for the Ute Mountain Ute Tribe.

The Agreement provides, among other things, that when Dolores Project Water is delivered to the Ute Mountain Ute Reservation, they will receive certain "project reserved water rights" and in turn will relinquish their Reserved Right Claims.

Animas-LaPlata Project a Key to the basis of settlement: Others with much more background and expertise than I will give testimony explaining how the Animas-LaPlata Reclamation Project is an absolute key to this settlement Agreement. I whole-heartedly agree with that philosophy and totally support their testimony.

Dolores Project Farmers & Their Relationship to this Legislation: Recent controversy regarding the value of the water from the Dolores Project going to convert dryland agricultural land to irrigated land has received national media attention. There is such similarity between the Animas-LaPlata Project and the Dolores Project that we feel it is appropriate to address this issue in this testimony. In order to do this, I want to first give a brief history of the situation, then give the DWCD Board's perspective on that process, and lastly relate some figures and facts showing an assesment of our project today.

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History: In 1977 one hundred seventy farmers in the "full service" area of the Dolores Project who had been farming as "dryland" farmers petitioned for water pursuant to the Water Conservancy District Act of Colorado, asking for an allotment of water from the Dolores Project. Based upon this guarantee of sale of water the United States Bureau of Reclamation began construction of the Dolores Project in December of 1978. Delivery of water first began this summer, 1987. As this delivery was drawing near, some farmers began to have second thoughts. Their reasons were basically fivefold; **One**, the presently depressed national agriculture economy; **Two**, lack of understanding on how the initial water deliveries and associated cost would begin; **Three**, posturing for a better deal with the District and the Government; **Four**, in the lapse of time between signup and water delivery many had retired and are using income from their land as their nest egg; and **Five**, the natural social change a project like the Dolores brings. It will change a way of life.

I am, and the District is, sympathetic to their fears. We are making and will continue to make every effort to accomodate their concerns as long as we don't damage the integrity of the project. The project has certainly not injured their financial interest in any way at this point in time. In fact if anyone has been damaged it may be those farmers who will suffer a delay in their water delivery due to the 1988 appropriation cutback. Since we have many more water petitions than we have water to allocate it might appear that the simple solution is just to take some water back. We would like nothing better. But the construction configuration at this late date simply does not allow that easy resolution.

The movement to "turn the water back", in my opinion has a direct link to the movement in Durango to stop the Animas-LaPlata Project. Individuals involved in that effort are manipulators of the

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Dolores Project farmers. The movement began with a petition, signed by over one hundred individuals who represented 69 of the 172 separate landownerships. That petition was presented to then Congressman Mike Strang in March 1985. It simply stated that economics in the Dolores Project area had changed and the interested parties needed to sit down and talk. The language used made it easy for any concerned individual to sign. Subsequently, the DWCD Board met at a school in the "full service" area, talked and listened and agreed to work with a self appointed Full Service Farmers Committee (which the leaders of the opposition refused to serve on) toward a solution to their concerns. Many meetings, much thought, lots of involvement from the Bureau of Reclamation, including the Regional Director, resulted in a much better understanding of how the first water deliveries would be initiated. That process allayed many of the fears that full water charge came with the first delivery and that all of the land would have to be developed at one time.

Subsequent to the first petition, there were two more petitions, each worded stronger, with less signers, until we got down to the fifteen landownerships represented on the "intent to sue" and the same fifteen landownerships who finally did sue.

Mixed in with the above mentioned process was the necessary adoption of the individual water petitions. The "asking for the water" had not been consummated, awaiting final design data from the Bureau of Reclamation. This process allowed the objectors another forum to be heard. The hearing allowed final water allocation for the full service area to take place. Of the forty-one objectors, eleven stated explicitly that they wanted their water but under better terms. The hearing was held two weeks after construction allowed tentative water deliveries in the first block of land so the stage was set for actions to speak instead of words.

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Dolores Water Conservancy District Board's perspective: The Board's response to those concerns has been based on several premises. First and foremost we want to be as fair as possible to all project beneficiaries. In guiding the changes that the Dolores Project will bring we must consider not only the concerns of those few full service farmers that feel they don't want the water, we must also consider the rights of those individuals and entities that are committed to making the Dolores Project and its potentially enormous benefits a reality. We must consider the farmer who is ready to irrigate, the landowner who wishes to sell project land, the MVI farmers who are counting on supplemental water, the municipalities that are counting on a firm water supply for their futures, those people who will have the cloud removed from their water rights, those people who are investing in the future growth and prosperity of the area, and the Ute Mountain Ute Tribe.

Our assesment of the concerns recently raised out in the dryland full service area of the project is that a dominant force behind them is the very human characteristic of being resistant to change. Even changes recognized and viewed as positive are difficult to deal with. The nature of the development of agriculture over the last twenty years has led to fewer people owning and farming more of the land in order to make a living. Consequently much of my generation had to leave the farm and go elsewhere to make their living. To switch from dryland farming to irrigated farming is like changing occupations. An irrigated farmer cannot farm as many acres as a dryland farmer. Our area will need new people coming in to fill this vacuum. The nintey-four percent who voted for the project back in 1977 voted for change. The Board and many landowners have realized that time is the best antidote to the difficult situations these changes are now bringing. Time will allow the opportunities brought by the Dolores Project changes to be maximized.

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Many farmers took advantage of the petition signing process to simply posture for a better deal from the district and the Bureau of Reclamation. The language of the petitions made it difficult for the board to separate those poker-faced business concerns from the few people who honestly have changed their minds about the value of the water to their personal situation. My opinion is that even some of the fifteen landownerships represented on the lawsuit would be mad if they lost their water.

The desire to avoid community conflict and to work out a local solution has made us slow to respond to the media compaign which has, in part, been instigated by the opponents to the Animas-LaPlata Project. Most of the farmers in the full service area share our satisfaction with the progress being made in the project. We in the majority emphatically hope that the vocal minority on the lawsuit not continue to have success in slowing down our appropriations.

The Project Today: As Board members we came out of the water petition hearings with a strong conviction that by accepting all of the water petitions we had acted decisively to protect a good project. Developments since the water began to flow this summer have reinforced this conviction. Even though water deliveries were uncertain and did not begin until July (a normal irrigation season begins in April) nineteen out of eighty-three (23%) landowners in the initial blocks have already installed forty-three irrigation systems serving approximately 2,000 acres. Some of the very farmers who objected to the District's acceptance of the water petitions at the July hearing have Dolores Project water irrigating their farms today. These positive developments will undoubtedly pick up momentum with the expectation of a more firm and earlier supply of water next year. The irrigation system planning that we are aware of could lead to the Cahone Block being fifty percent developed by next year. These optimistic

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financial actions should speak much louder than the national media attention headlining the pessimistic views of a much smaller minority.

Recent land sales demonstrate that not only is land under the irrigation project considerably more valuable than adjacent dryland, there is much more interest in the watered areas. Sales indicate that land with a water allocation is selling for $300 to $550 an acre while dryland is bringing $225 to $325. I have one friend who purchased and is irrigating project land who feels that he can have his land and irrigation equipment paid off in five years. As a non-project irrigator who is living with twenty, thirty and forty year notes, I can attest to the attractiveness of Dolores Project land. I only hope that we non-project farmers can continue to compete.

The silent majority of project landowners that have been patiently waiting for water have been slow to realize the damage that the fifteen landownerships and their lawsuit have done. The cut in the 1988 appropriations from $22 million to $11 million has just begun to sink in. There is growing talk of a counter lawsuit in response to the damage that this vocal minority has done.

What project farmers are responding to is an opportunity to make a transition to irrigation that promises to ensure an agricultural future for an area that has an uncertain future as an exclusively dryland area. The speed with which irrigation systems are being installed during this difficult time for agriculture all over the nation is a strong testimonial to the foresight of our community in its advocacy of the Dolores Project. These actions are proof that Congressional response to that foresight by approving and funding the Dolores Project was correct. The actions speak to the need for similar opportunities in the area served by Animas-LaPlata.

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Tribal Water Resource Development: I have talked about the benefits irrigation will continue to bring to the Dolores Project drylands. I have also made reference to how the overall settlement will remove the cloud on the Non-Indian water rights throughout the area. I would like to conclude by talking about the benefits to the Ute Mountain Ute Tribe who are my neighbors to the south.

I see evidence of the fact that the Ute Mountain Ute Tribe is serious about developing their water and land resource to create a permanent sustained agriculturally based economy for their people. They are developing a demonstration farm adjacent to my farm, which will give the Tribe the capability, the experience, the technical ability and the "know how", to develop their Dolores and Animas-LaPlata Project waters into a viable long term economy. The Development Fund is needed to put to practical use the knowledge and experience gained on the demonstration farm as the Tribe develops its "project waters".

Area wide economic development: The Ute Mountain Ute Tribe is an integral and an important part of the economic scheme in Southwest Colorado. It is possible through the wise development of its water and land resources for the Tribe to greatly expand and broaden its base of livelihood. Therefore, any factor that effects the Indian economy directly effects not only Montezuma County and Cortez but all of Southwest Colorado, indeed all of Colorado. A thriving viable sector of the economy tends to "rub off" on other sectors, therefore the Non-Indian community has much to gain from a healthy Tribal economy, which the requested Development Fund will foster.

Enhancement of the Towaoc Environment: Living just three miles away from Towaoc, as I do, I feel well qualified to testify to the need of the availability of a domestic water system for that community. I witness five to ten truck loads of water

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per day being hauled from Cortez to Towaoc. I know that this type of water supply only allows for the bare necessities of life. Certainly it does not allow for any lawns or landscaping. It dictates a bleak environment, one without any of the amenities of life. Water is the key to changing that environment, which from my point of view, the Utes have tolerated far to long. Nowhere can we find a more vivid example of how a water project and the use of its waters can truly enhance the environment than at Towaoc.

Conclusion

The Dolores Project has created a common bond between the Ute Mountain Ute Tribe and us Non-Indian neighbors that has significantly improved relations and promises mutual prosperity in the future. I trust that the Animas-LaPlata Project will do the same for the Southern Utes and their region. I would like to conclude by urging the passage of this legislation, and also urging that the appropriation dollars will follow.

Thank you for the opportunity to testify today.

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Mr. CAMPBELL. Thank you, gentlemen. Let me ask a question maybe of commissioner Colbert or you, Mr. Schwindt. One thing you reaffirmed is it is my belief that it is not just a problem we need to solve for any water rights, it is a problem we are all going to be faced with down there whether it is muncipalities or the non-Indian farmers that live in that area.

You talk to—commissioner Colbert talked about the Mancos Valley there and you said it would affect 13,000 acres. Was that the number you gave if the Indian rights were litigated, and they won and that might have to go out of production?

How many farmers does that represent?

Mr. COLBERT. That's true, Mr. Chairman, 1,500 acres in Mancos Valley alone and 100 farmers are involved with that, and besides that there is a Bureau of Reclamation Projects in the middle of that holds 10,000 acre feet.

Mr. CAMPBELL. Those totally rely on farming as a livelihood, so you are saying if we didn't move forward on that, they are apt to lose their livelihood.

Mr. COLBERT. Yes, sir.

Mr. CAMPBELL. You also said, if I can paraphrase it, you were happy that your land was not right—on the reservation—some words. But I caught part of that. But what is the comparative price? I know Mr. Schwindt lives down there by the Ute Mountain Reservations. A piece of irrigated ground down there by the acre, as opposed to a piece that is not irrigated in your side-by-side, what is the difference in value just a general going rate if I were a realtor.

Mr. COLBERT. I imagine today $900—$1,000 difference.

Mr. CAMPBELL. $900 to $1,000 an acre if it is irrigated as an average.

Mr. COLBERT. I imagine the reservation land is probably worth less than $100 an acre.

Mr. CAMPBELL. Or lands similar to that on reservations, private lands and that dry land which is virtually desert as I know it, it would be roughly $100 an acre, would lose about 90 percent of that value if that water was taken off of it is what you are saying.

Mr. COLBERT. I think that is true because now on the reservation they can't grow anything without the water and what I spoke to you today about was just one river, one stream. There are seven others in similar circumstances that have similar problems as we do, and I just tried to concentrate——

Mr. CAMPBELL. Do you have any idea about the total number of ranchers and farmers who might be affected if they had, say, the loss of that water?

Mr. COLBERT. No, sir, we don't have that today.

Mr. CAMPBELL. If you can find that, would you make that available to the committee in writing within the next three weeks or so.

Mr. COLBERT. Certainly will, sir.

Mr. CAMPBELL. Appreciate that. Thank you, gentleman. Thank you for coming a long way. I appreciate your testimony.

Mr. CAMPBELL. We will now go to Ms. Linda Lazzarino, representing the American Public Power Association, accompanied by Ms. Deborah Sliz, director for Government relations for American Public Power Association. And Linda, if you would like to proceed.

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STATEMENT OF LINDA LAZZARINO, REPRESENTING THE AMERICAN PUBLIC POWER ASSOCIATION AND ALSO, COUNSEL, COLORADO RIVER ENERGY DISTRIBUTORS ASSOCIATION, ACCOMPANIED BY DEBORAH SLIZ, DIRECTOR OF GOVERNMENT RELATIONS

Ms. LAZZARINO. Thank you very much, Mr. Chairman. My name is Linda Lazzarino. I am here representing—first of all, we did have written statements, and I believe they have been submitted to the clerk of the committee.

Mr. CAMPBELL. They will be included in total. If you would summarize, I would appreciate it.

Ms. LAZZARINO. Good afternoon. My name is Linda Lazzerino. I am a staff attorney for Platte River Power Authority, in Fort Collins, Colorado. I am here representing today the Colorado River Energy Distributors Association, which I am a member of its steering committee.

CREDA represents municipal electric utilities, consumer owned rural electric utilities, and State agencies in the states of Colorado, Wyoming, Utah, New Mexico, Nevada, and Arizona. The views I will express this afternoon are also shared by the Colorado Association of Municipal Utilities, which are the city owned utilities within the State of Colorado, by Platte River Power Authority, and by the American Public Power Association.

APPSA also represented, as you noted, by director of governmental relations, Deborah Sliz who is at my right. Our concern today with the Colorado Ute Indian Water Rights Settlement Act of 1987 is limited to provisions that relating solely to the financing of the Animas-La Plata project, that project is a participating project, the Colorado River Storage project. And because the CREDA members purchase almost 90 percent of the power that comes from that project, we are always interested in legislation that might impact the rates for the purchase of that power.

CREDA has always supported through the appropriation process and the Bureau of Reclamation's budget the numbers and the anticipation of the Animas-La Plata project. Animas-La Plata has been expected since it was authorized in 1968, and the power users have stood ready to pay their allocated share of the project costs, ready to pay on the same terms and conditions it has fulfilled in the financing of other CRSP projects under current reclamation repayment policy. My comments today make no representation as to the Indian water rights settlement, however the parties I speak for have publicly endorsed the Animas-La Plata project so long as there is no departure from the traditional repayment methods that have been the basis of the rates for CRSP power since the beginning of that project.

They do strongly oppose but not to what amounts to a unilateral change in the provisions of the purchase contract arrangement. Those provisions have been the standards for not only CRSP projects, but Federal water power projects nationwide. Our specific objection is to the language contained in section 6(g) of the act.

That section provides for repayment of irrigation costs in 30 equal annual installments. This straight line repayment modeling is a drastic departure from traditional reclamation repayment

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methods. It changes the rules. The procedure shortens the repayment period. It rejects a longstanding policy of repaying the highest interest bearing costs of the project first, and it removes the flexibility that the Bureau has to levelize rates and avoid major increase in an untimely manner.

This change could result in substantial increase in rate paid by power produced from the CRSP. Animas-La Plata contains no power features, but according to the August 1986 figures of the Bureau of Reclamation Power users will pay almost $207 million of the anticipated $329 million in irrigation costs. CREDA acknowledges its traditional side of the bargain in a historic bargain that was structured 30 years ago to achieve the ultimate development of CRSP; that is, they support their fair share of the irrigation project costs.

We only ask that the other side of the bargain be kept as well; that is, that those support payments be established according to the originally agreed upon rate making modeling. The CREDA members have made resource commitments and have based their future long-range plans on the specific terms and conditions that have long accompanied the CRSP Act.

To disrupt the financial terms that have been the basis of public power commercial investments for more than 50 years such as proposed here would be inequitable and would do substantial harm to the electric consumers who depend on the CRSP resources. The committee has been advised that adding the cost of the Animas-La Plata project will not impact the CRSP rates.

That information holds true only if there is no delay, no change in the present schedule, time holds on other projects in CRSP and the present cost projections are accurate and unchanging. Any change in any one of these, and most certainly accumulative impact would result in rate increase. I would like to quote briefly from the letter from the Western Area Power Dimension that analyzes the impact on the rates for CRSP.

The last paragraph in the Lloyd Graner letter says:

> While this special case of Animas-La Plata shows on rate changes for power users, it should not be inferred that these results are applicable anywhere outside the CRSP period.

The professions of the Colorado River Storage Project Act cause the results found here. Even at that, small changes in facility time could make appreciable changes in the rates especially if the facilities start building on each other.

In this case, the electric rate payers bear all the risk and no control for a project that has no power features. The rate—the risk of the rate increase in Animas-La Plata is compounded as we see it by a presidential authorization for changes in the repayment criteria for other Federal power projects.

We do not believe, as Governor Romer stated earlier today, that section 6(g) is only limited to this project. Applications of this section to other projects across the reclamation boundaries would ultimately negates any benefit of Federal power allocated for the direct use of nonprivate consumption.

Power users object to the continuing barrage of attempts to use power revenues for unrelated purposes. This project is a perfect ex-

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ample. Again, as Governor Romer advised the committee earlier today, we made an agreement and we will stick to it. We hope you will do the same. The parties to this settlement, none of which represent power purchasers, were unable to have had a way to make the project pay out.

The final solution negotiated without the participation and the consent of the power purchasers was to push the cash button on the power register and suddenly there was adequate financing.

Gentlemen of the committee, we are aware that parties have struggled long and hard and each has compromised to reach a unique settlement, but I think we have to look at the uniqueness of this settlement as well. We are not just financing a water project. We are paying a premium for a settlement of water rights.

That settlement is laudable and infinitely justifiable, but it is not a feature contemplated in the ultimate development of the CRSP nor is it one that can be equitably charged to a limited class of consumers that have neither the responsibility for the problem, nor claim to the benefits that will be derived.

We strongly encourage the committee to strike the provisions in this act which provide for 30-year straight line amoritization. I thank the committee for the opportunity to state your views and ask your serious consideration of these comments. Thank you.

[Prepared statement of Ms. Lazzerino follows:]

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Statement before the House of Representatives
Interior and Insular Affairs Committee,
Office of Indian Affairs
Concerning H.R. 2642,
"The Colorado Ute Indian Water Rights Settlement Act of 1987"
by the Colorado River Energy Distributors Association
September 16, 1987

Good afternoon. My name is Linda Lazzerino. I am a staff attorney for Platte River Power Authority, headquartered in Fort Collins, Colorado. I am here today on behalf of the Colorado River Energy Distributors Association ("CREDA") as a member of its Steering Committee. CREDA represents municipal electric systems, consumer owned systems, and state agencies located in the states of Colorado, Wyoming, Utah, New Mexico, Nevada, and Arizona. The views I will express this afternoon are also shared by the Colorado Association of Municipal Utilities ("CAMU") of which I am a member of the Board of Directors and whose members are the municipally owned electric utilities within the State of Colorado, by Platte River Power Authority, and by the American Public Power Association.

CREDA members purchase nearly 90% of the power generated by the Colorado River Storage Project ("CRSP") and thus are always concerned with legislation affecting the sales provisions for that power. Our concern today with H.R. 2642, "The Colorado Ute Indian Water Rights Settlement Act of 1987," is limited to provisions relating to the financing of the Animas-La Plata Project, which is a participating project of CRSP.

CREDA has supported appropriations for the Animas-La Plata

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Project before various appropriations committees for a number of years. Animas-La Plata has been contemplated from the very early days of the Storage Project and the power users have stood ready to pay their allocated share of the project costs on the same terms and conditions it has fulfilled in financing of other CRSP projects under current reclamation repayment policy. My comments today represent no position on the Indian water rights settlement, nor on the development of the Animas-La Plata Project. They do, however, strongly oppose what amounts to a unilateral change in the provisions of the purchase contract arrangement that has been the standard for not only CRSP projects, but federal water projects nationwide for many years.

Our specific objection is to the language contained in Section 6(g) of H.R. 2642, which provides for repayment of irrigation costs in 30 equal annual installments. This "straight-line" repayment methodology is a drastic departure from traditional reclamation repayment methods. This procedure shortens the repayment period and rejects the longstanding policy of repaying the highest interest bearing costs of the project first. This change could result in substantial increases in rates paid for power produced from CRSP.

The Animas-La Plata Project contains no power features, but, according to August 1986 figures of the Bureau of Reclamation, power users will pay almost $227 million of the then anticipated $392 million total irrigation costs. This is part of the historic bargain that was struck thirty years ago to achieve the ultimate development of the CRSP and CREDA acknowledges its traditional support of irrigation. We are only asking that the other side of the bargain be kept.

The CREDA members have made resource commitments and have based their future long range plans on the specific terms and conditions that have long accompanied the CRSP Act. To disrupt the financial terms that have been the basis of public power customer

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investments for more than 50 years, such as proposed in H.R. 2642, would be inequitable and would do substantial harm to the electric consumers who depend on the CRSP resource. Delivery of federal power resources directly to the people at the lowest possible cost consistent with sound business principles depends on continuing the longstanding commitment by the Federal Government to a constant and reliable ratemaking criteria.

No doubt the committee has been advised that, according to the present figures from the Western Area Power Administration, because of the unique distribution of revenues under the CRSP Act the 30 year straight-line amortization provision will not adversely affect power revenues. This holds true if there is no delay, no change from the present schedule, timing holds on other projects in the CRSP, and present cost projections are accurate and unchanging. Any change in any one of these aspects, amd most certainly a cumulative impact, would result in rate increases. The electric ratepayers have all the risk and no control.

The rise of rate increases is compounded by what we see as a precedential authorization for changes in the repayment criteria for other federal power projects that will ultimately negate any benefit of federal power allocated for the direct use of the non-profit consumer. Power users object to the continuing barrage of attempts to use power revenues for other federal purposes. Animas-La Plata is the perfect example. Section 6(g) was the result of an eleventh hour negotiation wherein the parties to this settlement -- none of which represented power purchasers -- were unable to find a way to make the project pay out. The solution was to push the cash button on the power register and suddenly there was adequate financing.

We are aware that the parties have worked long and hard and each has compromised to reach this unique settlement. We should acknowledge that uniqueness as well. We are not just financing a water project. We are paying a premium for a settlement of water

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rights. That settlement is a laudable and infinitely supportable objective, but it is not a feature contemplated in the ultimate development of the CRSP, nor is it one that can equitably be charged to a limited class of consumers that have neither the responsibility for the problem nor claim to the benefits that will be derived.

We strongly encourage the Committee to strike the provisions in this act which provide for 30 year straight-line amortization of the irrigation investment of the Animas-La Plata Project.

I thank the committee for the opportunity to state our views and ask your serious consideration of these comments.

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Mr. CAMPBELL. Let me just say one thing. It is my understanding—I knew that you were not included in the negotiations on the repayment plan, but as I understand it, OMB insisted on that type of repayment plan in the provision before they would sign off on this bill and as you know it is pretty delicately crafted.

I know there is some concern, including if we make any major changes, it is going to sink the whole bill which I don't want to do. Also you heard Colorado Utes' testimony which is something like 109,000 households in 47 of the 63 counties in Colorado is supportive of straight line 30-year repayment.

How does that—would you like to give us your thoughts on that?

Ms. LAZZARINO. Colorado Ute is a very different situation in terms of its wholesale power base than any of the other municipal or rural electric agencies in Colorado or in the affected States. Most of the people that I represent rely substantially more on the Colorado River storage project power than the Colorado Ute does.

Colorado Ute has very little under the present contracts for CRSP. They are applying for power under the new contracts for CRSP, but right now because so much more of our power supply is based on the—rates for public power any increase in the rates for that power would necessarily increase our wholesale power rate.

They are in the position where if they get any encouragement of Federal power from the next—in the next contract period, even if it were doubled in that case, their power rates would still benefit by lowering, to what extent I don't know, so they are in a diametrically opposed position.

Mr. CAMPBELL. OK, we will thank you for your testimony. I might just mention you have said you were kind of opposed to what you consider changing the rules. I want to tell you if the Government hasn't changed the rules, this thing would have been built years ago, totally by Federal money. We have been changing the rules all along on the thing. That is what made it so complex and difficult.

It would seem to me we can work that out. We ought to be able to change the rules or work out the rules in the payment plan, too, but that has been the difficulty of the bill that we continually change the rules here in the Federal Government. Thank you very much for your testimony.

Ms. LAZZARINO. If I may respond with respect—there has been a lot of changing of the rules, but the power users throughout have not been the parties who have changed the rules and they have been fulfilling completely the objections to which they committed at the beginning——

Mr. CAMPBELL. Certainly I agree with that. It wasn't the Indians that changed the rules either, the people out there in southwestern Colorado. The rules are changed here, but we still have to live with them out there. But thank you.

Mr. CAMPBELL. Next, let's go to Mr. Brent Blackwelder, vice president of the Environmental Policy Institute—is Mr. Blackwelder not here? All right, if he comes in, we will fit him in at the end.

Next will be Ms. Jean McCulloch, vice chairwoman, Taxpayers for Animas-La Plata Referendum, accompanied by Ms. Jeanne Eng-

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lert. You ladies can come forward now. And we will proceed in that order, Ms. McCulloch first.

PANEL CONSISTING OF JEAN MCCULLOCH, VICE-CHAIRWOMAN, TAXPAYERS FOR THE ANIMAS-LA PLATA REFERENDUM; AND JEANNE W. ENGLERT, PRIVATE CITIZEN

Ms. McCULLOCH. Mr. Chairman and members of the committee, I want to thank you very much for allowing me to be here today. I am Jean McCulloch, vice chairwoman of Taxpayers for the Animas-La Plata Referendum, a citizens group who actively opposes construction of the Animas-La Plata project since 1979. I am here today to speak in opposition to H.R. 2642.

The McCulloch family homestead is in Durango Colorado, in that area since 1899. The original ranch, in addition to other lands, acquired over the years comprises the largest, privately owned ranch in La Plata County, Colorado. The McCullochs attributed their staying power to the fact that they do not receive water from either of the two federally built water projects in the county.

Today, you have heard that H.R. 2642 solves all problems, Indians and non-Indians alike. However, I think this legislation creates more problems than it solves. The Colorado Ute Indian Water Right Act, like so many other settlements, only gives the tribes more paper water rights because the Indian delivered facilities have been removed from phase one of the Animas-La Plata project, the project being the essential component of this settlement.

Since phase 2 is purely speculative and is to be nonfederally financed, we questioned the wisdom of this decision. H.R. 2642 forces the tribes into court to challenge Federal, State and international laws, as well as the Colorado River Compact. Since the tribes can't use the water on the reservations, they are forced to sell it out of the State in order to realize any economic gains.

The Settlement Act precludes an obvious solution to the problems in the Dolores McCarran amendment project. If the dry land farmers who are present trying to rescind their water contracts were permitted to give the Ute Mountain Ute Tribe their water, two problems would be solved. The Ute Mountain Ute Tribes requests for an Animas supply route could be satisfied immediately, not in 12 years and the farmers would be released from their water contracts.

This makes more sense because the Dolores McCarran amendment project is closer to the Ute Mountain Ute Reservation, and the lands they intended to irrigate. The Settlement Act also sets a precedent that may be hard to control in the future. A legal opinion holds that the Ute Mountain Ute Reservation lands are neither apertinent to nor practically irrigatable to the waters of the Animas River.

If this precedent is allowed to stand, what happens when other Indian tribes lay claims to waters of distant rivers that are not pertinent to the reservations. The Settlement Act promotes ill will between Indian and non-Indians. People feel they must participate in the project or lose their water to the Colorado Ute Tribes.

This idea is being reinforced by radio ads that say the Indians threaten Durango, Colorado's water supply even though an engi-

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neering and legal study contradict these allegations. What happens when the Animas-La Plata project like the Dolores Mcarran amendment and so many other projects excedes cost estimates and becomes the financial burden? Who will be blamed?

The only thing that H.R. 1642 accomplishes is construction of the Animas-La Plata project. However the project is not needed for the Colorado Utes to sell their water down stream. In fact, the settlement gives them the option of taking their water directly from the Animas River without first being stored in the reservoirs.

One questions the wisdom of building a $208,000 acre-foot storage reservoir to satisfy a $60,000 acre-foot Indian claim. If the Ute Mountain Ute Tribe received their water from the Dolores McCarran amendment project, a 30,000 foot reservoir would do. Instead of looking at old solutions to water problems, new solutions that are less damaging to people, the taxpayers, the environment and the Federal Treasury need to be seriously considered.

I would urge a no vote on this legislation. Thank you very much, Mr. Chairman, for allowing me to testify today.

Mr. CAMPBELL. Thank you and Ms. Englert.

[Prepared statement of Ms. McCulloch follows:]

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STATEMENT OF JEAN MCCULLOCH

BEFORE THE INTERIOR COMMITTEE

UNITED STATES HOUSE OF REPRESENTATIVES

WASHINGTON, D.C.

September 16, 1987

Mr. Chairman and Members of the Committee:

I am Jean McCulloch, vice chairman of Taxpayers for the Animas-La Plata Referendum, a citizen's group who has actively opposed the construction of the Animas-La Plata Project since 1979. I am here today to speak in opposition to H.R. 2642.

The McCulloch family homesteaded in the Durango, Colorado, area in 1899. The original ranch, in addition to other lands acquired over the years, comprises the largest, privately-owned ranch in La Plata County, Colorado. The McCullochs have attributed their staying power to the fact that they do not receive water from either of the two federally built water projects in the county.

Today you will hear that H.R 2642 solves all problems, Indian and non-Indian. However, I think that this legislation creates more problems than it solves.

The Colorado Ute Indian Water Rights Settlement Act, like so many other settlements, only gives the tribes more "paper water rights" because the Indian delivery facilities have been removed from Phase I of the Animas-La Plata Project, the project being the essential component of this settlement. Since Phase II is purely speculative and is to be non-federally financed, we question the wisdom of this decision.

H.R. 2642 forces the tribes into court to challenge federal, state and international laws as well as the Colorado River Compact. Since the tribes can't use the water on their reservations, they are forced to sell it out of state in order to realize any economic gain. The leasing aspect of this

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settlement only emphasizes the fact that water can't be used for economic gain in Southwest Colorado.

The Settlement Act precludes an obvious solution to the problems in the Dolores Project. If the dry land farmers who are presently in court trying to rescind their water contracts were permitted to give the Ute Mountain Ute Tribe their water, two problems would be solved: The Ute Mountain Ute Tribe's request for Animas-La Plata Project water could be satisfied immediately, not in twelve years, and the farmers would be released from their water contracts. This makes more sense because the Dolores Project is closer to the Ute Mountain Ute Reservation and the lands they intended to irrigate.

The Settlement Act also sets a precedent that may be hard to control in the future. A legal opinion holds that the "Ute Mountain Ute Reservation lands are neither appurtenant to nor practicably irrigable from the waters of the Animas River." If this precedent is allowed to stand, what happens when other Indian tribes lay claim to the waters of distant rivers that are not "appurtenant" to their reservations?

The Settlement Act promotes ill-will between Indians and non-Indians. People feel they must participate in the project or lose their water to the Colorado Ute Tribes. Indeed, this idea is being reinforced by radio ads that say the Indians threaten Durango, Colorado's, water supply although an exhaustive engineering and legal study contradict this allegation. What happens when the Animas-La Plata Project, like the Dolores and so many others, exceed cost estimates and become financial burdens. Who will be blamed?

The only thing that H.R. 2642 accomplishes is the construction of the Animas-La plata Project. However, the project is not needed for the Colorado Ute Tribes to sell their water downstream. In fact, the settlement gives them

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the option of taking their water directly from the Animas River without first being stored in the reservoir. One questions the wisdom of building a 280,000 acre-foot storage reservoir to satisfy a 60,000 acre-foot Indian claim. If the Ute Mountain Ute Tribe received their water from the Dolores Project, a 30,000 acre-foot reservoir would do.

Instead of looking at old solutions to water problems, new solutions that are less damaging to people, the taxpayer, the environment, and the federal treasury need to be seriously considered.

I would urge a no vote on this legislation.

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Ms. ENGLERT. Thank you, Mr. Chairman, members of the committee. My name is Jeanne W. Englert. I am a citizen and taxpayer of Colorado. When the public debate over Animas-La Plata project began in 1979, Indian water rights were merely listed among other reasons for building the project. As the years went on the nature and the extent and amount of these water rights began escalating, so I was recently surprised to read in the Rocky Mountain News that the Ute Indians threatened to virtually dry all the streams that lie around mountains that rise in Southwest Colorado.

When it started, we were told there was a problem of early party water rights the Southern Utes had on the La Plata River and some impact on the users of the Animas. After the city of Durango engineers concluded that Durango's water rights were firm and it could develop its own water rights independently of the project cheaper, we heard that the Indians threatened Durango water rights on the Florida, and as it developed toward—as the years went on, we also were told that the Ute Mountain Utes claim on the Mancos River threatened the users there which we thought was interesting because in 1977, the proponents of the Dolores McCarran amendment project and State officials told the feds that the Dolores McCarran amendment—building the Dolores McCarran amendment project would serve as a more than adequate substitute for any claims the Indians had on the Mancos.

Given the fact that over the years the claims have changed in intensity and extent and even in a number of rivers, I began to look into—into them and it is my intent today to bring the attention of this committee the results of my reserve. To answer the question of what or how much water the Indians are entitled to and what is the nature of the claims and what priority date those claims may possess, I need to go briefly through the history of the reservation.

Mr. CAMPBELL. Before you get into a complete history, as I mentioned to all the other groups, we are trying to limit to 5 minutes, but all your written testimony will be included in the journal.

Ms. ENGLERT. Yes, I am summarizing. In 1868, the Federal Government negotiated a treaty for the reservations at that time compromising all of western Colorado, but in 1880, the Indians were asked to—were asked by the Feds to see that treaty, and they agreed under obviously difficult circumstances to be relocated, and they ceded all the land in western Colorado, thus nullifying the 1868 treaty.

Now, the intent was for us to recover the Utes totally from Colorado, except for the south three bands which were to be located on the La Plata River, but it was soon to be determined that the La Plata was deemed unsuitable for agriculture, and so did Colorado Senator Teller testify in 1881.

A second alternative was considered with San Juan County, Utah, or with the Indian reservation in Utah, but the State of Utah and the Indian Water Rights Society vociferously objected to this, and thus succeeded in removal bills until 1895, when it was finally agreed that the Southern Ute bands could remain where they were in southern Colorado, those—two of them agreed to take individual allotments of land anywhere within the old reservation, but because it was voted against taking land in severalty, they

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were awarded the first 40 western miles. In other words, the section of the modern reservation west of the Mancos.

In 1937 under the Indian Reorganization Act, 222,000 acres of surplus land was awarded to the tribes. The essence of this, though, is in 1950, a settlement was made over the land claims that both tribes had put all confederating Ute bands had put forward. This agreement stated that the tribes agreed that they and ceded all their lands in Colorado; that they agreed they agreed to be relocated, and at the money settlement they accepted in excess of $31 million would be a res judicata or final decision on all those claims.

In short, what they said was between 1859–80, the Utes did not own 1 acre of ground in Colorado. The consent judgment of that settlement said that in accepting the money and signing the judgment, the Indians agreed they had ceded the land and that they had been compensated for whatever losses they had claimed in that process.

This was affirmed by the U.S. Supreme Court in a ruling by Justice Brennen in 1971. The essence of this is that there is simply no way that we can make a claim here of 1869 as the early priority water rights on these rivers. That treaty was rescinded in 1880. The only claim we can possibly—date we could possibly assume here is 1895 for the individual allotments of land which was only 27,811 acres and the lands west of the Mancos and then later under the Indian Reorganization Act for what other lands were restored.

Mr. CAMPBELL. I am going to have to interrupt and tell you you are exceeding the time. I don't want to cut you off, but we are going beyond the scope of this hearing. There is going to be a complete documentation of the history of the tribe and I want to tell you from my standpoint there is a word used in legalese called duress. In the old days we used to call it "at gunpoint," and either your idea of what what was ceded and how it was ceded is a lot different than most of the Indian viewpoint on how they lost their land. I don't care who signed what. When you do it at gunpoint, it is not in my opinion a fair or equitable solution to the problems they had faced in those days.

I wanted to tell you that this whole thing will be taken up and will be submitted in detail, the history of the tribe and what has transpired, so if you would like to just summarize in a last sentence or two, go ahead.

Ms. ENGLERT. Yes, I would be glad to summarize, Mr. Chairman. The point of this is that it looks as though what we are talking about in terms of reasonable water claims on the Animas and La Plata Rivers can easily be satisfied right out of the Animas River, and for awarding water rights to the Southern Utes to the same degree it would get in the project, but without impacting the existing users in that the date the tribe would most likely get is almost exactly the same priority date the project would get, but the water is substantially less. Thus the city of Durango rafters, fishermen, and other irrigators in the upper Animas could continue to do just as they have been doing for the last 30 to 50 years at no impact.

The Southern Utes could have exactly what they would get in terms of water supply in the project. If necessary to build a structure at all for that amount of water, it is obvious that the State of Colorado itself has more than enough money. The rest of that is

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that I think we have seen in the dollars that there is plenty of water to more than satisfy the Mountain Ute claims on the Mecas River. Thank you, very much.

Mr. CAMPBELL. I would like to ask a couple of questions. All I have heard today from the State of Colorado, from downstream States, and from virtually everybody who has testified is that there is not enough water, but you don't agree with that. Apparently, you believe the water is enough to accommodate all of the claims and the additional claims of the Indian tribes, is that correct?

Ms. ENGLERT. It is correct what I am saying. What you heard me say, that there is ample water in the Animas River to satisfy the claims of the Southern Ute Indian Tribe for the entire western part of their reservation in direct flow rights without impacting water users. Do you want me to read the numbers?

Mr. CAMPBELL. No, that is all right if it is in the testimony.

Ms. ENGLERT. It is in my testimony. These numbers come from Black and Veech, city engineers.

Mr. CAMPBELL. Ms. McCulloch, the land you referred to, the family land, is that the take line as they say in water areas, so if the Animas-La Plata was built, would that inundate the land you are talking about that your family has been on for years?

Ms. MCCULLOCH. No, it won't inundate our land but we are water users below the project.

Mr. CAMPBELL. You mentioned—maybe I didn't hear it properly—new solution in lieu of the Animas-La Plata. Could you briefly tell me what you think they are?

Ms. MCCULLOCH. Well, as I said, I thought that the Mountain Ute claims could be solved from the Dolores project, and there is 20,000 acre-feet of water that the farmers are trying to give back, get rid of over there. In addition to that, there have been two salinity control studies, Mecas Valley salinity control study and Elno Creek. I think between both of those studies they said if they lined ditches either they would save 54,000 or 50,000 acre-feet of water approximately, so that is more water that could be used to solve those needs.

If the tribes want to sell their water out of State or down river, and the settlement says that they have that option of taking the water out of the river without storing it in the reservoir, why build the project.

As far as the Southern Utes go, I think approximately 30,000 acre-feet of water that they are supposed to get out of the project, and they did request more water, but the Bureau of Reclamation in the EIS said they didn't have the land, and denied it.

Mr. CAMPBELL. We have a great difference of opinion on some of the testimony, and some of the previous testimony indicated that without the settlement of the Indian water rights claims, as provided in the agreement, and it is litigated through the court system, that it is going to have a severe economic impact, and we heard several numbers, as high as $170 million possibly of litigation costs. That was the testimony of the attorney general from Colorado, as I remember it.

How do you feel about spending the money if we build it or don't build it? I mean it may go way over that. Nobody knows, I suppose,

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but there is a possibility of spending hundreds of millions in litigation, and then winning any way. How do you feel about that?

Ms. McCULLOCH. The cost of the project is estimated at $586 million roughly. I don't think it would cost—it looks like this settlement forces the tribes into court. If they want to sell their water or lease it down stream, they are going to be forced into court anyhow, and how much is that going to cost?

Mr. CAMPBELL. That is a separate issue that may yet be negated. We don't know that, because this is the original language of the bill, but it is my understanding from them that if it is not built, they are going to proceed, for sure, through the court system. My problem is this. We may face a time in which it costs several hundred million dollars of tax money to litigate, and the tribes will win anyway.

Ms. McCULLOCH. I think that would be a better solution. I think every one would absolutely know. The water would be quantified. Everyone would know what they are entitled to, and a project could be sized for their needs.

Ms. ENGLERT. Mr. Chairman, could I just respond to that briefly?

Mr. CAMPBELL. Sure.

Ms. ENGLERT. I am not an advocate of the Indians going into court, and I think we would be sitting there haggling over acres of ground forever and ever. What I am suggesting is that we have got something here which is, I think, pretty simple. Just looking at the legal history of this reservation, the obvious answer is 40 CFS on the Animas River awarded in a negated settlement with the Southern Ute Tribe, and again a settlement with the Mountain Utes saying here is even more Dolores water than you even asked for at the beginning.

We have an equitable settlement. We don't upset any existing users. We don't impinge on anybody and it also costs almost nothing. We just say we are going to give you what you would get in the project except you don't have to wait 12 years.

Mr. CAMPBELL. I appreciate you testifying. Your complete written testimony will be included in the record too. Thank you, very much.

Ms. ENGLERT. Thank you.

[Prepared statement of Ms. Englert follows:]

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TESTIMONY OF

JEANNE W. ENGLERT

ON

HR2642

September 16, 1987

The degree to which Ute Indian water rights threaten existing water users in the San Juan Basin has risen in direct proportion to the degree to which the opponents of the Animas-La Plata project have discredited the project's other rationales. When the public debate over the project began in 1979, Indian water rights were merely listed among other reasons for building the project; today the Indian claims have reached their apotheosis. The *Rocky Mountain News* recently reported that Ute water rights would include "virtually all the streams that rise in the mountains of southwest Colorado."

The most telling example of the escalation of the "threat" of Indian water rights as other reasons for building the project are discredited occurred upon publication of the Black & Veatch study of Durango's future water needs in September of 1981. The engineering firm concluded it would be cheaper for Durango to develop its conditional rights on the Animas River than to participate in the project. Until then, the official literature of the Southwestern Water Conservation District, chief promoter of the project, had said that Durango's base water supply of 8.92 cfs from the Florida River was not jeopardized by Indian claims. Since then, the proponents have claimed Durango water rights are in jeopardy, most recently in inflammatory radio ads sponsored by the First National Bank of Durango.

Another interesting contradiction which illustrates the use of Indian water rights to push construction of a federal water project occurred in connection with the Dolores water project, now under construction in Montezuma County, 60 miles west of Durango. In 1977, in testimony, tribal and state officials stated that construction of the Dolores project would settle Ute Mountain Ute claims for water on the Mancos River. Noting the efficacy of Indian claims on the Mancos to justify funding the Dolores project, the Southwestern Water Conservation District used the Mancos River again in promoting construction of the Animas-La Plata.

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Obviously it does not take a billion dollars in water projects to satisfy the claims of a thousand Indians to one small river in southwestern Colorado. The construction of the McPhee dam in the Dolores project provides an ample supply of water to meet all conceivable needs of the Ute Mountain Ute Indian Tribe for decades to come. The Ute Mountain Utes have no claim on the Animas and La Plata Rivers, neither of which is appurtenant to their reservation. Inclusion of the Ute Mountain Utes in the Animas-La Plata appears to be a political decision to make the Indian water-rights rationale appear more formidable. In summary, the United States has honored its trust responsibility to the Ute Mountain Utes by building the Dolores project, which satisfies all claims the tribe might have for water appurtenant to the Ute Mounatain Ute reservation.

I turn now to the claims of the Southern Ute Indian tribe for water on the La Plata and Animas Rivers. The question the members of the committee should ask is do these claims warrant an expenditure of $586,561,000 million, which is the current estimated cost of the Animas-La Plata project?

To answer that question, which is the point of the remainder of my testimony, I must first briefly review the history of the Southern Ute reservation. The nature of an Indian reserved water right under the Winters Doctrine is that the water right is created when the lands are set aside for Indian use and the right has a priority date for administration as of the date of creation of the reservation. On the basis of that general principle, proponents of the Animas-La Plata project have intimated that the tribe has claims to reserved water rights dating back to establishment of the confederated Ute reservation in 1868, a reservation which at that time was comprised of 16 million acres in western Colorado. The government, however, was unable to stop the invasion of gold-hungry prospectors, which resulted, first, in the San Juan Cession of 1874, and then pressure to remove the Utes from Colorado, pressure which culminated in September of 1879 after some disgruntled Indians, forced against their will to build an irrigation system near Meeker, killed the Indian agent and briefly took up arms against U.S. troops. In Washington, in 1880, Ute band chieftains agreed to the removal of the Ute Indians from Colorado and to relinquish all claims to their reservation, thus nullifying the 1868 treaty. Removal of the northern bands and the Uncompahgre to Utah proceeded on schedule, but removal of the Southern Utes was complicated by the discovery that the La Plata River lands, on which the three southern bands--the Mouache, Capote and Weminuche--were to receive allotments, were deemed unsuitable for agriculture.

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I pause to note the irony that the same lands that Senator Henry Teller testified in 1881 were "arid and worthless land" 8,000 feet above the sea, and which had only "500 acres of land that might, by active European or American citizens, be made a home..." are today the lands that are the prime objective of the irrigation portion of the Animas-La Plata project.

Congress, having rejected putting the Southern Ute bands on the La Plata River, considered two alternatives in Utah, but resistance from the State of Utah and the Indian Rights Society killed all Ute removal bills introduced. Finally, the Hunter Act of 1895 passed and was ratified by the Indians. It provided that the Mouache and Capote bands would accept individual allotments of land anywhere within the boundaries of the old reservation below the San Juan Cession. Because the Weminuche voted unanimously against taking individual allotments, the government awarded them the first 40 western miles of the reservation as land held in common.

By April of 1896, 72,811 acres of land had been allotted to 371 allottees, most of them clustered in the Pine River Valley and along the San Juan. We found only between 2,000 to 3,000 acres allotted in the La Plata River area, most along dry water courses, tributaries to the La Plata River. We do not know if these lands remained in Indian ownership or were sold or if any of them would fit the "practically irrigable acreage" standard of a Winters Doctrine water right.

After all the Indian allotments had been patented, the old reservation was opened up for white homesteading. In 1937, the government returned 222,016 acres of surplus land to the Southern Utes as part of reorganization of the tribe in the Indian Reorganization Act of 1934. It was at that time the Mouache and Capote formally adopted the name Southern Ute Tribe and adopted constitutional government.

The question this complicated reservation history raises is which reservation establishes the water right and, consequently, what priority date that water right might have. A 1937 water right on the La Plata is distinctly junior and threatens nobody. A 1937 water right on the Animas, while a junior right, has the same value as the 1938 conditional water right for the Animas-La Plata and is good, but also does not threaten Durango's water rights as they are senior rights. Since we found no record of allotments on the Animas River, we find it reasonable to conclude that the priority date the Southern Utes could claim on that river would be the date of creation of the modern reservation and tribal government, 1937, the year those lands were returned to the tribe.

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Another, more serious, question about the validity, extent and nature of these water rights is raised by subsequent Ute history, specifically the 1950 settlement of their land claims. In 1950, the United States awarded the confederated Ute bands $31,761,207.62 to settle their land claims. In accepting this money, the tribes signed a consent judgment, which states:

> *A judgment...shallbe entered in this case as full settlement and payment for the complete extinguishment of plaintiff's right, title, interest, estate, claims and demands of whatever nature in and to the land and property in western Colorado ceded by plaintiffs to defendant by the Act of June 15, 1880 (21 Stat. 199)...*

This judgment, said the court, is *res judicata*, for all lands in western Colorado formerly owned or claimed by the Utes, ceded by the Act of 1880. One thing this consent judgment does is acknowledge that the relevant treaty between the Utes and the United States is the Agreement of 1880 and not the treaty of 1868. Any analysis of the nature and extent of Ute Indian water rights would have to proceed from that agreement and the Hunter Act of 1895.

The consent judgment also raises the question of whether the Ute Indian tribes have any claims for water under the Winters Doctrine at all. The *res judicata* nature of this judgment is subsequently reaffirmed in a 1971 Supreme Court opinion in which Justice Brennan ruled that the 1950 settlement was, indeed, a final settlement of all Ute claims. Does that mean the Utes have no claims for water? Only a court can decide, but I am apparently not alone in wondering what the effect that consent judgment might have on Ute claims for water because the defendants raised that very point in the Akin case, the 1972 filing for water rights for the Southern Ute and Ute Mountain Ute Tribes. If they thought that the consent judgment and Brennan's ruling was important to bring to the attention of the court, I thought, therefore, I should bring it to the attention of this committee.

In conclusion, I would like to say that the "threat" of Ute water claims drying up the rivers of southwest Colorado has by no means been proven, that the historical and legal evidence available suggests strongly that water rights the Utes could conceiveably get do not have the early priority that proponents of the Animas-La Plata project claim, and do not constitute a great deal of water. As evidence of the latter, I would like to conclude my testimony by quoting the legal opinion of the special counsel to the City of Durango for its water rights and the ex-director of Colorado's Department of Natural Resources, David Getches, an expert on Indian water law, in a speech he gave in 1985.

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In 1981 the firm of Moses, Wittemyer, Harrison and Woodruff, special counsel for the City of Durango, said that the Bureau of Reclamation had estimated the potential Southern Ute requirements for water for municipal and industrial purposes to be 26,500 acre-feet a year, which amounts to an average direct flow of approximately 37 cfs. This, said the lawyers, is the estimated M&I requirement for the entire reservation. Due to the nature of the coal seam which underlies the Southern Ute reservation, that water would most likely come from the Animas, which is unique in that it has never had an administrative call. During the record drought year, a volume of 218,000 acre-feet flowed past Durango in the Animas River at a mean rate of 302 cfs and a minimum flow of 129 cfs. Near the state line, which is inside the boundaries of the reservation, the respective flow was 246,000 acre-feet and 129 cfs.

Those minimum flows, in the record drought year, prove that there is obviously sufficient water in the Animas River to award to the Southern Utes, either in court or through negotiated settlement, 37 cfs without impacting on existing users of that river.

In his address, David Getches estimated a maximum of 30,000 acre-feet, or 40 cfs, as the amount of water the tribes could use or sell by the year 2,000.

He also said, "Evidence available to the state shows that if the quantities of water awarded to the Southern Ute Tribe and Ute Mountain Ute Tribe, in an adjudication of their reserved rights claims, were based on the amounts of practically irrigable acreage on the reservations, those quantities would be far below the present claims."

Based on the legal and historical precedents and on what these experts in water law have to say, I would say that at most what we have is a $15-million problem of Indian water rights. Unfortunately, HR2642 proposes a $600-million solution. I beg this committee to consider telling the parties involved to scrap the present settlement plan and renegotiate a new one based on the actual extent and nature of these claims. It is possible that such a settlement may not need any federal involvement at all. In my opinion, the State of Colorado has set aside funds for Animas-La Plata that would cover any small structure that might emerge from either a court or negotiated settlement, if any structure is needed at all.

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Mr. CAMPBELL. The next panel will be Mr. James Isgar, a farmer from Durango, Mr. James Porter, a farmer from Cortez, and Mr. Dan Schmitt, a farmer from Durango.

Gentlemen, if you proceed in that order, Jim Isgar first. We have several more people who want to testify after you that came in a little bit later that we are going to make accommodations for, so if you keep your comments to a summary, all of your testimony will be included as the other witnesses. You may proceed.

PANEL CONSISTING OF JAMES ISGAR, FARMER, DURANGO, COLORADO; JAMES PORTER, FARMER, CORTEZ, COLORADO; AND DAN SCHMITT, FARMER, DURANGO, COLORADO

Mr. ISGAR. Thank you, Mr. Campbell. First of all it is a great honor to be here. I am really in awe of this place, Washington. This is my first trip here.

Mr. CAMPBELL. Me too.

Mr. ISGAR. I am sure you can handle it better. You have been here a little bit longer. It was an honor for me to have my name on the same list as some of the people who were here, the Congressmen, Representatives, Governor, but we do have a reason for being here. We are some of the people that will be receiving the water, and we do stand to lose water to the Indians if their claims are fulfilled with the project.

We want our water now. The Indians their water and we want our water and we don't want to give up what little water we have to settle their claims.

To give our water we do have to the Indians would devastate an already depressed economy. As you are well aware, we have a poor economy in the southwest Colorado. We feel that the water is not only deeply needed but it is affordable to us. We feel through the water we can increase our production and in combination with what is raised on the Dolores project, perhaps, we can increase our production to where we have marketable quantities. At present our production is not great and we don't have really large enough quantities to make it practical.

Dan Schmitt here next to me, we ship to California because it is the closest market we have, a good market. We are not in a surplus, a commodities surplus area. The area we live in from there to the west is a commodities deficient area. The increased production through the project will not add to any national surplus. More production will increase our marketing potential.

Another point. If we had more water, it wouldn't be necessary for the farmers in the area to be dependent on raising one or two crops, some of which are subsidized crops. The water would make it possible for us to raise a wide variety of crops, most of which would be far more lucrative for us.

I thank you for your time. We appreciate any questions you may have.

[Prepared statement of Mr. Isgar follows:]

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STATEMENT OF
JAMES R. ISGAR
FARMER-RANCHER, DURANGO, COLORADO
BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
regarding
H.R. 2642
THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987
WASHINGTON, D.C.
September 16, 1987

Mr. Chairman and members of the committee, my name is James Isgar. I am 36 years old and I farm and ranch in Southwestern Colorado near Durango. I am also a C.P.A., having completed college and graduate studies. I farm by choice. I enjoy being a part of the productive segment of our society. I like the satisfaction I get from doing an honest day's work.

I am here today to testify in support of the Colorado Ute Indian Water Rights Settlement Act of 1987. H.B. 2642 will assure that I, a dryland farmer, will be able to receive a reliable source of irrigation water for my farm and eliminate the threat posed by Indian water rights claims to the water supplies now available to non-Indian irrigators in the La Plata River Drainage. Without the Animas-La Plata Project embodied in the Settlement Act, the economic base for the entire Four Corners region, an already economically depressed area, will be severely damaged.

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Not only will enactment of this bill allow the Utes to realize their historic entitlement, it will provide our regional agriculture sector with the certainity of water supplies needed to assure our future. With water on our farms, we can increase production of livestock and crops that our country genuinely needs. Presently, without dependable water supplies, we lack the option to raise crops that are not in surplus. Although we have extremely productive soils, our crop selection is limited due to the lack of water.

The Water Rights Settlement Act fulfills the promises of the nation to the Utes, and extends to regional farmers the opportunity to improve their stability and potential.

My father, Arthur Isgar, has come here to Washington to testify before you in years past. He once thought he would be able to irrigate with water from the Animas-La Plata. Eventually, as the years went by, he realized he wouldn't. But he still continued to work for the project because he wanted me to have the chance to receive the water. Now I, too, wonder if I shall be able to use the water from the proposed project. What do I tell my sons? Will they receive water and have the chance to farm, or will the promise of water remain only that, a promise?

Thank you.

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Mr. CAMPBELL. Thank you. We will go on with James Porter.

Mr. PORTER. Thank you. I am James Porter from Cortez, Colorado. I own and operate several farms in Montezuma County. I was born and raised in the McElmo Canyon area where my family and I reside. My wife wife, Dorothy, and I have two sons and one daughter. They all help us in our farming. We farm in the lower valley which is south of Cortez. I just bought a farm of 120 acres north of Cortez in the full service area of the Dolores project north of Cortez.

I am on the board of directors of the Montezuma Valley Irrigation Company, am president of the San Juan Basin Farm Bureau, a director for the Citizens State Bank of Cortez and a member of the Church of Christ of Cortez.

My perspective and therefore my testimony is based on my involvement in three areas. That of a farmer that has had a life time of experience in both surface and sprinkler irrigation systems; that of one of the first landowners to begin irrigation, just this summer, in the "full service" area of the Dolores project; and that of a local commercial bank board director, whose bank is heavily involved in the agricultural economy of southwest Colorado.

I am told that my experience and the results that I have obtained sprinkler irrigating this past season on the new Dolores project have a bearing on the outcome of this legislation. I'm not sure how that is, but I'll let somebody else be the judge.

I do know that there are Dolores project farmers who signed petitions for water and a large reclamation project is being built and is beginning to deliver water on the basis of those commitments for the sale of water. I do know that now some of those same individuals are now saying they don't want the water and cannot afford to irrigate.

I am here to tell you that the land, the people, the area, the local and State economy, need and want the water.

Raised as I was on a truck garden farm in McElmo Canyon, I grew up to appreciate the potential, the benefit and the absolute necessity for water. We used the open ditch, surface, furrow method of irrigation. Shortly upon graduating from high school in 1961, I began expanding on my own skill in the McElmo Canyon area, whose supply of water is from Montezuma Valley Irrigation Company [MVIC) return flows.

In 1967, I bought my first farm in the lower Montezuma Valley. While the irrigating methods were the same, the supply of water is by diversion from the Dolores River and three small storage reservoirs developed by MVIC. With the additional land I specialized my operation into commercial alfalfa hay production. It became evident that by applying my water through "side roll" sprinkler systems I could save roughly 40 percent of my water, for use on additional land, could better control the salt movement in the soil and could therefore produce more. I therefore purchased my first side roll sprinkler, one of the first in Montezuma County, in 1971.

It then was very easy for me to see the real advantages that the "full service" area of the Dolores project offered my operation. I needed to further expand, as Mike and Frank, my two sons, are now farming with me. The advantages are as follows: No. 1, the cost of land is about one-half, $500 vs. $1,100. In our irrigated coun-

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try it is double what land values are today. No. 2, The cost of pressurized water is about one-half, $30 vs. $70; No. 3, the size of the fields and the lay of the land result in cheaper sprinkler system development cost, about $110 an acre vs. $225; and No. 4, there is much more selection and availability of land in the "full service" area.

As a result of these observations I bought 120 acres in the "Fairview block" of the "full service" area of the Dolores project in December 1986, because that was the first area that was to receive water. This year I harvested 210 tons of alfalfa in June, from the natural moisture. That would have been the extend of that farm's production except the project water became available in late June. Following the installation of a sprinkler system I started applying water in mid-July to land that was "bone dry". We just finished harvesting that crop. It produced 6,000 bales of hay. I received $2.20 per bale. I am confident that under full time irrigation and accompanying management practices, such as thicker stands and fertilization, I can raise 24,000 bales in three cuttings. The bottom line is that our family made an offer this past week on another piece of land in this same area. In other words, we believe those guys out in that area are asleep.

From the stand point of a local bank director, I am sure that on a case by case basis, thee will be operations that will have financial difficulty and will fail, just as has happened in the past and will happen in the future. However, in my judgment, farms that have the potential to get water are in a much better long term position than those that never did have that option.

In addition, as the individual farmer needs more farm services, produces more, thereby contributing more to the local economy, everyone benefits.

I thank this committee, Congress, and the Administration, for having made the Dolores project a reality. I feel I am fortunate to be able to be one of the pioneer irrigators on the Dolores project. What a tremendous opportunity.

There is a lot of excitement going on out there. There are sprinklers going in. There is going to be a lot of money made by some of these farmers. Mr. Chairman, I would like to thank you for the opportunity to tell you about the Dolores project. Feel free to ask any questions. I will be glad to answer then.

[Prepared statement of Mr. Porter follows:]

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James D. Porter
Montezuma County, Cortez, Colorado

Introduction

I am James Porter, from Cortez, Colorado, I own and operate several farms in Montezuma County. I was born and raised in the McElmo Canyon area, where my family and I reside. My wife, Dorothy and I have two sons and one daughter, all are helping me farm. We farm in McElmo, in the lower valley, south of Cortez and this summer bought and started irrigating 120 acres in the "full service" area of the Dolores Project north of Cortez.

I am on the Board of Directors of the Montezuma Valley Irrigation Company, am president of the San Juan Basin Farm Bureau, a director of the Citizens State Bank of Cortez and a member of the Church of Christ of Cortez.

Summary of Testimony

My perspective and therefore my testimony is based on my involvement in three areas. That of a farmer that has had a life time of experience in both surface and sprinkler irrigation systems; that of one of the first landowners to begin irrigation, just this summer, in the "full service" area of the Dolores Project; and that of a local commercial bank board director, whose bank is heavily involved in the agricultural economy of Southwest Colorado.

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I am here to tell you that the land, the people, the area, the local and state economy, need and want the water.

Testimony

Raised as I was on a truck garden farm in McElmo Canyon, I grew up to appreciate the potential, the benefit and the absolute necessity for water. We used the open ditch, surface, furrow method of irrigation. Shortly upon graduating from high school in 1961, I began expanding on my own skill in the McElmo Canyon area, whose supply of water is from Montezuma Valley Irrigation Company (MVIC) return flows.

In 1967, I bought my first farm in the lower Montezuma Valley. While the irrigating methods were the same, the supply of water is by diversion from the Dolores River and three small storage reservoirs developed by MVIC. With the additional land I specialized my operation into commercial alfalfa hay production. It became evident that by applying my water through "side roll" sprinkler systems I could save roughly forty percent of my water, for use on additional land, could better control the salt movement in the soil and could therefore produce more. I therefore purchased my first side roll sprinkler, one of the first in Montezuma County, in 1971.

It then was very easy for me to see the real advantages that the "full service" area of the Dolores Project offered my operation. I needed to further expand, as Mike and Frank, my two sons, are now farming with me. The advantages are as follows: One, the cost of land is about one-half, $500 vs. $1,100; Two, the cost of pressurized water is about one-half, $30 vs. $70; Three, the size of the fields and the lay of the land result in cheaper sprinkler system development cost, about $110 an acre vs. $225; and Four, there is much more selection and availability of land in the "full service" area.

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As a result of these observations I bought 120 acres in the "Fairview block" of the "full service" area of the Dolores Project in December of 1986, because that was the first area that was to receive water. This year I harvested 210 tons of alfalfa in June, from the natural moisture. That would have been the extent of that farm's production except the project water became available in late June. Following the installation of a sprinkler system I started applying water in mid July to land that was "bone dry". We just finished harvesting that crop. It produced 6,000 bales of hay. I received $2.20 per bale. I am confident that under full time irrigation and accompanying management practices, such as thicker stands and fertilization, I can raise 24,000 bales in three cuttings. The bottom line is that our family made an offer this past week on another piece of land in this same area. In other words, we believe those guys out in that area are asleep.

From the stand point of a local bank director, I am sure that on a case by case basis, there will be operations that will have financial difficulty and will fail, just as has happened in the past and will happen in the future. However, in my judgement, farms that have the potential to get water are in a much better long term position than those that never did have that option.

In addition, as the individual farmer needs more farm services, produces more, thereby contributing more to the local economy, everyone benefits.

Conclusion

I thank this Committee, Congress, and the Administration, for having made the Dolores Project a reality. I feel I am fortunate to be able to be one of the pioneer irrigators on the Dolores Project. What a tremendous opportunity! Thank you Mr. Chairman for this opportunity to tell you about the Dolores Project.

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Mr. CAMPBELL. Thank you, but I would like to hear Dan Scmitt testify first.

Mr. SCHMITT. Mr. Chairman, I am Dan Schmitt. I too am lost in Washington for my very first time. It is an honor and I thank you for the opportunity to supply my perspective on this issue. I would like to summarize my written statement briefly and underline my support of H.R. 2642 with the following points.

I firmly believe that agriculture will play a more predominant role in our Nation's future than it has in the past. It is unrealistic to assume that our current surplus in agricultural commodities will extend into the indefinite future. It seems vital to prepare now for future demand with projects like the Animas-La Plata.

My second concern is related to the importance of making our agricultural products more competitive in world markets. A consistent reliable source of irrigation water applied to fertile soil like those in southwestern Colorado is essential for efficient cost effective production and the competitive edge that we need.

My final point and the issue that is closest to the hearts of those I represent is that southwest Colorado farmers need the Animas-La Plata irrigation project to assure their continuing economic interest. This water starved region will consume and displace many of its current inhabitants without a reliable water supply. We, the farmers of southwest Colorado, appreciate any support that you give in regards to this legislation. Thank you.

[Prepared statement of Mr. Schmitt follows:]

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STATEMENT OF
DAN SCHMITT
FARMER, DURANGO, COLORADO
BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
regarding
H.R. 2642
THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987
WASHINGTON, D.C.
September 16, 1987

My name is Dan Schmitt. I am 30 years old, a life-long resident of southwestern Colorado and a young farmer with hopes and dreams for the future.

At the present time I have a pig farm in La Plata County where I raise 2500 hogs from farrow to market each year. I plan to expand my operation to 5,000 hogs by the year 1989. I presently farm 480 acres of land, 120 of which I own, the balance of which I lease. I am trying my best to be a successful farmer but I do not now have an adequate water supply to irrigate the lands which I am farming. I believe the approval of the Agreement between the Indians and farmers in southwestern Colorado and the construction of the Animas-La Plata Project will enable me to become a a successful farmer.

I know what it takes to be a successful farmer. I know that if I am going to dedicate and commit my life to farming and have a successful farming venture, water must be available to put on the land year after year just like spring comes every year. I have signed a petition for an allocation of water from the Animas-La Plata Water Conservancy District. I know I will not start receiving water until twelve years from now. I know that

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neither this Congress nor the President of the United States nor the farmers in my area know what the operation and maintenance costs for my allocation of water are going to be twelve years from now. With the Animas-La Plata Project water, however, I have every confidence that I will be able to successfully farm and I will be able to make a worthwhile contribution to our society.

I believe in agriculture or I wouldn't be attempting to make a living from the land. It is difficult to imagine a scarcity of agricultural supply in this day of surpluses. Nevertheless, I believe that in my lifetime agricultural commodities will become our most precious natural resource and the time to prepare for that future is now. The wealth of the nation resides in the resourcefulness of its people and the resources of the land. The strength of the nation is the pride of the people. Pride flourishes with ownership and finds its deepest roots in the land and the people who work it. In southwestern Colorado too many good farmers have been forced to leave the land to go to work for others to accomplish other people's dreams. Without the Project and without the water, I, too, may have to find a job in town.

I support this bill for what it means to me and to those I represent. For some it is the chance to have their hopes rekindled, for others it is the possibility to have their visions enlarged, and for many it is the opportunity to take pride in America and to hold onto their dreams.

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I thank you for giving me the opportunity to speak. I hope you will pass this legislation, approve the Indian Water Rights Settlement Agreement and give me the opportunity to be a successful farmer so that one day my 18-month old son will also have that same opportunity.

Thank you.

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Mr. CAMPBELL. Thank you. I would like to ask Jim Isgar, in your testimony, as I understand it, if we had a supply of water that you would not need to produce subsidized crops. What that right?

Mr. ISGAR. At the present time, you are limited as to what crops you can raise on dry land. Wheat plains in rotation is pretty common. If we had ample water, we would be more inclined to raise other things, like Jim mentioned that he is raising mostly irrigated alfalfa. Wheat is not a good irrigated crop there. We are basically too short a growing season for corn. There is no way we can raise cotton. Basically, no program crops would be raised under the irrigation.

As is presently the case now with what irrigation we have basically no subsidized crops are raised.

Mr. CAMPBELL. Thank you. Gentlemen, thank you for coming. It has been a long way and I appreciate your time and patience getting through the day. Thank you.

We had two witnesses. One was called earlier and was not in. I would like them to both come forward to be our last two. If they can sit at the table, they will make separate statements. If you will sit at the table and summarize your statements, your full written testimony will be included in the record as everyone else's has, so I would appreciate your summarizing.

First would be Mr. John Williams, Jr. and Mr. Brent Balckwelder. We will start with Mr. Williams.

STATEMENT OF JOHN WILLIAMS, JR., BOARD MEMBER OF AMERICAN RIVERS AND PRESIDENT OF THE BLUE RIDGE VOYAGEURS CANOE CLUB

Mr. WILLIAMS. Thank you for giving me time to come to the table today. My name is John Williams, with the board of American Rivers. I am president of the Blue Ridge Voyageurs Canoe Club, member of the Rocky Mountain Club out of Denver, and a frequent resident of southwest Colorado.

I have two basic things in summary I would like to bring to you today. First, I want to talk about the river as an environmental resource. We have heard very little about the environment. It is my perspective that that project is environmentally destructive. I would like to preface as my remarks by saying American Rivers has now named this river one of its ten most endangered rivers. This is due to the particular excellent quality of this river, which now with the construction of new dam facilities on the Yampa becomes the last major remaining predominantly free flowing river of the entire Colorado system.

This is a magnificent river for tourism, for rafting, and boating, not only in the Durango area but also construction will impinge on the San Juan River down stream through the Goose Necks section which is also rafted very heavily.

I have attached a petition which I brought from the owners and managers of southern rafting and kayaking companies in Durango and I would like to have them included in the record.

Mr. CAMPBELL. Without objection the testimony will be included.

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Mr. WILLIAMS. Just to summarize what they say, "We, the undersigned petition to end the Animas-La Plata project. We do not want to see the project built."

They note in their petition that they are part of a $1 million rafting industry in Durango, and they mention that the Animas-La Plata project would curtail and might put out of business "our river floating operations at Durango."

I might add that river guide books to the Animas River give a sparkling account to the rafting experience there, which I can underline from my own personal experience. It is a beautiful river to go down.

My second point, surely a river that is this valuable we should not try to destroy, to dewater unless it makes sense without subsidy. The major purpose of the Animas-La Plata project is for irrigation according to the Bureau of Reclamation, that is 67 percent of its purpose. This is not a project which is not, in terms of its irrigation part, going to help thousands and thousands of people. The primary recipients among the non-Indian community are approximately 400 farmers with about 120 acres each brought under irrigation to a total of approximately 50,000 acres. I guess that is in Colorado.

At a time when crop prices are low, payments for crop reduction are widespread, to provide great subsidies for increasing crop production is not warranted. How great is this subsidy? The cost to the project for each acre of land to be brought into irrigation is approximately $5,800. According to area farmers and realtors whom I talked to last summer, the production dry land value per acre is in the vicinity of $350 per acre. Under irrigation, if irrigation is made available to the land, the land might be worth $600 per acre. To invest $5,800 to increase the value of land by $250 is absurd.

The Bureau of Reclamation has determined that the farmers pay $3.20 per acre-foot of water as the amount that they can afford to pay for the irrigated water. Assuming that it takes approximately 2 acre-feet of water per acre of land to irrigate, this is a payment per acre of $6.40 per acre. For 120 irrigated acres of the average size, the annual payment is $768. This is on a project investment of $700,000. If it were paid off at 8 percent interest over a 50 year period the cost would be $57,000 annually. I just point these figures out as indicating that, from a cost perspective, the subsidy is enormous. I don't believe that a subsidy of that magnitude, $700,000 per farmer, is called for. That concludes my remarks.

[Prepared statement of Mr. Williams, with attachment, follows:]

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TESTIMONY OF
JOHN S. WILLIAMS JR.
BEFORE THE INTERIOR COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON DC
SEPTEMBER 16, 1967

RE: HR 2642

Mr. Chairman and Members of the Committee:

I submit these remarks as a Board Member of American Rivers and as President of the Blue Ridge Voyageurs Canoe Club.

This project, ostensibly a water storage project primarily for irrigation, is in fact a river dewatering project. Up to 500 Cubic Feet per Second (cfs) of water will be diverted from the river which at summer flows will leave a trickle of 150 cfs in the river during the high summer tourist season. The Animas River is one of Southwest Colorado's great rivers: it is the last major remaining predominantly free flowing river in the entire Colorado River system. The Animas River is now declared by American Rivers to be one of the nation's ten most endangered rivers.

Surely this river should not be dewatered unless the removal of water makes economic sense without subsidy.

1. How special is the recreational resource of the Animas River!

It is noted that the rafting industry, which is currently healthy and vibrant, will be curtailed sharply if not destroyed by the summer time dewatering of the river. No provision is made for compensating the rafting companies. Members of the rafting community (there are seven rafting companies operating out of Durango) have signed a petition to end the Animas LaPlata project. [copy of their petition attached].

River guide books to Colorado provide excellent descriptions of the popular run on the Animas River below Durango. It is a favorite for members of our canoe club. Members of our canoe club have paddled the Animas River during the last three consecutive years. This is the only river in southwestern Colorado that can now be run most years during the entire month of July.

Perhaps more important to canoeists is the effect of dewatering the river on the magnificent San Juan River through the Goose Necks section down stream below the town of Mexican Hat. This immensely popular stretch can in good water years be run all summer, thanks primarily to the flows

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of the free flowing Animas River. This section will no longer be so readily available for recreational use, and when runnable, its flows will be substantially degraded.

At a time when the President's commission on the Outdoors has called for an increase in river recreation facilities, this project attempts to destroy an outstanding recreational resource, not only on the immediate Animas River, but also with negative effects on recreation downstream.

2. How non-economic is the Federal subsidy of irrigation on non-Indian lands.

The major purpose of the project is irrigation for agriculture, at a time when the crops to be produced are in great surplus. The Bureau of Reclamation attributes 67 percent of the project's purpose for irrigation. Most of the land to be irrigated, (virtually all of it during the first phase to be completed by the year 2000) is for irrigation for only 400 primarily non-Indian farms. Many of these farmers are currently receiving payments to remove land from production or place erodable lands into soil banks. At a time when crop prices are low, crop surpluses extensive, and payments for crop reduction are widespread, to provide great subsidies for increasing crop production is not warranted.

The cost to the project for each acre of land to be brought into irrigation is approximately $5800. According to area farmers and realtors, the current value of farm acres in the area is approximately $350 per dry land acre, and less than $600 for irrigated acres. For the federal government to invest $5800 per acre to increase the value by $250 is economically absurd.

On average, the 400 farmers will have 120 acres each brought into irrigation. The project investment per farmer is approximately $700,000. If a farmer were to borrow $700,000 and make payments at 8 percent interest amortized over 50 years, the annual payment would be approximately $57,000. The repayment contract for the farmers, as determined by the Bureau of Reclamation is to be $3.20 per acre-foot of water per year for 50 years. For 120 irrigated acres each using 2 acre-feet of water, the annual payment is $768. Is this really what the United States Congress wishes to do?

The Bureau of Reclamation's determination that the $3.20 per acre-foot of water per year payment is all that the farmer's can afford makes a mockery of the claims for the economic benefits to be derived from irrigation. A group of farmers on the near-by Dolores River project are currently suing the Bureau of Reclamation, because the farmers believe they cannot afford the water, subsidized though it may be.

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We believe that the time for massive subsidies to a few farmers is ended. The subsidy of these 400 farmers is borne primarily by the taxpayers. Even if it were to provide benefit to 400 farmers, it would only serve to hurt all competitor farmers in Colorado. To fund a half billion dollar project primarily for the benefit of a few (primarily non-Indian) farmers is a most unhappy means of degrading the environment.

I urge you to seek more effective means of providing needed water to the Indians on Indian lands, and stop the Animas LaPlata project for once and all. The Indians have fair and seemingly modest claims to water that will not be hurt by failure to build this environmentally destructive and non-economic project.

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We, the undersigned owners and managers of rafting/kayaking companies, petition to end the Animas LaPlata Project. We do not want to see the project built.

The Animas River presently provides for waterflows for white-water boating below the town of Durango for most of each summer. It is the only such whitewater river in Southwest Colorado. Completion of the Animas LaPlata project would dewater the river to such an extent that it would not be commercially feasible for commercial trips after mid-July in normal years. Further, the quality of the experience between mid-June and mid-July would be adversely affected.

The rafting industry in Durango now grosses more than one million dollars annually and is growing. It is estimated that it generates more than two and a half million dollars of tourism for Durango. This tourism income would be dramatically reduced by the project. It is difficult to operate a viable commercial river floating business in Durango with the loss of the summer season after mid-July. Animas LaPlata would curtail and might put out of business our river floating operations at Durango.

We note the Department of Interior's determination that the project is inherently uneconomical. We add to that that the loss of rafting and kayaking on the river was not properly noted as an additional cost to the project. This project would be bad for our business, and, we believe, bad for Durango.

SIGNATURE	PRINTED NAME	COMPANY	ADDRESS
Wayne Walls	Wayne Walls	Pagosa Rafting	Pagosa Springs Colorado 81147
Milton L Wiley	Milton L Wiley	Four Corners Marine	Box 329 Dolores Co 81301
[illegible]	[illegible]	[illegible]	[illegible]
Stephen Saltzman	Stephen Saltzman	Flexible Flyers	Dolores Co 81301
Robin Frith	Robin Frith	Flexible Flyers	Dolores CO 81301
Casey D Lynch	Casey Lynch	Mountain Waters	P.O. Box 2691 Durango, Co 81301
Thomas Smith	Thomas Smith Jr.	Wild Canoe Co	Durango CO 81302
Dylan Brown	Dylan Brown	Big Tujunga River Tours	Box 2931 Dgo. Co. 81301

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Mr. CAMPBELL. Mr. Blackwelder.

STATEMENT OF BRENT BLACKWELDER, VICE PRESIDENT OF THE ENVIRONMENTAL POLICY INSTITUTE

Mr. BLACKWELDER. Thank you, Mr. Chairman. I am Brent Blackwelder, vice president of the Environmental Policy Institute which is a national conservation organization specializing in energy, water, and agricultural resource issue. I am here today to testify that action on H.R. 2642, the Colorado Indian Water Rights Final Settlement Act, is premature until policy implications, unanswered questions and terms of development that are necessary to make this agreement work are clearly spelled out. The agreement is based largely upon the pending Animas-La Plata project whose design and cost have undergone major change. The agreement is also set in the context of Bureau of Reclamation water projects in southwestern Colorado. This committee deserves to be told the full story behind the Dolores and Dallas Creek projects before proceeding with this agreement or with any aspect of the Animas-La Plata project. Indeed, it is misleading to attempt to consider this agreement by itself, pretending that there are no significant issues confronting the Dolores and Animas-La Plata projects integrally linked to the agreement.

Of special concern to EPI is the division of the Animas-La Plata project into two phases. This phased approach raises questions of economic justification, adequacy of fish and wildlife mitigation measures, and, most importantly in the present context, whether the Indians will ever receive any benefits. Animas-La Plata is primarily a project, as my colleague said, to benefit 400 non-Indian farmers with a subsidy of $5,800 per acre or roughly $1.2 million for a 200-acre farm. The crucial features for the Ute Mountain Utes are deferred until phase 2 and left up to non-Federal interests.

Today our organization is releasing an indepth report on the Animas-La Plata project. I have here a copy which I hope could be included in the committee record.

Mr. CAMPBELL. Without objection that will be included.

[EDITOR'S NOTE.—See materials submitted by Congressman Miller in the appendix.]

Mr. BLACKWELDER. This indepth report was produced by Peter Carlson who has been the director of EPI's water resources project and has drawn directly from project documents. He produced an extraordinary of unresolved issues surrounding the Animas-La Plata project. We believe a thorough investigation of these is desirable and is indeed essential prior to any further commitments to a $568 million project. The report cites unresolved water quality problems of two types, presence of heavy metals radioactivity, aggravation of salinity projects down stream in the Colorado River. These are already very serious. This project will make it indeed far more serious and some indications are that more than $½ billion in damages may be caused during the first 20 years of project operation.

EPI has met with representatives of the Southern Ute and Ute Moutain Ute Tribes several times in an effort to understand the

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issues and needs involved. We have indicated that we remain committed to work for an arrangement that genuinely meets their needs and that avoid the serious problems besetting the currently designed Animas-La Plata project.

Mr. Chairman, I have a series of questions, in fact quite a few pages of them which we hope the committee would get answers to prior to progressing any further.

Finally, I would like to introduce a 1-page resolution from the National Conference on Rivers held this year on April 4, 1987, concerning the Animas-La Plata project. The resolution cites negative cost ratios, serious impacts on the environmental quality of the Animas River and other matters, and urges that funding for the project cease and that alternatives to achieve just access for delivering of water to the Southern Utes be sought and funded.

Mr. CAMPBELL. Without objection that resolution will be admitted if you want to just submit those questions so the committee can take a look at those.

Mr. BLACKWELDER. Those are actually in the statement you have in front of you.

[Prepared statement of Mr. Blackwelder follows:]

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Testimony of Dr. Brent Blackwelder, Vice President of the Environmental Policy Institute on HR 2642, the Colorado Ute Indian Water Rights Final Settlement Agreement, Before the House Interior and Insular Affairs Committee, September 16, 1987

Mr. Chairman and Members of the Committee, I am Brent Blackwelder, Vice President of the Environmental Policy Institute, a public interest organization specializing in energy, water, public health, and agricultural resource issues.

I am here today to testify that action on H.R. 2642, the Colorado Ute Indian Water Rights Final Settlement Agreement, is premature until policy implications, unanswered questions, and terms of development that are necessary to make this agreement work are clearly spelled out. The Agreement is based largely upon the pending Animas La Plata Project whose design and cost have undergone major change. The Agreement is also set in the context of Bureau of Reclamation water projects in Southwestern Colorado. This Committee deserves to be told the full story behind the Dolores and Dallas Creek Projects before proceeding with this Agreement or with any aspect of the Animas La Plata Project. Indeed, it is misleading to attempt to consider this Agreement by itself, pretending that there are no significant issues confronting the Dolores and Animas La Plata Projects integrally linked to the Agreement.

Of special concern to EPI is the division of the Animas La Plata Project into two phases. This phased approach raises questions of economic justification, adequacy of fish and wildlife mitigation measures, and, most importantly in the present context, whether the Indians will ever receive any benefits. Animas La Plata is primarily a project to benefit 400 non-Indian farmers with a subsidy of $5800 per acre or roughly $1.2 million for a 200-acre farm. The crucial features for the Ute Mountain Utes are deferred until phase 2 and left up to non-federal interests.

With the construction of the Dallas Creek and Dolores Projects we have witnessed the reckless waste of hundreds of millions of tax dollars. The very irrigators to be benefited by the Dolores Project are suing to stop it. The communities who desperately sought Dallas Creek municipal water and obtained a Congressional waiver from the standard repayment requirements, announced that they don't want the water after all.

EPI is today releasing an in-depth report on the Animas La Plata Project. Drawing information straight from Bureau of Reclamation documents, author Peter Carlson, former Director of EPI's Water Resources Project, points to an extraordinary array of unresolved issues surrounding the Animas La Plata Project.

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EPI believes that thorough Congressional analysis of the project as currently proposed is essential prior to commitment to a $586 million project. The report cites serious unresolved water quality issues of two types: 1) the presence of heavy metals and radioactive material in excess of EPA standards in the project water and 2) the aggravation of salinity problems in the Colorado River with the possibility that the project may cause $686 million in damages in its first 20 years of operation. The report raises the issue of further agricultural subsidies in an area where farmers are entering the USDA set-aside program. The provision of costly water to Durango is placed in the context of a detailed consultants' report to the town outlining cheaper methods of supply.

EPI has met with representatives of the Southern Ute and Ute Mountain Ute Tribes several times in an effort to understand the issues and needs involved. We have indicated that we remain committed to work for an arrangement that genuinely meets their needs and that avoid the serious problems besetting the currently designed Animas La Plata Project.

EPI asks the Committee to look to the implications that the pending Agreement has on the originally authorized Animas La Plata Project and that answers be provided to the following set of questions we raise on the pending Agreement.

QUESTIONS

1) With respect to waiver of the Nonintercourse Act, which would allow the Tribes to use their water on or off the reservation, what are the details on off-reservation use, given the absence of information in project documents on off-reservation use? Furthermore, is it clear that the EIS that was undertaken for the Animas La Plata project does not relieve the Tribes from their NEPA requirements on any future development?

2) How long into the future will the project construction costs and project operation, maintenance, and repair costs be deferred?

3) Why is it necessary to waive the provisions of Reclamation Law? The recent abuses in the law give a clear indication of the ends to which western growers will go to receive federally subsidized water. What is to keep them from going after Indian water, thereby avoiding requirements of Reclamation Law? No where in project documents is it indicated that such a need exists for the Tribes to be relieved of these requirements or the reasons for such.

4) What sort of development plan has been outlined for the $49.5 million Tribal Development Funds?

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5) If the Navajos are among the project beneficiaries, why are they not part of the Agreement? It is worth noting that in comments on the EIS for the Animas Project, the Navajo nation did not want to have anything to do with the project when it was first conceived.

6) According to the agreement on page 1, lines 40 -43, the Indians are to beneficially use water on, under, adjacent to or otherwise appurtenant to the two reservations within the state of Colorado even though there were plans for use of the water in New Mexico. What is the situation for New Mexico?

7) On page 2, lines 59-60, the authorization to sell, exchange, lease or otherwise dispose of Indian water was not addressed in the Environmental Impact Statement (EIS), the Definite Plan Report (DPR), or otherwise authorized as a project purpose. In reading project documents it seems clear that the intent was to keep the water on the reservation. Is this a brand new proposal?

8) Page 4, lines 134-140. This is a change in the design and authorization of the Dolores Project and there should be separate legislation and time to assess the impact on the rest of the project.

9) Page 6, line 202. It is unclear what the implications of giving the Utes priority on stored Dolores water will have on other Dolores water users. This was not covered in the Dolores EIS, Supplements to the DPR or in similar documents for the Animas La Plata Project. What are the implications?

10) Page 7, line 223. Who will pay for the 800 acre-feet/year for fish and wildlife?

11) Page 7, line 234. Will the Tribe get their municipal and industrial (M&I) water first in a water short year?

12) Page 7, lines 236-239. This section seems to say, if the Ute Mountain Utes change agricultural water to municipal and industrial water and sell or lease the water, the contract should make it clear that the lessees or purchasers will not get every drop of water promised because the shortages will be shared. Will this be the case?

13) Page 8, lines 248 - 253. This section needs some explanation. The acre-feet figures in this section do not match up with the acre-feet figures from the previous page.

14) Page 8, lines 258-265. What happens to the water that is not used under section (d)(i)? Does someone else get to use it and pay the Tribe or is it stored in the reservoirs? Who pays the operation and maintenance costs on this water?

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15) Page 9, lines 297-305. Who is entitled to use the water under section (d)(ii) if the Tribe does not consume it?

16) Page 9, lines 307-310. Section (d)(iii) uses the phrase "among the state, the tribe, the Dolores Water Conservancy District and the United States Bureau of Reclamation". Does this not change the (d)(ii) consumptive use figures?

17) Page 10, lines 327-328. This agreement appears to confer water rights to the Ute Mountain Utes on the Mancos River and the Dolores River. Are these legal claims for these rivers unclear to begin with?

18) Page 12. In fairness to the Ute Mountain Utes, EPI hopes that the Committee would make it clear in the report accompanying this legislation that notification to renegotiate shall serve to retain their position and make clear that they will not get stuck with accepting (a),(b), and (c) on lines 371-381.

19) From reading lines 382-410 its sounds as if there is a built in disincentive to seek justice and restitution if the Highline-Towaoc Canal is not built and they possibly lose the right to 23,300 acre-feet of water and possible opportunities to lease or sell water for economic gain. Is this true?

20) Page 15, lines 467-470. This agreement is legislating a project-reserved water right for the Tribe in the Animas La Plata project that according to a study by Black and Veatch for the city of Durango they had no right to. What explanation is being offered to deal with this conflict?

21) Page 15, lines 478-483. The Committee should make it clear that the reserved water right can only be used in Colorado. The language in the Agreement is more restrictive since it seems to say that it can only be used on the reservation or within the boundaries of the Animas La Plata Conservancy District. The Committee may want to inquire about the limitation to this District and not the other four Districts that are part of the Agreement.

22) It is a bit puzzling as to how the Ute Mountain Utes are going to handle 6,000 acre-feet of municipal and industrial water and 26,300 acre-feet of agricultural water since their facilities for using it are in Phase 2 of the project. The Ute Mountain Utes faced with two options: develop a market for the water to be used on the reservation or be faced with a closed market situtation of one potential buyer, the Animas LaPlata Conservancy District which already will be receiving water from the project. Once again, it appears that Indian people are being set up. Where is the economic opportunity for the Tribe?

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23) Page 20, lines 615-616. EPI is troubled by the January 1, 2000 completion date. An examination of other Bureau of Reclamation projects raises doubt about the ability to complete any major project on time.

24) Page 20, line 628. Why is the tribe provided with a five-year time period here for consultation and only an eight-month period on the Highline-Towaoc Canal?

25) Page 21. Once again, the conditions on page 21 appear to endanger the economic livelihood of the Utes: they lose their reserved water right. Whom does this go to in the event of loss?

26) Page 21. This page appears to say to the Indians: "So what if you litigate and win more water in the interim. How are you going to get the water and use it? We're not going to let you use our facilities because if you do, you will only get the allocation from the Ridges Basin Reservoir by your previous full project reserved water right." Is this an accurate reading of the intent of the non-Indian proponents of the Animas Project?

27) Page 23. Why is November 1, 1988, such a magic date for the Tribe to decide on making a crucial engineering economic decision? They are being asked to decide on the capacity of the Ridges Basin Pumping Plant, Long Hollow Tunnel and Dryside Canal and other associated delivery facilities and their possible reduction. It sounds as if the Utes future is already decided for them and that a plan is actually in place. If so, it would be interesting to see what it is.

28) Page 24, Line 742. EPI is a bit in the dark as to who the other "water users" are on line 742. In addition, why isn't there an increase in OM&R and no reductions in deliveries to the Tribe?

29) Page 27. According to the Agreement, the Southern Utes shall use "on that part of the Reservation in Colorado or Boundaries of the Animas La Plata Water Conservancy District 26,000 acre-feet for M&I and 3,400 for agriculture, and that until the Southern Ute Reservoir is built, it will be stored in Ridges Basin." The Agricultural water will be allocated according to the DPR. Since the water is to be used in Colorado, the Agreement leaves in doubt the issue of whether the Tribe can use the water on lands in New Mexico.

30) Page 29. Why are the Agriculture and M&I Tables different for the Southern Utes and the Ute Mountain Utes when it comes to determinations of historic beneficial use?

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31) Page 30. Aren't the Southern Utes . . . in the same economic bind as the Ute Mountain Utes over the single contractor for water situation?

32) Page 34. Why should there be a deferral on repayment until water is used by the Tribe? Why don't they use the Water Supply Act of 1958 requirements? The project is supposedly being built because there is a need for water.

33) Page 34-35. The same issue arises for the Southern Utes and Ute Mountain Utes on where they will take water and when they have to make a decision.

34) Page 37, Lines 1148-1149. It is unclear what this financial windfall represents.

35) Page 38. What is so special about these parcels?

36) Page 39. Why aren't the improvements that the Florida Ditch Companies having to make for parcels 1 & 2 part of Animas La Plata project costs?

37) Page 42. Did the Tribe have a right on the Piedra River before? Is there a discussion of this in the EIS or DPR? What is the flow of the river?

38) Page 47. Why don't the Ute Mountain Ute's have the well restrictions that the Southern Ute's do?

39) Page 57. This appears to imply that if the Tribes, through their U.S. Trust relationship want to change their project reserved water rights, then the Federal Government will have to budget and appropriate specific funds for such action, otherwise it will not take place. Is this interpretation correct?

40) Page 59. This appears to conflict with the stipulations and restrictions laid out on pages 15 and 27.

41) Pages 59-60. This appears to say "go on ahead and try to sell, exchange, lease or otherwise dispose of your water outside the boundaries of the reservation but you may be faced with litigation." Is this interpretation correct?

42) Given the restrictions on pages 15 and 27 on how the water should be used and given the silence in this section as to who will defend the Indians in such litigation, what intentions does the Committee have?

43) If water is truly needed for economic development, then doesn't it make sense to keep it on the reservation? Dividing this project up into Phase 1 and Phase 2, where Phase 2 happens to be all of the Indian delivery and storage facilities, makes one wonder what the Federal Government is

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really doing here in the first place.

Concluding Comments

There are two more points that we would like to raise on this issue of what the two tribes are actually gaining by agreeing to this settlement. The question of paper water rights versus wet water seems to be at the heart of this agreement.

In letter to the Secretary of Interior in 1979, the Tribe stated:

> ...We seek no less from the Animas-La Plata project and desire to have the water to achieve our goal of self sufficiency and self-determination. Paper water rights will not fulfill the needs of the Southern Ute people. Storage of Animas River water will provide us with this critically needed resource in the years to come.

On December, 10, 1986, the Southern Ute Tribe as well as the Ute Mountain Ute Tribe agreed to just that - paper water rights. Because the Animas La Plata project has been divided up into a Phase 1 and a Phase 2, the Indians will receive paper water in the Ridges Basin Reservoir but will not be able to get it to their reservation until non-federal interests decide to build Phase 2 as we have indicated in our previous comments. As part of this development package in exchange for this phasing approach the Tribes are to receive a Tribal Development Fund.

Reference is made in the executive summary of the Settlement that the precedent for Tribal Development Funds was set in the Papago settlement ($15 million) in Arizona for purposes similar to those for the Ute development funds. It is worth noting that in the Papago settlement of 1982 that the development fund was for "the subjugation of land, development of water resources, and the construction, operation, maintenance, and replacement of related facilities on the Papago Reservation." Furthermore, the Tribe may only spend each year the interest and dividends accruing on the sum. Agricultural development or land development were central to the fund. In the case of the two Ute Tribes this is less clear.

Much is made of the trust fund that is set up for the Tribes to enable them to develop and use their water resources. It is interesting to note what that money was contemplated for during the negotiations that took place on the cost-sharing agreement on the project. In September of 1985, the total amount in the fund for just the Ute Mountain Ute's was to be $100 million.

The picture of how the Southern Ute's were to use their share of a trust fund was less clear. At a September 19, 1985, Water Rights negotiations session, Counsel for the Southern Ute Tribe indicated that their request for a $30 million development

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would would be used for on-farm development, rehabilitation and consolidation of lands on the reservation, and compensation for damages.

These scenarios beg the question "What is the development fund going to be used for?" If the federal facilities are going to provide water for energy development, EPI feels that at a minimum, a supplement to the EIS is in order since such action was not covered in the project's EIS. If the water is to be marketed outside of the area, EPI feels that a supplement to the EIS is also in order. If it is to be used for agricultural development or non-energy related developments on the reservation more information on the nature of the development would be pertinent given the wide ranging justifications that have presented so far.

EPI supports the concept of a Tribal Development Fund; however, we do have a major question about the potential development issues that may result from such a fund were they to result in development outside the reservation or if the development on the reservation was going to have an impact on another national resource.

Because of the phased construction of the Animas La Plata Project as laid out in the agreement, there are additional concerns in terms of whether the project is still economically viable as a Federal project, what the impacts will be on the cultural resources-historic preservation program that was relying on 1% of the project's budget for recovery programs, whether the recreational objectives will still be achieved because of facilities in phase 2, and what the fate of the wildlife mitigation that was also tied to the original project will be.

This concludes our statement.

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Mr. CAMPBELL. Thank you, gentlemen. I apprecaiate your time and testimony. I have no questions. I believe that concludes every one that was signed up. Without objection a letter from Susan Harjoe, executive director of the National Congress of American Indians will also be inserted in the record. This record will remain open for 4 weeks for the submission of additional and supplemental statements. That will conclude our day.

I would like to say though, living in that area, noting that from a nonlegal standpoint, let's say a layman's view, that I have been dealing with the Animas-La Plata, been around it for a good number of years, and certainly many people in that area have been involved with it a lot more than I have, some up to 30 years and more.

All day today we have heard a number of facts and statistics and numbers, and some which complement each other and some which contradict each other, but one thing that does keep surfacing in my mind, and that is that first of all it is not just an Indian bill. I believe it is a beneficial bill to many people in many areas of our part of the southwest, but more than that, being perhaps a freshman back here, I take a little different view about what this place is supposed to be all about.

I was interested in one of the ranchers from my area who said he was kind of awed back here. Well, believe me a lot of us are too. But this year is our 200th Anniversary of this system of Government. As you know, they are celebrating the day out in the streets, and we are told continually that we are supposed to be a nation of laws.

I don't know the legal definition of the law, but I know one thing, it is a solemn commitment to do something or not do something, and to a layman that is very simply a promise, and I can tell you this. If our commitments via our promises to one American is no good, then it is not any good to any Americans, and we made, I believe, a solemn commitment on the part of Congress and to renege on that promise that we made in 1968 to those two tribes is to say that other promises to other Americans are also in jeopardy, and those promises may have been the ones we made to anyone of you sitting in this audience.

That is one of the things that really concerns me is that if we are going to be a Government that fulfills promises to our people or if we are not, we can confuse the thing in many different ways with many different numbers, and we can all fall out in all kinds of different agreements or disagreements about whether we support an activity or not, but if we are going to continue to have representative Government, and we are going to continue to be a nation of laws, then we ought to fulfill those promises.

I thank you all for your testimony and your time. It has been a long day. I appreciate it and I am sure the other committee members who are also very busy today will also. Thank you very much. This hearing is adjourned.

[Whereupon, at 5 p.m., the committee was adjourned.]

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APPENDIX

WEDNESDAY, SEPTEMBER 16, 1987

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

September 11, 1987

The Honorable Morris K. Udall
U.S. House of Representatives
Washington, DC 20515

Re: Colorado Ute Water Rights Settlement
H.R. 2642

Dear Congressman Udall:

As you know Americans for Indian Opportunity (AIO) is an organization designed to assist inter alia American Indian tribes to develop their reservations as permanent homelands. The most valuable resource of many reservations, particularly in the west, is their renewable water resources.

Over the years I have worked with and am proud of the successful efforts of the Ute Mountain Ute and Southern Ute Indian tribes to resolve their longstanding federal reserved rights claims in Southwest, Colorado and Northwest, New Mexico through a conciliatory effort with their non-Indian neighbors rather than through expensive and painful litigation. It is my understanding that the Agreement of December 10, 1986 which gave rise to a final settlement of these reserved rights claims and involved the substantial participation by the states of Colorado and New Mexico as well as the United States Departments of Interior and Justice constitutes a remarkable political, cultural and technical achievement. It represents a settlement of longstanding claims that other tribes may want to study and follow in their efforts to secure valuable resources for their reservations without impairing their relationships with their non-Indian neighbors.

H.R. 2642 is required to implement the Colorado Ute Water Settlement Agreement of December 10, 1986. It deserves the support of your Committee. It assures the two tribes of a permanent quantification of their water rights, and the establishment of their water in a fashion that preserves, and does not destroy the

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farming communities of their non-Indian neighbors. H.R. 2642 also carries forth the commitment of the Unites States and the State of Colorado to establish development funds to allow the tribes to utilize the water resources on their reservations. Finally, both H.R. 2642 and the Agreement preserve for a future day the complex questions relating to whether either tribe may, if it so desires, market its federal reserved water outside of the State of Coloirado.

Thank you very much.

With warmest personal regards,

LaDonna Harris

LDH/dkm

cc: Chairman Ute Mountain Ute
Chairman Southern Ute

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September 15, 1987

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The Honorable Morris K. Udall
Chairman
Committee on Interior and Insular Affairs
U.S. House of Representatives
1324 Longworth Building
Washington, D.C. 20515

Dear Mr. Chairman:

On behalf of the National Congress of American Indians, I am writing in strong support of H.R. 2642, the Colorado Ute Indian Water Rights Settlement Act of 1987.

H.R. 2642 is required to implement the Colorado Ute Water Settlement Agreement of December 10, 1986, which was signed by the Southern Ute Indian Tribe, the Ute Mountain Ute Indian Tribe, the Departments of the Interior and Justice, the State of Colorado and many non-Indian water users in southwest Colorado. The bill deserves the support of your Committee. It assures the two Tribes of the permanent quantification of their water rights and the means to develop those valuable resources in the future. Notably, as the tribes point out, it establishes those water rights without destroying the surrounding communities. The bill implements the settlement of claims which have been outstanding since at least 1868, and which have been the subject of litigation for over 15 years. In short, it is truly remarkable that the many diverse interests in southwest Colorado could resolve this longstanding dispute in a peaceful, productive fashion.

On a final note, the December 10 Agreement follows more than two years of negotiations, is complex and multi-faceted and has much which is commendable. However, some parts of the settlement cause concern for those who are not directly involved but who face similar problems elsewhere. The important point here is that this settlement has been embraced by the parties directly involved. It must not be viewed as a model for other settlements, rather as a negotiated, consensual agreement which meets the needs of the

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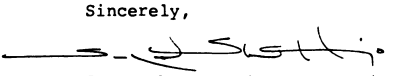
signatories. As you are aware, negotiated settlements represent an opportunity for tribes to accomplish much that could not be achieved in litigation and avoid long, costly and bitter litigation. For such settlements to be successful, the parties involved must not be subject to scrutiny based on the potential "precedent" set.

In conclusion, I urge your support for this bill, so that the Southern Ute and the Ute Mountain Ute Indian Tribes will finally get the water resources promised them so long ago.

Sincerely,



Suzan Shown Harjo
Executive Director

cc: Chris Baker, Chairman
Southern Ute Indian Tribe

Ernest House, Chairman
Ute Mountain Ute Indian Tribe

Scott B. McElroy
Native American Rights Fund

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U.S. HOUSE OF REPRESENTATIVES
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CHIEF MINORITY COUNSEL

September 17, 1987

The Honorable Morris K. Udall
Chairman
Committee on Interior and Insular Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

As a follow-up to the Committee's September 16, 1987 hearing on H.R. 2642, I am enclosing several documents which are relevant to the Committee's consideration of that legislation and the Animas-LaPlata project. I request that these materials be included in the official hearing record and that they be included in the Committee's printed record of the hearing.

Thank you for your cooperation.

Sincerely yours,

GEORGE MILLER, Chairman
Subcommittee on Water and
Power Resources

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Materials submitted for the record -- September 16, 1987 hearing on H.R. 2642

1. March 31, 1980 letter from the Environmental Protection Agency, transmitting EPA's comments on the Bureau of Reclamation's environmental impact statement for the Animas-LaPlata project.

2. October 21, 1986 letter from the Bureau of Reclamation, stating the Bureau's policy regarding further compliance with the National Environmental Policy Act.

3. Bureau of Reclamation Project Data Sheet for the Animas La-Plata project, dated January 31, 1987.

4. Resolution of the assembly of the National Conference on Rivers, dated April 4, 1987.

5. June 5, 1987 letter from the Colorado River Board of California, stating the Board's concerns regarding the Colorado Ute Indian Water Rights Settlement Agreement.

6. Report of the Environmental Policy Institute, "An Analysis of the Animas-LaPlata Project", dated July, 1987, by Peter Carlson and Spencer Wilson.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII
1860 LINCOLN STREET
DENVER, COLORADO 80295

MAR 3 1 1980
Ref: 8W-EE

Mr. Al Jonez, Director
Office of Environmental Affairs
Water and Power Resources Service
U.S. Department of the Interior
Washington, D.C. 20240

Dear Mr. Jonez:

I am writing to convey to you EPA's comments on economic and financial aspects of the Animas-LaPlata project. I am also taking this opportunity to follow up on some of the matters discussed at an October 9, 1979, meeting between members of my staff and representatives of the Bureau of Reclamation. We request that these follow-up comments be addressed in the final EIS along with our comments of October 25, 1979.

Foremost among our concerns about the economic analysis for the project is the failure to include the costs of project-induced increases in salinity in the overall benefit cost analysis for the project. This omission is critical because it overlooks a cost factor that casts serious doubt on the overall economic feasibility of the project. I hope that future reports on the project will reflect consideration of the complete costs of the project (including salinity impacts) in the economic analysis. Our economic concerns are discussed in more detail in an attachment to this letter.

In addition, during the October 9 meeting mentioned above, reference was made to a Bureau of Reclamation policy on consideration of salinity impacts in project planning. Mr. Brown of the Durango Projects Office informed us that such a policy had been reviewed and approved by the Office of Management and Budget in 1973. Although we were not previously aware of the existence of such a policy, we would greatly appreciate receiving a copy of it as it would aid in our understanding of your agency's approach to salinity problems in project planning. A better understanding of how your agency views the relationship between the overall salinity control program and the planning of individual projects is also pertinent to our continued interest in establishing an offset policy to control salinity in the Colorado River Basin.

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Since the October 9 meeting, we have also re-examined the applicability of the Water Resources Council's "Principles and Standards" to the Animas-LaPlata project. Although I recognize that the "Principles and Standards", in their present form, came into being in 1973 after the project was authorized by Congress, I do not agree with the view that the project is wholly exempt from the substantive requirements of the "Principles and Standards".

The "Principles and Standards" adopted in 1973 and recently amended incorporated much of the substance of a set of "Policies, Standards and Procedures..." approved by the President on May 15, 1962, and printed as Senate Document No. 97, 87th Congress (2nd Session). The basic objective of the 1962 policy was, "to provide the best use or combination of uses of water and related land resources to meet all foreseeable short and long-term needs." In the pursuit of this basic conservation objective, full consideration was to be given to (1) national and regional economic development, (2) preservation of environmental and cultural amenities, and (3) well-being of people. Moreover, plans developed under these policies were to disclose departures from national policies and any conflicts among the three objectives listed above, so that reasoned choices could be made among them. Specifically, subparagraph III.B.2 of this policy requires consideration of, "All relevant means (including nonstructural as well as structural measures) singly or in combination, or in alternative combinations reflecting different basic choice patterns for providing such uses and purposes (emphasis added)." In our view, the planning for the Animas-LaPlata project under the 1962 policy does not reflect the range of alternatives that we believe must be studied.

I remain hopeful that our concerns about the Animas-LaPlata project can be resolved in a timely and amicable manner. Please do not hesitate to contact me or my staff if you wish to discuss these matters further.

Sincerely yours,

Roger L. Williams
Regional Administrator

Attachment

cc: William Plummer

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Economic Analysis of M&I Water Supplies

EPA's review of the advance draft of the Financial and Economic Analysis for the project has surfaced a number of questions about economic aspects of the project. Some of these concerns relate directly to the feasibility of the project and various alternatives; others are primarily related to the techniques used to analyze economic and financial aspects of water projects in general. We believe that the project-specific concerns discussed in these comments must be addressed through changes in the economic analysis for the Animas-LaPlata project. Other concerns, which relate more to the relationships between the techniques of economic analysis and the behavior of economic systems should also be addressed in the EIS in order to enhance the public's understanding of the planning/decision making process vis-a-vis the behavior of real economic systems and to comply with the disclosure requirements of the National Environmental Policy Act. We hope that our concerns about discrepancies between the planning/decision making process and the actual behavior of economic systems will be elevated to the levels of policy making where they may be resolved.

Three aspects of the Definite Plan Report's consideration of water supply concern us. First, the alternative M&I water supply sources selected for evaluating benefits of the project in comparison to other sources of water reflects a rather narrow range of the possible alternatives and focuses on alternative sources that cause the proposed project to appear more attractive than it actually may be. Secondly, the amortization periods and interest rates used for the various M&I water supply project alternatives are not directly comparable, resulting in misleading comparisons among the alternatives. Finally, the economic analysis claims benefits for M&I water supplies without reflecting the added costs that must be incurred before these benefits may be realized. The details of each of these concerns are explained more fully below.

Page 4 of the DPR states that, "Benefits for municipal and industrial water are considered to be equal to the cost of an alternative source of new water of equivalent quality and quantity most likely to be developed for use in the absence of the project." In effect, the benefits attributed to the proposed project are the costs of another project (i.e., the "most likely" alternative that might be selected to supply the same amount of water at any price). The error in this approach is two fold. First, it uses costs and benefits interchangeably. The assumption that one project's costs are equal to another project's benefits is unjustifiable. Using such an analytical approach <u>any</u> M&I water project of any scale could be justified. Second, this approach presumes "demand" is inflexible and

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that the "gap" between supply and demand can only be reduced through expanding supplies. This overlooks the fact that supply, demand, and price are each variable and they influence one another. These fluid relationships between supply, demand, and price are evident in the current trend toward decreasing rates of growth in the demand for electricity and gasoline in the United States. As prices have increased, people have chosen to reduce their use of these resources rather than pay more to continue using them wastefully. This fact has been recognized in the final Water Resource Council guidelines (December 14, 1979). These guidelines state that all future M&I water use projections "shall include the effects of implementing all expected nonstructural and/or conservation measures required or encouraged by Federal, State, and local practices" (section 713.113). The guidelines identify three basic options for addressing any projected deficits. Two of these options are nonstructural and coonservation options (section 713.115). This point is again stressed in section 713.117, by pointing out "Consideration of alternative plans shall not be limited to those that would completely eliminate the projected gap between supply and demand. Plans that do not completely satisfy water supply objectives shall also be considered."

These relationships are also well illustrated in the case of the water supply needs of Durango and Farmington. Per capita water use rates for both communities are far above average, 280 and 255 gallons per capita day, respectively. Therefore the projected "demand" for water in the future is very high and the "gap" to be filled by the Animas-LaPlata project (or what the Water and Power Resources Service views as the "most likely" alternative means of supplying the same amount of water) is large.

However, this overlooks a number of important points. First, the reason present per capita consumption of water is so high is because, at present, the flat, non-metered rate system offers absolutely no economic incentive to conserve water. If anything, it creates an incentive to waste[1] water to insure "you get your money's worth". However, just as with energy resources, we no longer can afford to continue to waste our nation's precious water resources. Thus, the second point the DPR's "demand" projections overlook is the relationship between price and resource scarcity. Just as our nation's energy costs have risen as oil and other energy resources have become increasingly scarce, our nation's water resources have similarly become increasingly expensive to develop as our developable water supplies wane.

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These facts lead to a third and final vital economic fact of life: under an existing resource user system which incorporates large amounts of waste, and is facing increasing resource scarcity, it is substantially less expensive (both from an economic and environmental standpoint) to create "new supplies" by conserving existing supplies, than it is to further develop the resource through physical means. Just as the Harvard Business School estimates our nation can more cheaply obtain new oil supplies through conservation, at a cost of $10-12 per barrel, compared with the physical development of new supplies at a cost of from $35-50 per barrel, the towns of Durango and Farmington can more cheaply obtain their "new supplies" through conservation than through developments such as the proposed Animas-LaPlata project.

Therefore, we believe that the "most likely" alternative source of new water selected for the purpose of computing economic benefits of the Animas-LaPlata project is a poor choice because it ignores the variable nature of demand and it assumes that the gap between supplies and the presumably inflexible demand can only be filled by physically developing new supplies. This approach overlooks the opportunities to reduce the "gap" that exists between supplies and demand by implementing rational conservation measures. Since conservation measures alone or in combination with phased development of alternative sources are substantially less costly than either of the approaches designed to meet the excessively high demand postulated for the study area, such alternatives should be considered in the selection of a "most likely" alternative.

1 Waste is defined here as excess and unnecessary use of a resource. Elimination of this type of waste, such as overwatering lawns, leaky faucets and pipes, etc., does not involve any impairment to either the lifestyle or the quality of life of individuals.

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We have already shown that reasonable water conservation measures could practically double Durango's effective water supply on an average per capita basis without imposing unreasonable burdens on present or future water users or affecting economic growth in the study area (see our comments of October 25, 1979). Other communities in Colorado have been quite successful with this approach. For example, daily per capita water use in Aurora, the fastest growing city in Colorado, averages 135 gallons, and vigorous efforts are still being made so that the City can make the most of its present and future water supplies. Therefore, we believe that consideration of conservation measures among the candidates for "most likely" alternative to the Animas-LaPlata project would point the way toward far less costly means of reducing the gap between supply and demand than those presently considered in the economic analysis.

Consideration of largely non-structural alternatives like water conservation are a part of the President's water policy and the Water Resources Council guidelines for two important reasons. First, consideration of these alternatives is designed to reduce unjustifiable expenditures on costly water projects and, secondly, they are intended to provide substantive choices to the public with respect to alternatives. In the case of the Animas-LaPlata project, selection of a costly and perhaps unnecessary "most likely" alternative thwarts the intent of these policies. Since the benefits attributed to the project are computed on the basis of the costs of the "most likely" alternative, it is advantageous, from a project justification standpoint, to have that alternative be as costly as possible. Hence, the more costly the alternative is, the greater apparent benefits (and overall benefit-cost ratio) of the federal project. However, from a community water supply standpoint, conservation measures, perhaps in combination with smaller scale or phased improvements in water supplies, should meet community needs without the huge sums of federal investment and the significant costs of the federal project to the local taxpayer and water user.

We believe that the EIS and DPR fail to elucidate the fundamental choices that are inherent in consideration of the Animas-LaPlata project and its alternatives. The procedures used to evaluate the project contain a built in bias in favor of the project and a bias against considering the broader range of alternatives that are available. Therefore, we believe that it is in the public interest to amend the economic analysis and the EIS to reflect the true range of alternative choices that are posed by the fact that conservation measures also permit alteration of supply-demand relationships at the far lower costs to both the federal taxpayer and the affected community.

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In addition to the incomplete range of alternatives used in computing the M&I water supply benefits of the project, the discount rates and amortization periods used to measure the proposed project's costs against the cost of other alternatives are different from one another and hence misleading and confusing to the average citizen and most decision makers. The DPR compares the alleged "costs" of the M&I portion of the Animas-LaPlata project using a discount rate of 3.25% over 100 years with the costs of the postulated "most likely" alternative using a discount rate of 7% over a period of 50 years, and the costs of single purpose alternatives computed using a 6.595% discount rate over a 100 year period of analysis. Thus, the analysis uses three completely different sets of discount rates and periods of analysis, none of which are directly comparable.

Since the calculations necessary to convert these three sets of figures into a common denominator are beyond the comprehension of most citizens and decision makers, we believe that the project documents should be revised to show these alternatives on a truly comparable basis. Even if the use of these widely divergent sets of comparisons is justified under your procedures for analyzing projects, we believe that some effort must be made to express them in terms of directly comparable values. For example, how would the costs of the M&I portion of the project compare with the costs of the selected "most likely" alternative and the single purpose alternatives if all were compared on the basis of a discount rate of 7 1/8% and a 50 year time period of analysis?

Finally, neither the draft EIS nor the economic and financial analysis address the treatment costs associated with the project. According to the EIS, new treatment plants will be required at Durango and Breen in order to make use of project supplies M&I water. Without these treatment capabilities, no "M&I water" can be used for municipal purposes and some of the water could not be used for industrial purposes. Thus, in these cases, the treatment plants and their costs are an integral part of the Animas-LaPlata M&I water even though these costs would not be paid with project funds. The costs of treatment should be included as costs in the project's benefit-cost ratio. At the very least, these substantial local costs must be estimated and included as secondary costs in the overall benefit-cost ratio.

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Water Quality

We have reviewed the water quality studies that were provided subsequent to the October 9 meeting to discuss EPA's EIS comments. The kinds of studies that have been done to analyze the impacts of the project are consistent with the types of studies that we have suggested in the past for projects of this nature. In addition, we feel that your conclusions about the trophic status of the reservoirs are supported by the water quality studies. Although the models point to the conclusion that heavy metals in the reservoir may not pose a serious water quality problem in the future, we believe that the EIS should be revised to reflect the uncertainties that are inherant in the use of any model that has not been verified. One of the principal limitations of the model is that it assumes that the reservoir will act as an infinite sink for oxidized heavy metals even though it is unlikely that it's capacity to trap heavy metals is unlimited. Therefore, we believe that the EIS should acknowledge that the reservoir's capacity to trap heavy metals is finite and unknown even though it appears that there would be no chronic near-term heavy metals problems in the reservoir.

The EIS should also recognize that seasonal peaks in heavy metals concentrations may occur due to the limnological characteristics of the reservoir. In the spring and the fall heavy metals released from the bottom sediments to the oxygen depleted deeper layers of the reservoir may mix with the upper layers of water in the reservoir. Although the metals would presumably precipitate back to the bottom when the oxygen level increases during turnover, waters drawn off the reservoir during spring and fall turnover could contain elevated levels of heavy metals.

We also wish to emphasize the fact that the water quality studies reviewed here do not resolve our concerns about the potential need for advanced treatment of Animas River water before it meets safe drinking water standards. The method and costs of drinking water treatment and alternative domestic water supplies still need to be investigated and disclosed to the public before a final project determination is made.

Finally, we would like to bring to your attention the San Juan 208 Water Quality Management plan, which was approved by EPA on February 28, 1980, with respect to management of nonpoint sources of water pollution in the service area for the project. Citing the presence of shale-derived soils and the potential for accelerated erosion in the rolling terrain that is found in the project area, the

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plan recommends "intensive water and irrigation management to avoid excessive erosion and sedimentation". These limits should be taken into account in developing irrigation management programs and repayment contracts for the project. We believe that salinity and nonpoint sources control measures should be developed for lands served by the Animas-LaPlata Project and that implementation of these measures should be stipulated in contracts for water from the project. Similar arrangements for implementation of management practices aimed at protecting water quality have been used by your agency for the O'Neil Unit in Nebraska.

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United States Department of the Interior
BUREAU OF RECLAMATION
UPPER COLORADO REGION
DURANGO PROJECTS OFFICE
P.O. BOX 640
DURANGO, COLORADO 81302-0640

IN REPLY REFER TO: 150
120.1

OCT 21 1986

Mr. Weston Wilson
U.S. Environmental Protection Agency Region VIII
One Denver Place, 999 18th Street, Suite 1300
Denver, Colorado 80202-2413

Dear Mr. Wilson:

Since our last correspondence, we have gained a clearer idea of the implication of the cost-sharing agreement for the Animas-La Plata Project. Under the agreement, construction was divided into two phases but the project will serve all the project water users as described in the Final Environmental Statement (FES). The Bureau of Reclamation will prepare a status report explaining the phased project in accordance with the June 30, 1986, Agreement in Principle. The report will be available to the general public after January 1987.

The FES for the Animas-La Plata Project was filed in 1980 and still covers the impacts of the project to be constructed. Minor changes in the design of some facilities may be necessary as a result of the cost-sharing agreement. Appropriate National Environmental Policy Act compliance will be completed on any changes prior to their construction.

We are now conducting detailed geological investigations of the Ridges Basin Dam site. The data collected and associated tests will be used for detailed designs of Ridges Basin Dam and no reformulation of the project is planned.

Since Reclamation has not reformulated the Animas-La Plata Project, no revised legislation is needed for project authorization. There may be additional legislation introduced to allow the terms of the cost-sharing agreement to be implemented, but these issues do not impact the features of the project.

Sincerely yours,

ACTING FOR Rick L. Gold
Projects Manager

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PROJECT DATA SHEET

PF 65 (2-84) Bureau of Reclamation

REGION			
Upper Colorado			
PROJECT AND STATE	**Completion Date**	**% Complete**	**Date**
ANIMAS-LA PLATA PARTICIPATING PROJECT, COLORADO-NEW MEXICO	1/ 2000	0	1/31/87
AUTHORIZATION	**BENEFIT COST RATIOS**		
Public Law 90-537, September 30, 1968	Based on Direct Benefits	Based on Total Benefits	Date
LAND CERTIFICATION / **DEFINITE PLAN REPORT**			
January 19, 1982 / Approved August 18, 1980	2/ 1.5	2/ 1.6	10/1/87

SUMMARIZED FINANCIAL DATA

Total Federal Obligations (Reclamation)	16/ $331,790,500	Allotments to September 30,1986		$ 4,930,695
Recreational-Fish and Wildlife	3/ 11,800,000	Allotments for FY 1987		1,000,000
Net Property and Other Transfers:				
Federal Participation	2,100,000	Allotments to Date		5,930,695
Non-Federal Participation	4/ 206,219,500	Allotments Required for FY 1988		1,955,000
Adjustment	5/ 34,651,000	Balance to Complete after FY 1988		$323,904,805
Total to be Allocated	$586,561,000			

ALLOCATIONS 6/		REPAYMENT		AMOUNTS PER ACRE			
Irrigation	$391,792,000	Amount Repaid by Irrigators	3,185,000	Irrig. Invest. per Acre	$5,808	Payment Capacity per Acre	$41.55
Power		Amount Repaid by Power		Repayment of Investment per Acre:		Annual Charges:	
M & I Water 7/	142,249,000	Amount Repaid by M & I Water 9/	116,275,000	By Irrigators	47	O & M	40.00
Recreation	9,700,000	Cost Sharing Agreement 10/	206,195,000	By Power Revenues	0	Construction	1.55
F & WL	23,820,000	Amount Repaid by UCRBF Rev 11/	226,754,000	By M & I Water Users	0		
Flood Control		Contributed Funds 12/	254,000	By CRDF&Cont Funds	10		
		CRDF 13/	654,000	Deferred	2		
		Am. deferred under Leavitt 14/	124,000	By UCRBF Rev.	3,361		
Other 8/	19,000,000	Nonreimbursable 15/	33,120,000	Cost Sharing Agr.	2,388	Total	$41.55
Total	$586,561,000	Total	$586,561,000				

STATUS OF REPAYMENT CONTRACT: In accordance with P.L. 99-88, binding agreements with non-Federal entities desiring to participate in project construction, were executed June 30, 1986. Repayment with Animas-La Plata Water Conservancy District, Colorado, and with La Plata Conservancy District, New Mexico, scheduled for execution November 1987; validation December 1987. Repayment contracts with Indian tribes scheduled for execution January 1988.

STATUS OF NEPA COMPLIANCE: Projectwide final Environmental Impact Statement was filed with Environmental Protection Agency July 1, 1980.

DESCRIPTION: The project is located in Montezuma and La Plata Counties of southwestern Colorado and in San Juan County of northwestern New Mexico. This is a multipurpose project which will provide 80,100 acre-feet annually of municipal and industrial (M&I) water supplies with new M&I water supplies allocated for the Navajo Tribe 7,600, the Ute Mountain Ute Indians 6,000, and the Southern Utes 26,500. M&I water will also be provided for Colorado non-Indians 9,200 a/; and for the New Mexico communities of Farmington 19,700; Aztec 5,800 and Bloomfield 5,300. The project will provide a full water supply for the irrigation of 11,980 acres of Ute Mountain Ute Indian land, 31,500 acres of non-Indian land in Colorado, 1,800 acres of Southern Ute Indian Reservation land; and 4,530 acres of non-Indian land in New Mexico. A supplemental supply will be provided for 17,650 acres of presently irrigated land. Benefits will also result from recreation, and F&W. The crops presently grown are alfalfa, pasture, and small grains. It is anticipated that with project water, the trend would be toward more intensive farming and the production of cash crops and livestock.

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PROJECT DATA SHEET - 2
Animas-La Plata Participating Project, Colorado-New Mexico

OTHER INFORMATION: Funds to begin advance planning were appropriated in FY 1971. Under the cost-sharing agreement in principle executed on June 30, 1986, the Animas-La Plata Project will be developed in two phases. The first phase provides irrigation service for 42,880 acres, municipal and industrial water service, and some recreation and and fish and wildlife features with a total estimated cost of $413,940,000 (October 1987 price levels). The second phase will provide for irrigation service to 24,580 acres and additional recreation and fish and wildlife features at a total estimated cost of $137,970,000 (October 1987 price levels). The second phase will be financed and constructed by the project sponsors in the States of Colorado and New Mexico.

In order to settle tribal water rights claims, the Indian tribes will receive irrigation service to 1,800 acres and municipal and industrial water service under the first phase of the Animas-La Plata Project and municipal and industrial water service from the nearby Dolores Project. The tribes will also receive irrigation service to 11,980 acres under the second phase of the Project. In addition, a tribal development fund of $61 million would be provided, $11 million of which would be funded by the State of Colorado and the balance requiring authorization by the Congress would be provided by the Federal government. No construction contract funds will be requested until legislation on the tribal water rights claims has been enacted and a 30 year straight line amortization plan has been adopted.

Footnotes:

a/ Municipal and Industrial water for cities of Durango and La Plata combined to Colorado non-Indians.

1/ As part of the Administration's new policy of concentrating resources on those projects substantially underway, the completion date for this project will be delayed 1 year due to constrained funding in FY 1988. Additional delays of 1-3 years could be experienced, depending on when other projects are completed over the next 3 years and resources become available to concentrate on relatively newer projects such as Animas-La Plata. Initial delivery of 46,600 acre-feet of municipal and industrial water is scheduled for FY 2000. Drains will be completed thereafter as needed. Phase 2 facilities will be completed by project sponsors in the States of Colorado and New Mexico on such schedules as they deem practicable.

2/ Direct benefits ratio increased from 1.4 and total benefits ratio increased from 1.5 as presented in Fiscal Year 1987 Budget Justifications due to a decrease in total project costs due to a reanalysis of unit costs. The ratios were computed by using the authorized interest rate of 3.25 percent. The benefit-cost ratio includes interest during construction on both Federal and non-Federal contributions.

3/ Includes specific recreation costs of $6,200,000 and specific fish and wildlife mitigation costs of $5,600,000. Specific recreation costs reduced from that shown in the FY 1987 justifications as result of non-Federal participation.

4/ Contributions for advance planning of $24,500 in cash made by: Colorado Water Conservation Board, $10,000; Southwest Water Conservancy District, $7,500; city of Durange, $2,000; La Plata County, $2,000; La Plata Water Conservancy

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Footnotes: (continued)

District, Colorado, $1,850; La Plata Conservancy District, New Mexico, $650; the Southern Ute Tribe, $500; Phase 1 non-Federal cash contribution of $68,225,000 to be made by: Colorado Water Resources and Power Development Authority $42,400,000; Animas-La Plata Water Conservancy District $7,375,000; Montezuma County $50,000; San Juan Water Commission $12,800,000; State of Colorado $5,600,000. Phase 2 will be financed and constructed by non-Federal entities at an estimated cost of $137,970,000. This includes $3,500,000 for Recreational, Fish and Wildlife Facilities.

5/ Reimbursable interest during construction at 11.070 percent for all municipal and industrial water facilities.

6/ Explanation of changes in allocations from Fiscal Year 1987 Budget Justifications:

Allocation	FY 1987 estimate	FY 1988 estimate
Irrigation	$413,580,000	$391,792,000
Municipal and Industrial Water	156,758,000	142,249,000
Recreation	9,611,000	9,700,000
Fish and Wildlife	19,660,000	23,820,000
Other	19,576,000	19,000,000
Total	$619,185,000	$586,561,000

Explanation	Amount of Change
Interest during construction computed on all Colorado Municipal and Industrial water facilities instead of Indian Municipal and Industrial water facilities only	+8,710,500
Cost Indexing offset by repricing. (Repricing of original 1978 cost estimate to October 1985 unit price levels, and then indexed to October 1987. The previous cost estimate for the project was based upon a 1982 repricing indexed to October 1985 price levels)	-41,334,500
Total	$-32,624,000

The allocations to Irrigation, M&I Water, and other, all decreased due to indexing resulting from actual changes in unit prices of materials and labor between 1982 and 1985 and the application of construction cost indexing since 1982 which significantly overestimated the present costs of steel, concrete, tunneling, and pipe. The allocation to Fish

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Footnotes: (continued)

and Wildlife increased due to reanalysis of prices used in DPR which had not been indexed from 1972 to 1978. The allocation to Recreation increased due to new estimate of non-contract costs.

7/ Includes $34,651,000 reimbursable interest during construction.

8/ For nonreimbursable cultural resource activities (Public Law 96-301).

9/ The scheduled amount to be repaid will be covered by contracts with project beneficiaries before construction is initiated.

10/ Cost sharing agreement between the Federal Government and the States of Colorado and New Mexico identify contributions from local interests of $206,195,000 which consists of cash contributions $68,225,000 and credit for non-Federal construction of deferred facilities $137,970,000. These funds were assigned by purpose for repayment as follows: Irrigation $161,095,000, Cultural Resources, $10,900,000, M&I $25,700,000, Recreation $3,500,000 and Fish and Wildlife $5,000,000.

11/ Repaid from net power revenues contained in CRSP Power Rate Schedule (SP-F1) effective on or after January 23, 1981, Upper Colorado River Basin Fund Revenues, apportioned to State of Colorado at $192,741,000 and New Mexico at $34,013,000. Legislation is required to provide for a 30-year, straight line amortization repayment.

12/ Contribution includes $229,500 for General Investigations and $24,500 for Advance Planning which are allocated $146,000 for irrigation and $108,000 for municipal and industrial water.

13/ Colorado River Development Fund investigation costs of $654,000 which includes $488,000 for irrigation and $166,000 for municipal and industrial water.

14/ Amount for amortization capacity for Indian irrigation. The Leavitt Act (25 U.S.C. 386a.) permits repayment to be deferred as long as the land is in Indian ownership.

15/ Includes $9,700,000 for recreation facilities, $5,600,000 for fish and wildlife mitigation facilities, $18,220,000 for fish and wildlife enhancement and $19,000,000 for the Cultural Resources Activities (Public Law 96-301) less the amounts assigned by the cost sharing agreement as follows: Recreation $3,500,000; Fish and Wildlife $5,000,000 and Cultural Resources $10,900,000.

16/ Appropriations authorized are $1,348,501,000 (October 1987) for the Colorado River Storage Project under Public Law 90-537. The comparable Federal obligation is $1,318,527,500. This authorization is adequate to cover the project as currently proposed. However, legislation is required prior to construction to authorize deferral of Indian M & I water repayment until water is used or leased by the Tribes, and to authorize the establishment of Indian Tribal development funds.

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CONSTRUCTION PROGRAM:

Ridges Basin Reservoir System

Ridges Basin Dam and Reservoir

Dam:
- Type - Zoned earthfill
- Structural Height - 313 feet
- Crest Length - 1,600 feet
- Base Width - 1,670 feet

Spillway:
- Type - Uncontrolled Overflow

Reservoir Capacity:
- Total Storage - 280,000 acre-feet

Durango Pumping Plant

Pumping Plant:
- Fifteen units (dual) Total horsepower - 41,850
- 441 cubic feet per second

Switchyard:
- 30,000 kilovolts ampere 1/

Ridges Basin Inlet Conduit

Conduits:	Length (miles)	Diameter (inches)	Capacity (Cubic feet per second)
Ridges Basin Inlet	2.1	102	430

Ridges Basin Delivery System

La Plata Diversion Dam:
- Dam: - Type - Concrete ogee overflow
- Structural Height - 9.5 feet
- Overflow Crest Length - 50 feet
- Diversion Capacity - 150 cfs

Ridges Basin Pumping Plant

Pumping Plant:
- Ten units Total horsepower - 38,300
- 700 cubic feet per second

Switchyard:
- 30,000 kilovolts ampere 1/

1/ Added as agreement with Western Area Power Administration requires Reclamation to fund and construct.

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Dry Side Canal:
Length - 24.3 miles — Capacity - 710 cubic feet per second

Long Hollow Tunnel:
Length 3.2 miles — Diameter - 10.5 feet — Capacity - 710 cubic feet per second

Durango M&I Pipeline

Pipelines:
Length - 3.1 miles — Diameter - 20 inches — Capacity - 11 cubic feet per second

South Durango District M&I Pipeline

Pipelines:
Length - 7.8 miles — Diameter - 6" - 18" — Capacity - 6 cubic feet per second

Ridges Basin Irrigation System

Pumping Plants:	Units (number)	Total horsepower	Capacity (cubic feet per second)
Red Mesa	8	3,000	77
Alkali Gulch	5	1,100	45
Ute Mountain	6	1,650	56

Laterals
Four laterals with a combined length of 162.2 miles

Switchyards:
5,000 kilovolts ampere 1/

Transmission Lines:
46 kilovolts — Length: 18.5 miles 1/

Southern Ute Reservoir System

Southern Ute Dam and Reservoir

Dam:
Type - Zoned earthfill
Structural Height - 170 feet
Crest Length - 2,900 feet
Base width - 1,010 feet

Spillway
None

Reservoir capacity:
Total Storage - 70,000 acre feet

1/ Added as agreement with Western Area Power Administration requires Reclamation to fund and construct.

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ANIMAS-LA PLATA PROJECT, COLORADO-NEW MEXICO

PHYSICAL DATA ON STRUCTURES - 7

Southern Ute Diversion Dam:

Dam:

Type - Concrete ogee overflow
Structural Height - 8.5 feet
Overflow Crest Length - 100 feet

Southern Ute Inlet Canal

Canals:

Length - 3.3 miles Capacity - 375 cubic feet per second

Southern Ute Irrigation System

Pumping Plants:	Units (number)	Total Horsepower	Capacity (cubic feet per second)
Southern Ute	4	950	17
Third Terrace	4	750	30

Canal:

New Mexico Irrigation - Length - 3.1 miles Capacity - 140 cubic feet per second

Laterals:

Two laterals with a combined length of 35.7 miles

Switchyards

12,000 kilovolts ampere 1/

Transmission Lines:

12.5 kilovolts Length - 12.5 miles 1/

Drains

Location and length to be determined by subsequent investigation.

1/ Added as agreement with Western Area Power Administration requires Reclamation to fund and construct.

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ANIMAS-LA PLATA PROJECT, COLORADO-NEW MEXICO

PHYSICAL DATA ON STRUCTURES - 8

Land and Rights 2/

Quantity - 10,210 acres
Total Estimated Cost - $7,656,000
Cost per acre - $750
Acquisition - 0 percent complete as of September 30, 1986

Relocation 2/

Total Estimated Cost - $13,515,000
Percent Complete - 0 percent as of September 30, 1986

Items	Length (miles)	Total cost	Cost to September 30, 1986
Gas Pipelines and Related Facilities	10.8	12,445,000	- -
Transmission Lines	4.1	929,000	- -
Telephone Cable	1.5	124,000	- -
Private Roads	0.3	17,000	- -
TOTAL		$13,515,000	- -

2/ Estimated costs reduced from FY 1987 Budget Justifications as a result of overall project cost reductions based on new unit price base.

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Appropriation Title: Construction Program
Upper Colorado River Basin Fund

ANIMAS-LA PLATA PARTICIPATING PROJECT, COLORADO - 9

FISCAL YEAR 1988

Work Proposed	Program
Ridges Basin Dam and Collection System. - Preconstruction activities for Ridges Basin Dam and Reservoir will continue.	1,810,000
Service Facilities, Depreciation, and Salvage. - The acquisition of office and lab equipment will continue.	45,000
Other Project Costs. - Preconstruction activities for cultural resources program will continue.	100,000
TOTAL	$1,955,000

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SCHEDULE OF CONSTRUCTION PROGRAM FISCAL YEAR 1987 AND FISCAL YEAR 1988

	PROGRAM ITEM	NOTE	ESTIMATED TOTAL	TOTAL TO SEPTEMBER 30 1986	FY 1987 PROGRAM	FY 1988 PROGRAM	BALANCE TO COMPLETE
1	• CONSTRUCTION COSTS						
2	•• RIDGES BASIN DAM/CLLCTN SYSTEM		172,000,000	2,249,479	1,170,000	1,810,000	166,770,521
4	•• RIDGES BASIN DELIVERY SYSTEM		127,900,000	1,255,000			126,645,000
6	•• DURANGO M I PIPELINE		4,600,000				4,600,000
8	•• RIDGES BASIN IRRIGATION SYSTEM		107,700,000	1,120,000			106,580,000
10	•• SOUTHERN UTE DAM/CLLCTN SYSTEM		58,100,000	329,850			57,770,150
12	•• SOUTHERN UTE IRRIGATION SYSTEM		25,450,000	327,000			25,123,000
14	•• TRANSMISSION FACILITIES		3,600,000				3,600,000
16	•• DRAINS		8,600,000	94,000			8,506,000
18	•• PERMANENT OPERATING FACILITIES		7,700,000	47,000			7,653,000
20	•• O M HOUSING		210,000				210,000
22	•• SERVICE FACILITIES/DEPRE/SALVG			48,689	35,000	45,000	128,689-
24	• CONSTRUCTION COSTS		515,860,000	5,471,018	1,205,000	1,855,000	507,328,982
25	• OTHER PROJECT COSTS		20,750,000	403,246	29,867	100,000	20,216,887
27	TOTAL PROGRAM COST		536,610,000	5,874,264	1,234,867	1,955,000	527,545,869
28	OTHER CONSOL. EXPEND & CREDIT		2,100,000-	1,148,936-			951,064-
29	TOTAL EXPENDITURES		534,510,000	4,725,328	1,234,867	1,955,000	526,594,805

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SCHEDULE OF CONSTRUCTION PROGRAM FISCAL YEAR 1987 AND FISCAL YEAR 1988

	PROGRAM ITEM	NOTE	ESTIMATED TOTAL	TOTAL TO SEPTEMBER 30 1986	FY 1987 PROGRAM	FY 1988 PROGRAM	BALANCE TO COMPLETE
1	NONFEDERAL CASH CONTRIBUTIONS		68,249,500-	24,500-	5,000-		68,220,000-
2	NONFEDERAL NONCASH CONTRIBUTION		134,470,000-				134,470,000
3	TOTAL FEDERAL EXPENDITURES		331,790,500	4,700,828	1,229,867	1,955,000	323,904,805
4	TOTAL RECLAMATION EXPENDITURES		331,790,500	4,700,828	1,229,867	1,955,000	323,904,805
5	UNDELIVERED ORDERS			27,867	27,867-		
6	TOTAL RECLAMATION OBLIGATIONS		331,790,500	4,728,695	1,202,000	1,955,000	323,904,805
7	TOTAL FUNDED OBLIGATIONS		331,790,500	4,728,695	1,202,000	1,955,000	323,904,805
8	METHOD OF FINANCING						
9	APPLICATION OF PRIOR YEAR FUND				202,000		
10	APPROPRIATION AVAILABLE & REQD				1,000,000	1,955,000	323,904,805
11	NONFEDERAL PARTICIPATION				5,000		68,220,000

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NATIONAL CONFERENCE ON RIVERS

PROCEEDINGS OF APRIL 4, 1987

FORMAL RESOLUTION on the ANIMAS LAPLATA PROJECT.

The following resolution was moved, seconded, and approved unanimously:

WHEREAS the Animas LaPlata Project has a negative benefit to cost ratio;

and **WHEREAS** the Animas LaPlata Project will significantly dewater the river during the summer and other low water periods;

and **WHEREAS** the Animas LaPlata Project will greatly harm river recreation, both floating and fishing, below Durango, and threaten the livelihood of rafting companies;

and **WHEREAS** the Animas LaPlata Project will provide subsidized water for irrigation that is costly and potentially threatens the livelihood of the very farmers who must pay water and water distribution costs;

and **WHEREAS** the Animas LaPlata Project will destroy the Bodo wildlife preserve;

the assembly of the National Conference on Rivers hereby requests

- that all funding for the project cease;
- that alternatives to achieve just and equitable access and delivery of water for the Southern Utes and Mountain Utes Indians be sought and funded.

Passed unanimously this 4th day of April, 1987.

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STEVE

STATE OF CALIFORNIA—THE RESOURCES AGENCY GEORGE DEUKMEJIAN, Governor

COLORADO RIVER BOARD OF CALIFORNIA
107 SOUTH BROADWAY, ROOM 8103
LOS ANGELES, CALIFORNIA 90012
(213) 620-4480

June 5, 1987 JUN 9 1987

The Honorable George Miller
House Office Building
Washington, D.C. 20515

Dear Congressman Miller:

Legislation may be introduced shortly by Congressmen from Colorado and New Mexico to implement a final water rights settlement agreement between the Animas-La Plata Project beneficiaries and the federal administration. The agreement is referred to as the Colorado Ute Indian Water Rights Final Settlement Agreement.

The Board and its represented California agencies with Colorado River water contracts have reviewed the agreement and found that it goes far beyond just settling a local water rights dispute. It contains provisions that we believe could seriously jeopardize California's use and priority to Colorado River water. These provisions are not permitted under present law and federal legislation is required to implement them and the agreement.

The Colorado River Board of California is the California State agency charged with protecting the rights and interests of the State, its agencies and citizens in the water resources of the Colorado River system. Two-thirds of all the water used in southern California comes from the Colorado River. As such, any threat to California's Colorado River supply would have major statewide impact implications.

Upon receipt and review of the legislation to implement the agreement, I will furnish you with comments as to the specific impacts that it would have with regards to California's vital supply of Colorado River water. The Board would greatly appreciate your attention and assistance in this extremely important matter. Should you require any immediate information on this matter, please contact Robert P. Will in Washington, D.C. at (202) 429-4344 or myself.

Sincerely yours,

Dennis B. Underwood
Executive Director

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ENVIRONMENTAL POLICY INSTITUTE

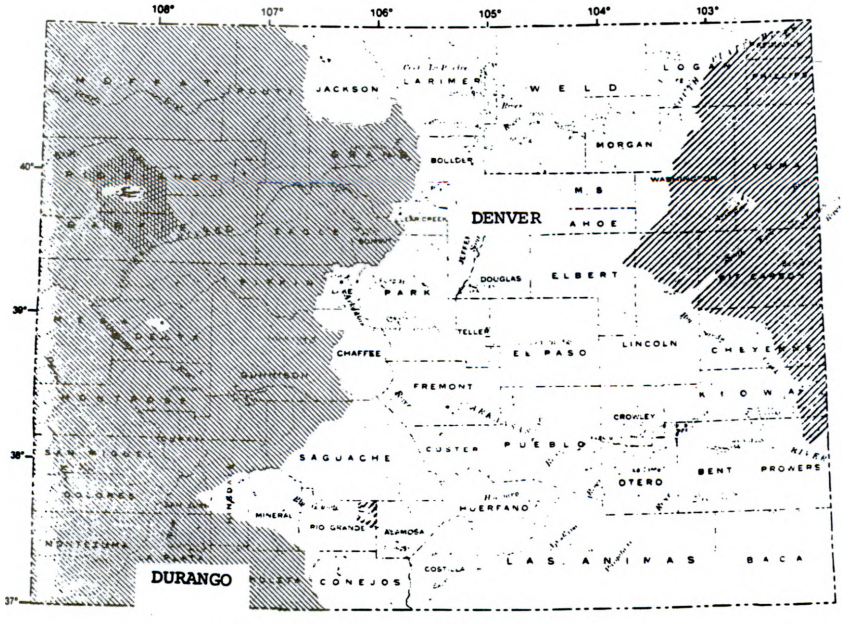
AN ANALYSIS OF THE ANIMAS LA PLATA PROJECT

DURANGO, COLORADO

JULY, 1987

PETER CARLSON
DIRECTOR
WATER RESOURCES

SPENCER WILSON
RESEARCH ASSOCIATE



218 D Street, S.E., Washington, D.C. 20003 (202) 544-2600

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The Environmental Policy Institute is a Washington, D.C. based non-profit, public interest organization engaged in research, public education and lobbying. The organization specializes in energy, water and agricultural resource issues.

The authors of this report would like to thank the Bureau of Reclamation, the State of Colorado, the Ute Mountain Ute and Southern Ute Indian Tribes and their attorneys, the sponsoring Conservancy Districts, the Taxpayers for an Animas La Plata Referendum and other interested individuals who have provided valuable assistance in the preparation of this report.

The content of this analysis is solely that of the Environmental Policy Institute and in no way seeks to reflect the overall views of parties involved in this project.

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DOCUMENTS REVIEWED FOR THIS REPORT

1. Animas La Plata Project Final Environmental Statement, Department of the Interior, July 1, 1980.

2. Animas La Plata Project Definite Plan Report, Department of the Interior, September, 1979.

3. Animas La Plata Project Definite Plan Report, Appendix A, Designs and Estimates Operation, Maintenance, and Replacements, Department of the Interior, September, 1979.

4. Animas La Plata Project Definite Plan Report Appendix B, Water Supply, Department of the Interior, September, 1979.

5. Animas La Plata Project Definite Plan Report Appendix C, Project Lands and Drainage, Department of the Interior, September, 1979.

6. Animas La Plata Project Definite Plan Report Appendix D, Agricultural Economy, Department of the Interior, September, 1979.

7. Animas La Plata Project Definite Plan Report Appendix E, Financial and Economic Analyses Plan Formulation, Department of the Interior, September, 1979.

8. Animas La Plata Project, Colorado and New Mexico, Draft Status Report, Bureau of Reclamation, November, 1986.

9. Colorado Ute Indian Water Rights Final Settlement Agreement, November 20, 1986.

10. Master Plan Report on Water Supply and Treated Facilities Prepared for Durango, Colorado, Black & Veatch, 1981.

11. Municipal and Industrial Water Needs, Colorado Portion of Animas La Plata Project, August, 1975

12. Energy and Water Development Appropriations for 1988, 1987, 1986, 1985, 1984, 1983, 1982, 1981, 1980, 1979, 1978, 1977. Hearings Before the Subcommittee on Energy and Water of the Committee on Appropriations

13. Federal Reclamation and Related Laws Annotated

14. Upper Colorado Resource Study, Colorado and Utah, Concluding Report, Department of the Interior, May, 1980

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15. Potential Modifications in Eight Proposed Western Colorado Projects for Future Energy Development, Department of the Interior, June 1980

16. 1987 Water Quality Standards for Salinity, Colorado System, Colorado River Basin Salinity Control Forum

17. Water in the West, What Indian Water Means to the West, Western Network, 1982

18. Water in the West, Water for the Energy Market, Western Network, 1983.

19. Water in the West, Western Water Flows to the Cities, Western Network, 1985

20. Survey of Fifty States Water Conservation Programs, Environmental Policy Institute, 1982.

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INTRODUCTION

In the Spring of 1987, after many years of being involved in the Animas La Plata Project, the Environmental Policy Institute decided to undertake an in-depth analysis of the project. The analysis in part was an outgrowth of a meeting with representatives of the two Tribes involved in the project, who suggested that we lay out the problems which we saw with the project and put forth some alternatives that were more environmentally, socially, and economically sound.

This report is a result of reviewing over twenty different documents - some government, some public, and some private - to reveal what was contemplated by the Bureau of Reclamation by way of construction of the Animas La Plata Project. The review was complex because since the development of the project Environmental Impact Statement in the late 1970's and the preparation of the Definite Plan Report for the project in the same period, the project has just recently been divided into a Phase I and a Phase II. In addition, an Indian Water Rights Settlement has been reached with the Tribes, the State, Conservancy Districts and the Department of Interior which further complicates the project.

Our review attempts to consolidate the material from all of the basic documents and put in one place the issues, problems, and concerns so that those concerned about the project can judge for themselves whether this particular project is the best way to proceed. Over the years we had found that not everyone could agree upon the facts as to what this project would or would not do. Some of the financial data and cost figures used in the report are from 1979 and we have attempted to identify them as such. Other figures are as current as the Spring of 1987.

Some may quesstion the presentation of the project in this report. I would like to stress that without exception, all of the material utilized in the preparation of this report, all the facts and figures, can be found in the documents reviewed for the project and was not created out of thin air. If there are conflicts, it can only point to the need for updating project documents before proceeding with a reconstituted Animas La Plata Project.

Peter Carlson
July, 1987

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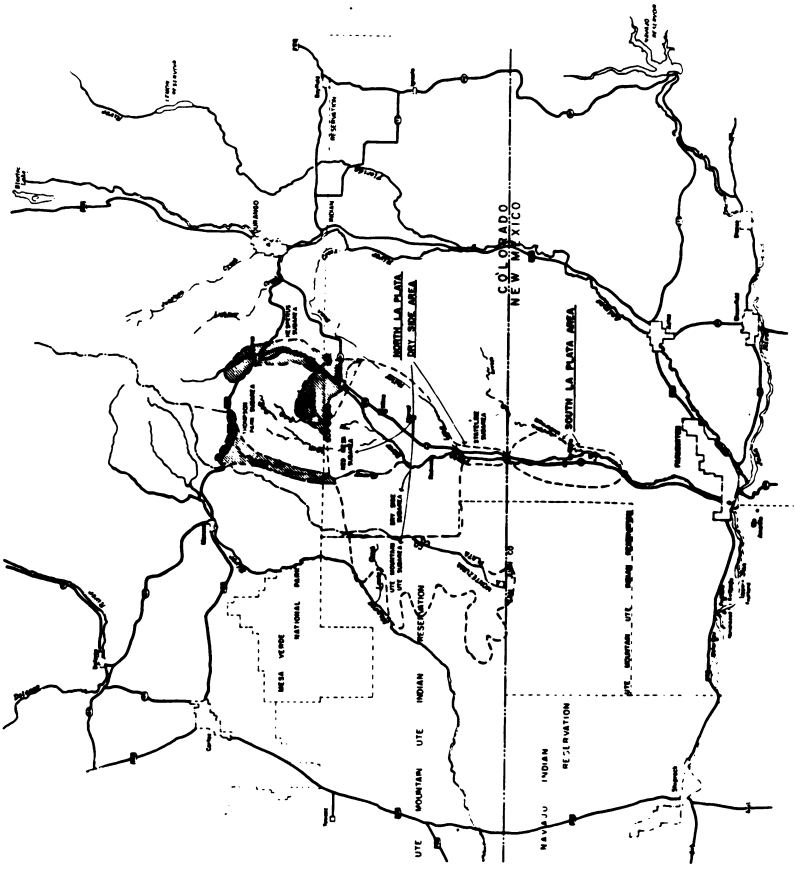

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PROJECT HISTORY

The Animas La Plata project was authorized by the Colorado River Basin Act of September 30, 1968, as a participating project under the Colorado River Storage Project Act of April 11,1956. Since that time, the project has undergone reviews and studies by various Federal Agencies. The Final Environmental Impact Statement (EIS) on the project was filed in 1980. The Definite Plan Report (DPR) on the project (the Bureau of Reclamation's guiding construction document) was approved in August of 1980.

There has been $5,930,695 spent on the project to date. This money has been for studies but not for actual construction. The total to be allocated for the construction of the project is $586,561,000. Because of the rather unorthodox way in which this project is to be constructed - Phase 1 and Phase 2 - the costs and repayments for the project are difficult to ascertain at times as well as the ultimate project design.

THE PROJECT DESIGN

According to the EIS and the DPR, the Animas River would be the principal source of project water. Water would be diverted from the river by the Durango pumping plant, located immediately south of town, and conveyed to Ridges Basin Reservoir through the 2.1 mile-long Ridges Basin Inlet Conduit. The water would be stored at Ridges Basin Reservoir, an offstream site located on Basin Creek 3 miles southwest of Durango.

Municipal water for Durango would be delivered from a valve station on the inlet conduit to a new water treatment plant to be constructed near the divide between the Animas river and the reservoir. At times when the Durango Pumping Plant would not be in operation, flows in the inlet conduit to the valve station would be from Ridges Basin Reservoir. The Durango M&I Pipeline would deliver water from the new treatment plant to existing water mains at the south edge of Durango.

Municipal water for New Mexico communities would be supplied from the Animas River, supplemented by releases from Ridges Basin Reservoir outlet works to Basin Creek, a tributary of the Animas River. Water would be pumped from the reservoir to the Dry Side Canal for deliveries to the west in the La Plata and Mancos River drainages.

The Dry Side Canal, 27.5 miles long including the long hollow Tunnel, would deliver water to seven turnout points. These turnouts would provide delivery of water to full and supplemental service lands in the North La Plata Dryside

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Phase 2 areas through pressurized pipe laterals. The Red Mesa, Alkaki Gulch, and Ute Mountain Pumping Plants (Phase II), located beside the canal would pressurize three of the laterals. The other four laterals would have sufficient pressure because of the elevation difference between canal and farm turnouts. Municipal and industrial water would be delivered to the Ute Mountain Ute Indian Reservation at the end of the Dry Side Canal.

4,600 acres of supplemental service lands above the Dry Side Canal would receive additional water through existing diversions and distribution facilities by exchange of La Plata River water supplies from lower lands that would be served from the Dry Side Canal.

The Southern Ute Diversion Dam, located on the La Plata River 2.8 miles north of the Colorado - New Mexico State line, would divert flows from the La Plata River to Southern Ute Reservoir through the Southern Ute Inlet Canal. These flows would consist of natural runoff from the La Plata drainage, return flows from irrigated areas upstream, and Animas River water supplied through Dry Side Canal. The Southern Ute pumping plant, located on the inlet canal near the diversion dam, would provide pressure for a pipe lateral system serving lands in Colorado along the La Plata River.

Southern Ute Dam and Reservoir, located at an offstream site east of the river, would provide regulation of water supplies for irrigation in New Mexico and industrial water for the Southern Ute Indian Tribe. The industrial water would be delivered at the outlet works of Southern Ute Dam, and the Southern Ute Indian Tribe would provide facilities for distribution beyond that point. The New Mexico Irrigation Canal, heading at the dam, would provide water to three turnouts serving pressurized pipe laterals for La Plata, New Mexico, lands. Two of these laterals would develop sufficient pressure for sprinkler irrigation from the difference in elevation between the canal and farm turnouts. The third Terrace Pumping Plant would provide pressure for the third lateral.

Operation and maintenance of the project reclamation and joint use facilities would involve three separate entities. The La Plata Water Conservancy District in Colorado would administer those project facilities within its boundaries. The La Plata Conservancy District in New Mexico would administer the project facilities that directly supply project water to lands within its boundaries. The Ute Mountain Ute Indian Tribe would administer the facilities on the reservation. Several entities, including the Bureau of Reclamation, Colorado Division of Wildlife, Colorado Division of Parks and Recreation, the New Mexico Department of Game and Fish, and the Southern Ute Indian Tribe, would

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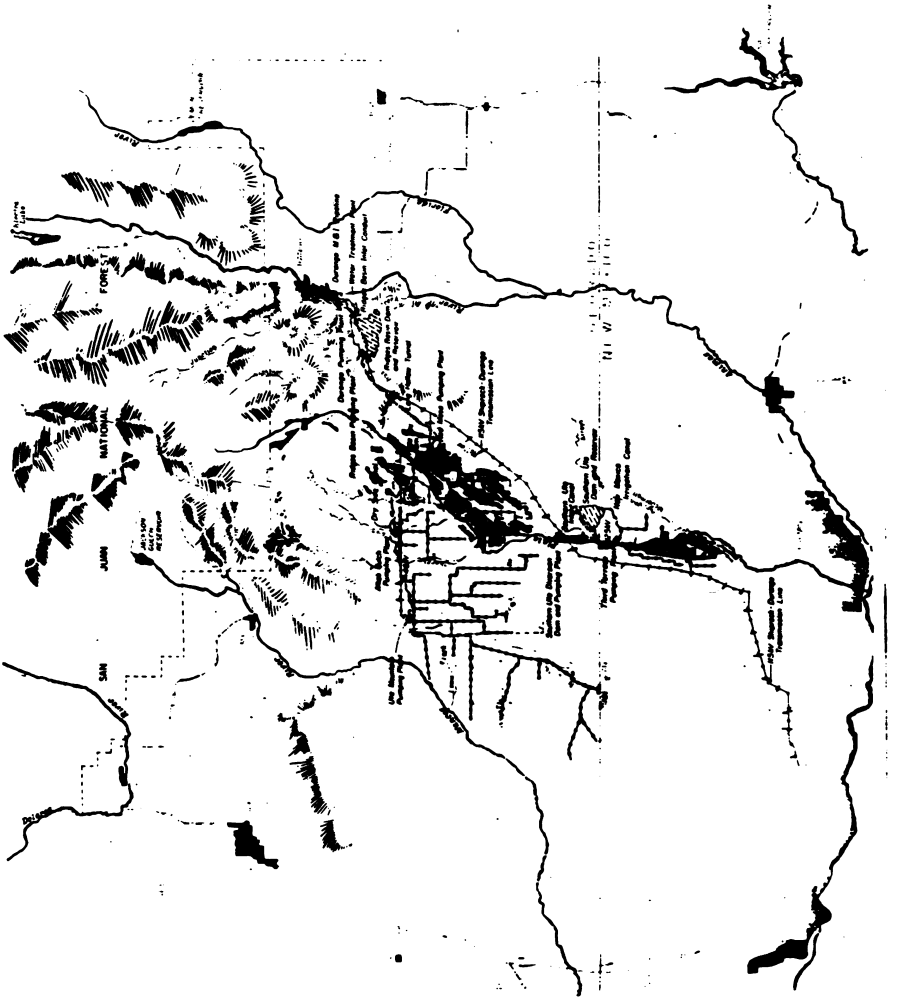

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participate in the management of recreation facilities and wildlife lands.

COST SHARING

The Department of Interior required a cost-sharing agreement between the project beneficiaries and the Federal government to repay certain project costs. The parties to the cost-sharing agreement are: the State of Colorado; Colorado Water Resources and Power Development Authority; Montezuma County,Colorado; Animas La Plata Water Conservancy District; New Mexico Interstate Stream Commission; San Juan Water Commission, New Mexico; Southern Ute Indian Tribe; Ute Mountain Ute Indian Tribe; and the Department of the Interior. Under terms of the agreement the Federal government and non-Federal entities will finance the construction of Phase 1. When Phase 2 is initiated at a future date, non-Federal entities will finance its construction.

Phase 1 and Phase 2 construction plans are as follows:

Phase 1		
Total construction cost-	$ 512,300,000	
Ridges Basin Reservoir	$ 100,000,000	Spring 1988
Southern Ute Diversion Dam	$ 2,400,000	Winter 1996
Durango Pumping Plant	$ 35,000,000	Winter 1992
Ridges Basin Pumping Plant	$ 38,000,000	Winter 1994
Red Mesa Pumping Plant	$ 5,100,000	Fall 1995
Ridges Basin Inlet Conduit	$ 23,000,000	Winter 1992
Dry Side Canal	$ 33,000,000	Winter 1993
Long Hollow Tunnel	$ 40,000,000	Fall 1990
Southern Ute Inlet Canal	$ 6,000,000	Summer 1994
Durango M&I Pipeline	$ 1,900,000	Winter 1996
Shenandoah M&I Pipeline	$ 2,400,000	Winter 1992
Laterals	$ 56,900,000	Fall 1992
Drains	$5,100,000	
Permanent Operating Facilities	$ 3,200,000	Fall 1994
Capitalized Equipment	$ 1,000,000	
Cultural Resources	$ 12,000,000	
Future Year Capacity	$ 1,600,000	
Recreation Facilities		
Ridges Basin Reservoir	$ 6,600,000	Fall 1995
Wildlife Mitigation	$ 5,200,000	
Transmission Facilities	$ 900,000	Spring 1994
TOTAL	$ 379,000,000	

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Phase 2 (to be built by non-federal interests)

Southern Ute Reservoir	$ 43,000,000
La Plata Diversion Dam	$ 1,700,000
Ridges Basin Pumping Plant	$ 3,900,000
Alkali Gulch Pumping Plant	$ 2,700,000
Ute Mountain Pumping Plant	$ 3,600,000
Southern Ute Pumping Plant	$ 2,900,000
Third Terrace Pumping Plant	$ 2,500,000
Dry Side Canal	$ 3,000,000
Southern Ute Inlet Canal	$ 3,400,000
New Mexico Irrigation Canal	$ 2,400,000
Laterals	$ 47,020,000
Drains	$ 2,700,000
Permanent Operating Facilities	$ 1,600,000
Operating & Maintenance Housing	$ 170,000
Capitalized Equipment	$ 1,200,000
Cultural Resources	$ 5,500,000
Southern Ute Reservoir	$ 3,200,000
Wildlife Mitigation	$ 120,000
TOTAL	$ 133,000,000

The cost-sharing agreement between the Federal Government and the States of Colorado and New Mexico calls for contributions from local interests of $206,195,000 which consists of cash contributions of $68,225,000 and credit for non-Federal construction of deferred facilities totaling $137,970,000. These funds were assigned by purpose for repayments as follows:

Irrigation	$161,095,000
Municipal & Industrial	$ 25,700,000
Cultural Resources	$ 10,900,000
Fish and Wildlife	$ 5,000,000
Recreation	$ 3,500,000

The Animas La Plata Water Conservancy must hold an election within the District on the repayment contract for the project. This election is scheduled for the fall of 1987. This contract was negotiated between the Federal Government (Bureau of Reclamation) and the local district over the course of the past couple of years and finally signed on June 11, 1987. There will also be repayment contracts for the Southern Ute Indian Tribe, the Ute Mountain Ute Indian Tribe, and the San Juan Water Commission.

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THE PROJECT AREA

The proposed Animas La Plata project is located in La Plata and Montezuma counties of southwestern Colorado and in San Juan County of northwestern New Mexico. This area is in the eastern part of a region that is frequently called the "four corners area" because of the unique juncture of the States of Utah, Colorado, New Mexico and Arizona. The project area lies within the upper Colorado River Basin and includes the San Juan River and three of its tributaries--the Animas, La Plata, and Mancos Rivers.
The area to be served by the project is subdivided into Colorado and New Mexico portions. The largest city in the Colorado portion is Durango, which is located on the Animas River and is the retail trade center and largest city in southwestern Colorado. To the west and southwest of Durango are the rural communities of Hesperus, Breen, Kline, Marvel, and Redmesa in the La Plata river drainage.

Farmington, the retail trade center of northwestern New Mexico, is the largest city in the New Mexico portion of the project area. Other communities in New Mexico are Aztec, Bloomfield and Blanco to the east of Farmington; La Plata to the north; and Kirkland, Fruitland, Waterflow, Upper Fruitland, Nenahnezad, and Shiprock to the west.

PROJECT PURPOSE

The Environmental Impact Statement on the project refers repeatedly to the need to utilize the flows of the Animas and La Plata Rivers for irrigation and municipal and industrial uses. The Statement also asserts that the project will provide fish and wildlife benefits, recreation facilities, a cultural resources program, and area redevelopment. There is little evidence, however, to support these claims.

According to the 1987 Project Data Sheets of the Bureau of Reclamation for the Animas La Plata, the project is being undertaken for the following authorized project purposes:

Irrigation	67%
Municipal and Industrial Water Supply	24%
Fish and Wildlife	4%
Cultural Resources	3%
Recreation	2%

There is no flood control, power production or water quality improvement associated with the construction of this project. The stated reason for ignoring flood control for the project is the location of the reservoirs offstream. The Definite Plan Report for the project, however, suggests that

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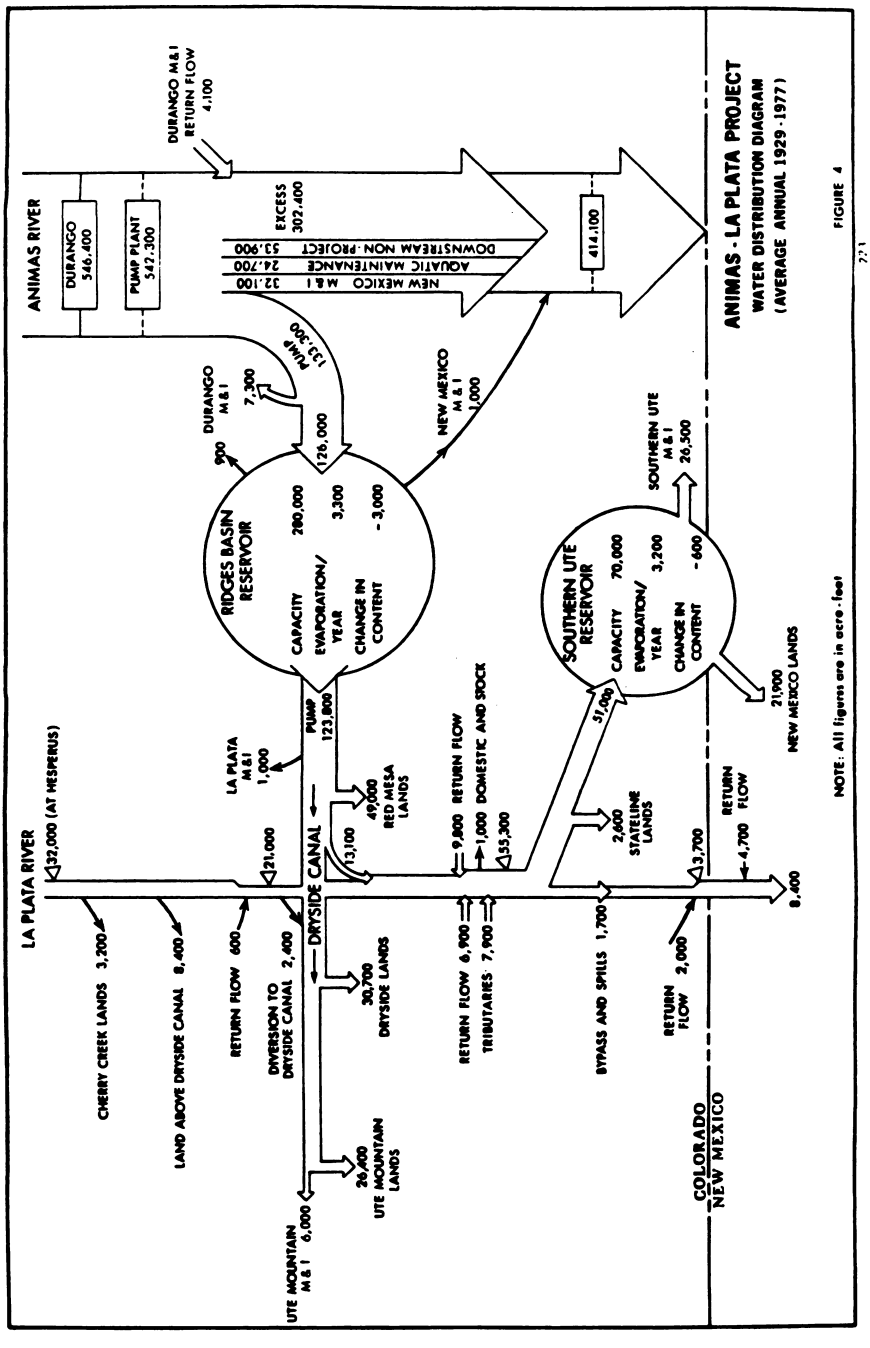

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development in the Animas River Valley from Bakers Bridge to the mouth of the river has created a serious potential for disastrous flooding. Moreover, the Animas River Valley is listed by the State of Colorado as one of the ten areas in the State most susceptible to flash flooding according to the Definite Plan Report.

IRRIGATION

The Land

The Animas La Plata project's EIS calls for provision of 118,100 acre-feet of water for irrigation. This water will be used to irrigate 21,480 acres which is presently irrigated and bring into production 48,620 new acres of irrigation.

	CO acres	NM acres	Total acres
Full Service Land			
Non-Indian	30,310	4,530	34,840
Indian	13,400	380	13,780
Subtotal	43,710	4,910	48,620
Supplemental Service			
Non-Indian	17,300	3,720	21,020
Indian	460		460
Subtotal	17,760	3,720	21,480
Total	61,470	8,630	70,100

Topographically, the project area lies in a zone of transition between the La Plata and San Juan Mountains to the north and the Colorado Plateau to the south and west. In Colorado, mesas cut by streams, gulches, and arroyos are particularly prominent in the La Plata river drainage to the southwest. In New Mexico, the relatively narrow valley of the La Plata River and the broader valleys of the Animas and San Juan Rivers are the most prominent topographic features.

Precipitation ranges from 9 inches at lower elevations in the southernmost part of the project area to about 18 inches at higher elevations in the northern part. The rainfall allows for moderately successful dry farming on the higher mesa lands in Colorado.

Project lands have an average elevation above sea level of approximately 6,300 feet (8,400 feet near Hesperus to 5,200 feet near the confluence of the La Plata and San Juan Rivers). Approximately 85% of the lands lie between 6,500

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and 7,000 feet above sea level.

Since most of the farming in the project area is done at high altitudes, the frost-free growing season averages only 120 days (138 days at La Plata to 99 days at Hesperus). The growing season generally extends from May 9 to October 13. Temperature and frost conditions limit crop production to hardy field crops such as alfalfa, small grain, and a variety of garden vegetables.

Mechanics of Irrigation

Agriculture is the primary economic pursuit in the Colorado portion of the project area and is also important in the New Mexico portion. The water will be used for: alfalfa, small grains and pasture to support beef, sheep and dairy enterprises. Pinto Beans and grain corn would be grown as the cash crops to help pay for the water.

According to project documents most of the irrigation water would be pumped from the Animas River to the Ridges Basin Reservoir. The dam and reservoir are located approximately 2 miles southwest of Durango. Most of the water for land in Colorado would be pumped from Ridges Basin Reservoir by the Ridges Basin Pumping Plant and conveyed through the Dry Side Canal, except that land too high to be served from the canal would receive water diverted directly from the La Plata River. Water for land in New Mexico would be stored in Southern Ute Reservoir and released to the New Mexico Irrigation Canal.

According to project documents and based on a 49-year study period of simulated operations, the total project water supply would average 198,200 acre-feet annually. The supply would include:

1. 38,400 acre-feet for municipal and industrial use and 16,800 acre-feet for irrigation in New Mexico

2. 101,300 acre-feet for irrigation and 41,700 acre-feet for municipal and industrial use in Colorado

Of the total project water supply, 169,400 acre-feet would be developed from the Animas River, 17,000 acre-feet would be developed from the La Plata River and 11,800 acre-feet would be supplied by the reuse of project return flows to the La Plata River. The 49-year average annual flow in the Animas River at Durango is 546,400 acre-feet. The operational study for the project modified this flow figure down to 542,300 acre-feet to allow for additional development of the city of Durango's water right.

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An average annual water supply of 200,000 a/f would be developed by using flows of the Animas and La Plata Rivers. The project would supply full or supplemental water to irrigate 70,100 acres and provide municipal and industrial water for the city of Durango, for the Ute Mountain Ute Indian Tribe, and the Southern Ute Indian Tribe, and for the cities of Aztec and Farmington in New Mexico. 65,500 acres would be sprinkler irrigated and 4,600 acres would be gravity irrigated.

To meet the above needs, 130,000 a/f of active storage capacity would be provided at Ridges Basin Reservoir and 40,000 a/f of active storage at the Southern Ute Reservoir. The project irrigation demand would average 118,100 a/f annually. Of this amount, 21,900 a/f would be used on supplemental service lands and 96,200 a/f on full service lands.

The Dry Side Canal would serve about 57,290 acres, which includes 43,510 acres of nonreservation lands, 1,800 acres of scattered Southern Ute Indian lands, and 11,980 acres of Ute Mountain Ute Indian lands. All of the above acreage is in Colorado, except for 380 acres of Ute Mountain Ute Indian lands in New Mexico.

The full and supplemental service lands below the Dry Side Canal in both Colorado and New Mexico would be sprinkler irrigated. The 43,510 acre service area of the Dry Side Canal includes 1,520 acres of full service lands lying above the canal. The water for sprinkler irrigation of these lands will be by pumping from the Dry Side Canal. There are about 4,600 acres of presently irrigated lands above the Dry Side Canal, which will receive a supplemental supply by exchange through gravity irrigation. Approximately 460 acres of these lands are owned by the Ute Mountain Ute Indian Tribe.

The following is the irrigation water supply summary:

	Colorado avg.annual water supply (acre-feet)	land area (acres)	New Mexico avg. annual water supply (acre-feet)	land area (acres)
Full Service Lands				
Non-Indian	54,600	30,310	11,900	4,530
Southern Ute	3,300	1,800		
Ute Mountain Ute	25,600	11,600	800	380
Subtotal	83,500	43,710	12,700	4,910

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Supplemental Service Lands				
Non-Indian	17,600	17,300	4,100	3,720
Ute Mountain Ute	200	460		
Subtotal	17,800	17,760	4,100	3,720
Total	101,300	61,470	16,800	8,630

In order to provide irrigation benefits to the area, the Federal Government, through the Bureau of Reclamation and this project, will be investing $5,808.00 per acre. This will go to land on approximately 400 existing farms.

The following table gives the projected crop distributions of each area or subarea of the project:

Projected crop distribution percentages

Area or subarea	Alfalfa	Small Grain	Corn	Dry Beans	Pasture
Thompson Park-Hesperus	85	4	2		9
Breen Subarea					
Supplemental Service	62	16	3	14	5
Full Service	56	21	1	20	2
Red Mesa Subarea					
Supplemental Service	62	16	3	14	5
Full Service	56	21	1	20	2
Dryside - Ute Mtn. Ute	56	21	1	20	2
State Line Subarea					
Supplemental Service	63	11	22		4
Full Service	64	13	22		1
South La Plata					
Supplemental Service	63	11	22		4
Full Service	64	23	22		1

The soils of the project area are generally low in organic content and are moderately to highly calcerous. In order to know what lands would be suitable for irrigation the Bureau of Reclamation has undertaken detailed land classification studies for land in the area. The classification of project lands was completed during the field season of 1972, 1974 and 1975 with the following results (see next page):

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Project irrigable acreage
(Unit--acres)

	Colorado			New Mexico			
	Non-Indian	Indian	Subtotal	Non-Indian	Indian	Subtotal	Total
Supplemental service land							
Class 1	240		240	1,720		1,720	1,960
Class 2	16,500	190	16,690	1,860		1,860	18,550
Class 3	560	270	830	140		140	970
Subtotal	17,300	460	17,760	3,720		3,720	21,480
Full service land							
Class 1	640		640	3,320		3,320	3,960
Class 2	27,930	12,800	40,730	1,010	360	1,370	42,100
Class 3	1,740	600	2,340	200	20	220	2,560
Subtotal	30,310	13,400	43,710	4,530	380	4,910	48,620
Total	47,610	13,860	61,470	8,250	380	8,630	70,100

Land classification summary
(Unit--acres)

	Colorado			New Mexico			
	Non-Indian	Indian	Subtotal	Non-Indian	Indian	Subtotal	Total
Arable land							
Irrigated							
Class 1	240		240	1,950		1,950	2,190
Class 2	16,500	190	16,690	2,050		2,050	18,740
Class 3	560	270	830	150		150	980
Subtotal	17,300	460	17,760	4,150		4,150	21,910
Nonirrigated							
Class 1	640		640	3,710		3,710	4,350
Class 2	47,480	14,210	61,690	1,310	360	1,670	63,360
Class 3	4,020	750	4,770	240	20	260	5,030
Subtotal	52,140	14,960	67,100	5,260	380	5,640	72,740
Total arable	69,440	15,420	84,860	9,410	380	9,790	94,650
Nonarable land							
Class 6	66,000	32,890	98,890	17,180		17,180	116,070
Class 6W	1,330	170	1,500	150		150	1,650
Rights-of-way	1,840	200	2,040	330		330	2,370
Total nonarable	69,170	33,260	102,430	17,660		17,660	120,090
Total project	138,610	48,680	187,290	27,070	380	27,450	214,740

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Class 1 Arable Lands are highly suitable for irrigation farming and are capable of producing sustained and relatively high yields of a wide range of climatically adapted crops at reasonable cost.

Class 2 Arable lands are of moderate suitability for irrigation farming, being measurably lower than class 1 in productive capacity, adapted to somewhat narrower range of crops, more expensive to prepare for irrigation, and more costly to farm.

Class 3 Arable Lands are suitable for irrigation development but are approaching marginality for irrigation and are of restricted suitability because of more limiting deficiencies in the soil, topographic, or drainage characteristics than described for Class 2 lands.

Class 6 lands include those considered permanently non-arable because of their failure to meet the minimum requirements for an arable class. This helps explain the large federal investment per acre.

The benefit analysis that was conducted on the irrigation portion of the project was based upon levels of production and management expected 20 years after water is first delivered (emphasis added).

It has been assumed in the farm-budget analysis that in order to stay in the business of farming, a farmer would have to utilize the latest methods and technology, nearly optimal amounts of fertilizer and water would have to be applied, and hired labor would be kept at a minimum.

The Bureau indicated that the level of management presently found in the irrigated part of the project is considered as average or even slightly below when compared to national management levels in agriculture. Nevertheless, the above two assumptions were also included for the two Indian Tribes.

Payment for Irrigation

According to the Project Data Sheets the payment capacity per acre is $41.55: $40.00 for annual operation and maintenance costs and $1.55 for repayment of construction costs. The irrigators will pay an additional $5.45 for water, bringing their total repayment per acre to $47.00.

During the time the Farm Management Survey was conducted on the project (which provides the background for the irrigation repayment), the farm mortgage and loan situation was very good (late 1970's). Most of the farmers in the project area who had demonstrated their managerial ability

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and developed a positive credit rating, would have few problems with either short- or long-term financing, according to the Bureau.

In order to benefit from this project, farmers would be required to cover on-farm development costs to convert farmland to sprinkler-irrigated farms which would require a substantial amount of capital to purchase additional farm machinery, sprinkler irrigation equipment, fencing and buildings, and improvements. Lending institutions which were contacted at the time of the Survey, including commercial banks, Federal Land Banks, and the Farmers Home Administration, generally agreed that both short- and long-term financing could be obtained to meet these farm development needs.

The post-Survey experience of farmers at the neighboring Bureau of Reclamation Dolores project, however, has not confirmed this optimistic view. As part of the farm analysis for this project, the Dolores Demonstration Farm was used to project crop yields and other key information. (The same Demonstration Farm used for Animas La Plata.) Farmers in that area now find themselves in the position of bankruptcy if they have to take Bureau water and undertake the farm improvements necessary to use it.

Irrigation repayment would be divided into 13 blocks under the original project, with each block determined by availability of water, type of service, and geographical location. The blocks include six for non-Indian land in Colorado, two for non-Indian land in New Mexico, four for Indian land in Colorado, and one for Indian land in New Mexico. Repayment on each of the non-Indian blocks would start after the appropriate development period and would continue for 50 years for each block. (This may change under the new cost-sharing agreement that has been negotiated which may require 30-year repayment.)

The Animas La Plata Project was authorized as a participating project of the Colorado River Storage Project. Thus, net revenues of the Colorado River Storage Project storage units apportioned to Colorado and New Mexico may be used to repay that portion of the irrigation construction cost not paid from project sources.

Payments are scheduled so that costs assigned to each block would be repaid in 50 years following the end of the respective period. Irrigators would pay according to their ability and the available ad valorem tax would be used for repayment. The unpaid balance of each year's payment would be accumulated as an obligation of the Colorado River Storage Project revenues apportioned to each State for irrigation assistance.

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Investment values of land
by area and land class

Service area	Agricultural land value
Colorado	
Supplemental service	
Class 2	$400
Class 3	350
Benefit composite	375
Full service	
Dryside and Red Mesa	
Class 2	300
Class 3	250
Dry farm without project	275
Benefit composite	275
Grazing land	20
Indian full service	
Class 2	250
Benefit composite	250
New Mexico	
Supplemental service	
Class 1	425
Class 2	375
Class 3	325
Benefit composite	400
Full service	
Class 1	200
Class 2	150
Class 3	100
Benefit composite	175

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Summary of farm budget data for determination of payment capacity

	Colorado					New Mexico		
	Supplemental service class 2 land		Full service class 2 land		Indian land	Supplemental service land[3]		
	Without project	With project	Without project[1]	With project	Full service class 2 with project[2]	Without project	With project	Full service land with project[2][3]
Farm size (irrigable acres)	660	290	820	290	290	280	280	275
Project water supply (acre-feet per acre)		1.18		1.80	2.2		1.1	2.64
Gross farm income	$52,103	$75,815	$37,264	$73,214	$73,214	$49,783	$76,136	$74,868
Less farm expense	57,520	53,581	42,699	50,780	50,055	41,276	52,864	48,779
Net farm income	-5,417	22,234	-5,435	22,434	23,159	8,507	23,272	26,089
Less return to labor, management, and equity		15,610		15,195	15,123	8,507	15,876	15,397
Payment capacity		6,624		7,239	8,037		7,396	10,692
Increase per acre due to project (rounded)		22.80		25.00	28.00		26.40	38.90
Increase per acre-foot (rounded)		19.40		13.90	12.60		24.00	14.70

1/ Represents dry farm conditions.
2/ Without project condition consists of dry grazing of negligible value.
3/ Composite of land classes 1 and 2.

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Table 23
Buildings and improvements

Structure	Size or capacity	Projected cost	Useful life (years)	Annual repairs		Depreciation	
				Percent	Cost	Sinking fund factor (6 percent)	Annual cost
Dwelling	1,200 square feet	$25,575.00	50	0.02	$511.50	0.00477	$122.00
Domestic water system	250 feet x 5 inches	4,670.00	50	.015	70.00	.00477	22.00
Garage and machine shed	40 x 60	9,935.00	50	.02	198.70	.00477	47.00
Calf shed	40 x 80	10,035.00	20	.02	200.70	.03024	303.00
Calf pen (dairy)	per head	55.00	30	.02		.01505	.82
Cattle shed	per head	16.00	20	.02		.03024	.48
Utility shed	20 x 25	3,230.00	30	.02	64.60	.01505	49.00
Water trough (with pipe)		205.00	20	.02	4.10	.03024	6.00
Free-stall dairy shed	per head	185.00	40	.02		.00827	
Milking parlor	26 x 52	24,840.00	50	.02	496.80	.00477	118.00
Fences (cash-crop, feeder calf, and orchard)	3 rods/irrigated acre	16.00	20	.075	1.20	.03024	.48
Fences (cow-calf and dairy) (4-strand barb)	4.75 rods/irrigated acre	26.00	20	.075	1.95	.03024	.79
Fences (sheep)	4.75 rods/irrigated acre	33.00	20	.075	2.50	.03024	1.00
Fences (cattle nonirrigated) other	1.5 rods/nonirrigated acre	8.00	20	.075	.60	.03024	.24
Fences (sheep nonirrigated)	2.0 rods/nonirrigated acre	14.00	20	.075	1.00	.03024	.42
Sheep shed and paneling	100 head	980.00	50	.02	19.60	.00477	5.00
Sheep feeder	50 head	75.00	10	.03	2.25	.07950	6.00
Granary	1,030 bushels	1,010.00	30	.02	20.20	.01505	15.00
Granary	1,640 bushels	1,165.00	30	.02	23.30	.01505	17.50
Trench silo	300 ton	140.00	50	.02	2.80	.00477	.67
Concrete silo	300 ton	3,625.00	50	.02	72.50	.00477	17.00
Spray equipment (cattle)		320.00	15	.04	12.80	.04634	15.00
Cattle chute		710.00	30	.03	21.30	.01505	11.00
Calf chute		350.00	30	.03	10.50	.01505	5.00
Calf feeder	50 head	270.00	10	.03	8.10	.07950	21.00
Cattle corrals (includes chutes)	per head	12.40	20	.075	1.00	.03024	.37
Sheep corrals	per head	12.00	20	.075	.90	.03024	.37
Hay shed	45 x 128 x 20	9,200.00	50	.02	184.00	.00477	44.00

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It is estimated that throughout the repayment period, revenues from the Colorado non-Indian irrigators and ad valorem tax would pay $22,238,000. Revenues from the New Mexico non-Indian irrigators and ad valorem tax would pay $6,020,000. Irrigators would also pay all of the operation, maintenance, and replacement costs allocated to irrigation. Including the estimated capitalized value of the operation, maintenance, and replacement costs, approximately 26% of the total cost allocated to Colorado non-Indian irrigation and 33% of the costs allocated to New Mexico non-Indian irrigation would be repaid from local sources.

Colorado River Development funds of $654,090 and contributed funds of $254,000 from the Bureau of Indian Affairs, State of Colorado, city of Durango, La Plata County, Colorado, La Plata Water Conservancy District, Southwest Water Conservation District, State of New Mexico, and Southern Ute Tribe totaling $908,000 have been credited to the Animas La Plata Project for repayment.

Irrigation was credited $634,000 and the remaining $274,000 was credited to municipal and industrial water. The $654,000 from the Colorado River Development Fund would be distributed among States and Indians in proportion to costs allocated to each. The contributed funds have been assigned to those entities represented by the contributors.

An Indian repayment of $4,565,000 would be deferred under the Leavitt Act as long as the lands remain in tribal ownership. The remaining $202,250,000 of the irrigation obligation would be paid from revenues in the Colorado River Basin Fund apportioned to Colorado and New Mexico with $179,972,000 coming from Colorado's share and $22,278,000 from New Mexico's share.

The payment of Indian irrigation costs is based on charges for purchase of water, estimated at $383,300 annually in 1979. Approximately $292,000 ('79 figures) of this amount would be required for the Indians' share of the annual operation, maintenance, and replacement costs. The remainder of $91,300 ('79 figures) annually or $4,565,000 ('79 figures) over a 50-year period would be deferred under the Leavitt Act of July 1, 1932 as long as the lands remained in Indian ownership.

The Conservancy Districts would make payments toward project irrigation costs from three sources: (1) water charges from the irrigators, (2) account charges from the farm unit operators who received project water, and (3) ad valorem tax revenues. The following table shows these costs from 1979, as contained in the Definite Plan Report (see next page):

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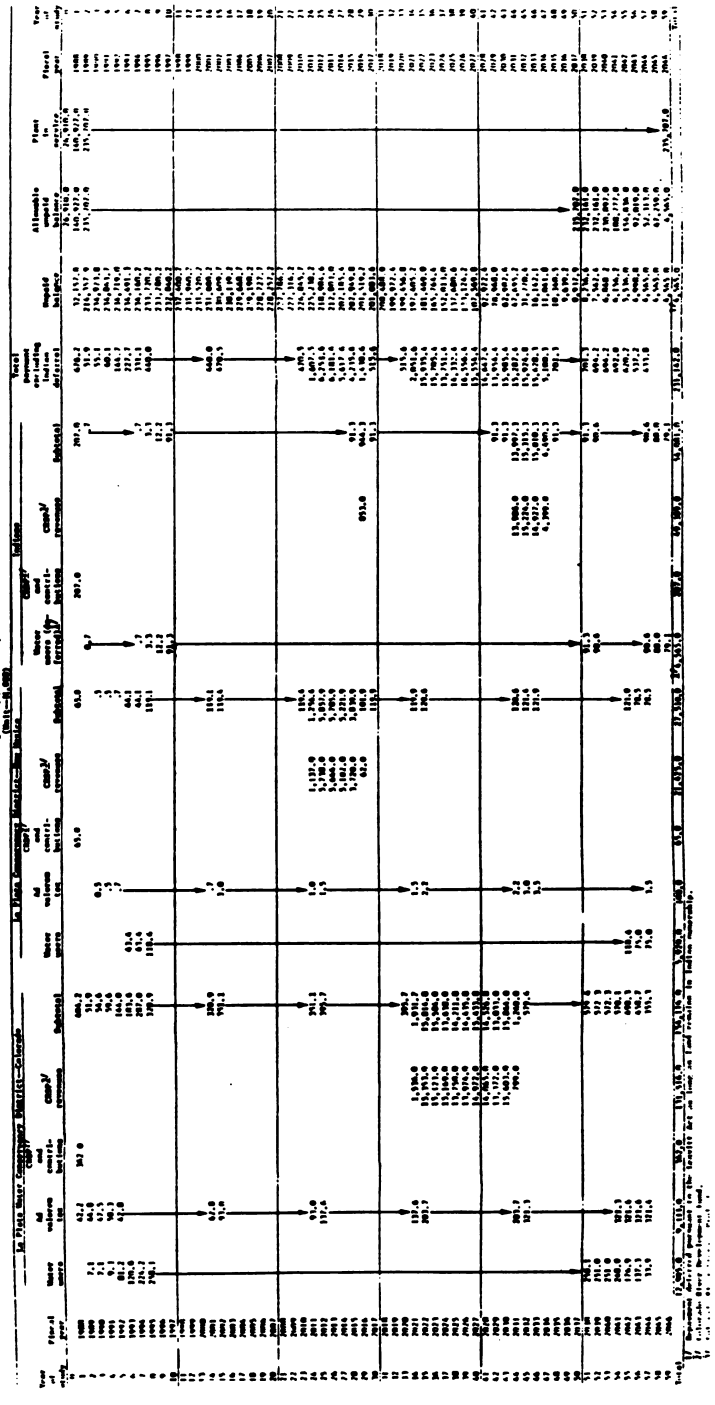

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Difficulties of Irrigation

About 21,480 acres in the project area are presently irrigated, all from the La Plata River and its tributaries. The principal crops grown in the presently irrigated portions of the project area in Colorado are: wheat, 24 percent; alfalfa, 19 percent; and barley, 7 percent. According to project documents, crop yields are low, diversity is restricted, and crop failures often occur.

In the presently irrigated sections of the project area in New Mexico, alfalfa is the main cash crop, accounting for 58 percent of total irrigated crops. Other primary crops are: barley, 12 percent; corn silage 7 percent; oats, 3 percent; and wheat, 3 percent. About 83 percent of the irrigated land is used for crops and 17 percent for pasture or farmstead. Grazing accounts for essentially all dryland use of the project area in New Mexico.

In relation to full supply of water needed for irrigation, the average annual shortage of water on presently irrigated land is estimated to be 52% on farms in the New Mexico portion of the project area, 49% in the northern part of Colorado lands, and 76% in the remainder of the Colorado portion. It should be noted that there will still be irrigation water shortages during and after the completion of the project.

The lands in the Red Mesa and State line areas that have an average annual shortage of 65% without the project will have theirs decreased to 2.6%. The Thompson Park-Hesperus areas that have a 49% shortage will be reduced to 32% in Colorado and 2.5% in New Mexico. Shortages on full service lands under project conditions for both Colorado and New Mexico would average about 3%.

About 52 percent of the irrigated acreage is used for crops, 30 percent is used for pasture, and 16 percent is idle or fallow. The main dryland crop in the Colorado portion of the project is pinto beans, which make up 60 percent of total dryland crop distribution; wheat accounts for 25 percent and 15 percent of the land is idle or fallow.

Project irrigation water would be provided to approximately 400 existing farms in private ownership and to the two Ute Indian Tribes. All of the on-farm improvements (sprinkler systems, etc.) are to be the responsibility of the landowners, Indian and non-Indian.

There is essentially no irrigated cropland on the Ute Mountain Ute Reservation, but the tribe and individual Indians graze cattle on the sparsely vegetated areas.

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Without irrigation, sparse grassland and shrubland on the Ute Mountain Ute Reservation is suitable only for a small amount of cattle grazing.

According to the EIS, the Indian full service land would require extensive clearing, field layouts, selective fencing and access roads before irrigated agriculture could occur. According to the Definite Plan Report, the Ute Mountain Ute Tribe has plans to irrigate about 7,500 acres of land west of the project area as a result of the Bureau of Reclamation's Dolores project, which is now under construction.

In order to deliver the water for irrigation, lateral systems with 197.9 miles of buried pipe would be constructed for the project (this was before the project was divided into Phase I and II) in order to deliver the water to project lands. This pipe would either be asbestos cement or reinforced concrete.

Since the original documents were prepared on the project, the U.S. Congress has passed the 1982 Reclamation Reform Act, which changes the acreage limitations on project beneficiaries who plan on receiving Federal irrigation water. In the absence of a new analysis of the project area, it is difficult to ascertain how this will affect agricultural interests in the project area.

Under the plans of the project authorization, water was to be delivered to privately owned farms of 175 to 198 acres in single ownership and 350 to 395 acres in joint ownership. At the present time, between 82 and 92 owners have land in excess of the limits for single ownership, and 51 of the owners also have land in excess of the limits for joint ownership before the 1982 changes in law . A total of about 10,350 acres, or 15 percent of the privately owned project land, is in excess ownership. The owners of these lands would have to dispose of the excess acreage before receiving project water or sign contracts with the United States agreeing to dispose of the land within 10 years after receiving project water, or they could retain their excess land and not receive project water for the excess land.

In addition, it is impossible to report exactly how many of these farmers have participated in the set aside programs of the 1985 Food Security Act. The Soil Conservation Service has to go through the lengthy process of determining the farmers that qualify. A source from the SCS expects that at least 75% of the farmers from that area will qualify for the farm subsidies from this program of the Department of Agriculture.

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In counties neighboring the project area such as Montezuma County, farmers have enrolled 9,624 acres into the program and want to add 17,123 acres. In another neighboring county, Dolores, 20,301 acres are currently enrolled with plans to add another 5,824 acres.

Within the project area an increasing number of farmers are finding it advantageous to explore different avenues of employment. The high cost of farming and its low returns, oversupplied markets, and relative low economic benefits vis-a-vis other sectors of the economy have all contributed to farmers leaving the industry. Indeed, project documents reveal that 1 of 16 families received direct income from farming in the project area and that the total value of production on land to receive project water was $3.2 million in 1978. With respect to Indian farming, there were 17 full-time farms and ranches and 24 part-time operations on the Southern Ute Reservation in 1975. In light of the relatively light agricultural activity, the Project's emphasis on irrigation seems disproportionatley large.

The base of operations on the Ute Mountain Ute Reservation is a bit different. The 51 Tribe-subsidized cattle operations represented the main agricultural activity. Insufficient irrigation water has hindered agricultural development.

That the land has not been put to agricultural use is not entirely surprising. Given the high altitude and the short growing seasons, much of the land will not meet prime or unique farmland status, according to agricultural officials. Further, these agricultural lands have in the past been sprayed with the parathion insecticide and the 2-4-D herbicide, which have been linked to an increase in cancer in farmers. The EIS reports that, "the use of chemicals that does occur (in the project area) are consistent with a growing trend nationally to use pesticides that are more toxic. The herbicides are used along irrigation ditches, drains and canals for weed control. Since return flows from project lands receiving irrigation water from the project are in some instances going back into project reservoirs further information is needed to determine the likely effects on reservoir water quality and fish and wildlife.

MUNICIPAL AND INDUSTRIAL WATER SUPPLY

Project Goals and Requests

The climate of the project area is characteristic of the southwest-- low precipitation and humidity and abundant sunshine. Precipitation is generally influenced by the prevailing southwesterly winds and elevation differences.

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Consequently, average annual precipitation ranges from about 9 inches at lower elevations in the southernmost part of the project area to about 18 inches at higher elevations in the northern part. The least precipitation usually occurs in June and the greatest from July through October. Average May through September precipitation ranges from about 4.1 inches in the La Plata area of New Mexico to 7.6 at Hesperus, Colorado.

The project is to supply 47,600 acre-feet of water for non-Indian municipal and industrial users and 32,500 acre-feet for the Indians. Water users would be responsible for the conveyance, treatment, and distribution of their respective water supplies. Project documents give no indication of what these costs will be.

According to the Definite Plan Report:

> The amount of water available for project use is the portion of the preproject flows of the Animas and La Plata Rivers at the Durango Pumping Plant and Southern Ute Diversion Dam, respectively, in excess of the amount required to satisfy water rights senior to project rights or to maintain selected minimum river flows. During the 49-year period 1929 through 1977, the average annual preproject flows of the Animas and La Plata Rivers at the indicated locations were 542,300 acre-feet and 26,400 acre-feet, respectively, and non-project water for rights senior to the project rights or to satisfy selected bypass requirements average 78,600 acre-feet and 7,200 acre-feet, respectively. The supply available for project use, therefore, is 463,700 acre-feet from the Animas River and 19,200 acre-feet from the La Plata River, or a total of 482,900 acre-feet annually.

The Animas River will have its average annual flow depleted by 131,200 acre-feet at the state line and up to 161,400 acre-feet at the confluence of the San Juan. The La Plata river will be depleted by 12,400 acre-feet.

The M&I water supplies are committed to meeting projected needs of the project area until approximately 2010 in New Mexico and 2020 in Colorado. Some of this supply would be used when available, the remainder would be used as the need developed. (It is possible that these time periods could slide ten years given the delay in project construction. The absence of new information, given the Phase I - Phase II approach for the project, makes this speculative.)

81,100 acre-feet of water from the project have been requested for municipal and industrial use. The state of Colorado portion would be 41,700 a/f and New Mexico

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interests would receive 38,400 a/f.

In Colorado, the following parties have indicated an interest in municipal and industrial water:

8,200 a/f	Durango
1,000 a/f	LaPlata Service Area
6,000 a/f	Ute Mountain Ute Tribe
26,000 a/f	Southern Ute Tribe
41,700 a/f	

In New Mexico, the following parties have indicated an interest in municipal and industrial water:

19,700 a/f	Farmington
7,600 a/f	Navajo Tribal Utility Authority
5,800 a/f	Aztec
5,300 a/f	Bloomfield
38,400 a/f	

It is estimated in project documents that none of the M&I water for the two tribes will be needed prior to the year 2000 which marks the end of the 10-year deferral period (This had assumed that the project would begin construction in 1980 and be completed in 1990. It may be assumed that this deferral period should now be 2010.)

In addition, the project documents indicate that the Indians need to repay annual operation, maintenance, and replacement costs for M&I water. In addition, the 6,000 a/f of M&I water developed for the Ute Mountain Ute Tribe, the 26,500 a/f for the Southern Ute Tribe and the 7,600 a/f for the Navajo Tribe are the result of written requests from the respective Tribal Councils, and it was assumed that payment capability existed when the project was formulated.

The Southern Ute Tribe requests M&I water needed to permit development of coal reserves located on the reservation. The Southern Utes have asked for 26,500 a/f of water for the development of coal resources plus 3,300 a/f of water to irrigate 1,800 acres of land.

The Ute Mountain Ute Tribe also seeks water for developing coal on the east side of its reservation. The Tribe has requested 6,000 a/f of water for coal development, as well as for the proposed Mancos Canyon Park, and a Urea Production Plant. They have also requested 26,200 a/f to irrigate 12,440 acres.

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The Navajo Tribal Utility Authority in New Mexico has requested 7,600 a/f for its growing needs.

Population Projections

After 1970, a new period of population growth began, attributable primarily to renewed exploration for oil, gas, and coal in New Mexico and to the appeal of the entire area to those seeking to live in rural and scenic surroundings.

Estimated water requirements of the project area increase from 6,700 acre-feet per year in 1980 to about 59,200 acre feet per year in 2020. The need for new industrial supplies is estimated at 32,500 acre feet per year by 2020. (Definite Plan Report pg. 18) These estimates are based on continuous population growth.

Population projections are crucial to water planning studies, because all future water demands are based on those projections. If the population projections are high, the examination of project alternatives will be skewed because the alternatives will appear unable to meet the high demand. In addition, the elevated costs of the project end up being borne by a smaller population. If the population projections are low, the facility will rapidly become inadequate and will need to be expanded sooner than expected.

The Bureau of Reclamation's projected population growth rates for the Colorado portion of the project are 3.4 percent annually to 1990 (the growth rate of the city of Durango in the late 1970's) and 1.9 percent annually from 2000 to 2020. The Colorado portion of the project is expected to have a population of about 53,000 by the year 2020, or nearly three times the estimated 1976 population of 18,000.

In the New Mexico portion of the project area, population projections to 1985 were based on the late 1970's San Juan County annual growth rate of 5.7; the historic county growth rate of 3.6 percent annually was applied to years from 1985 to 2000, and the current State growth rate of 2.4 percent to the years 2001 - 2020. Thus the population of the New Mexico portion of the area is expected to approximate 267,000 by the year 2020, about 4.6 times the estimated 1976 population of 57,550.

These projections are based on data provided by the state, county, and local governments and planning offices and various consulting engineer's reports.

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PROJECTED POPULATION
Animas - La Plata Project Area
United States Bureau of Reclamation

	1970	1980	1990	2000	2010	2020
CO	18,000	20,600	28,700	36,400	44,000	53,000
NM	75,550	94,600	145,200	202,400	254,300	319,700

PROJECTED POPULATION
Animas - La Plata Project Area
Census Bureau

	1970	1980	1990	1995	2000	2005
CO	19,199	27,201	34,000	37,000	40,000	47,000
NM	52,517	81,433	99,500	112,800	128,000	142,800

Concern that the U.S. Bureau of Reclamation's population projections were inaccurately high has prompted Durango's Animas Regional Planning Committee to make its own assessment.

PROJECTED POPULATION FOR PROJECT SERVICE AREA IN DURANGO
BY AGENCY

	USBR	ARPC	CEN.BUR
1980	17,952	15,134	12,274
1990	24,338	20,737	
2000	32,202	28,415	
2010	38,675	------	
2020	48,337	------	

The growth rates used by the USBR and the ARPC are very similar. The main difference is that the ARPC started at a lower population base as determined by the 1980 Census Bureau. These are also very large and rapid increases in population for the city and its service area, considering past growth and the land area actually suitable for development.

According to an analysis that was undertaken by Black and Veatch for the City of Durango serious doubt is raised on the population figures used by the Bureau of Reclamation

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to substantiate future water needs. With respect to the Bureau's figures Black and Veatch state:

> Based upon demography performed by the U.S. Bureau of Reclamation and the Animas Regional Planning Commission and starting with the 1980 U.S. Census Bureau figures, the population to be served by the Durango Water Utility will grow to an estimated 21,420 by 1990; 32,600 by 2005; and 45,520 by 2020. This is a very large and rapid increase in population for Durango and its service area, considering its past growth and the land area actually suitable for development. A more realistic future growth projection may only result in a population near 20,000 by 1990, 24,700 by 2005 and 29,300 by 2020 (emphasis added).

According to project documents, the Indian population in the project area (1979 figures) is as follows:

Southern Utes	870
Ute Mountain Utes	1,325
Navajos	6,530
Total	8,725

Projected Water Usage

The USBR should place more emphasis on estimates of the study area's future water needs and reasonable means of satisfying those needs. Conservation measures appear to have great potential for obtaining maximum benefits from present supplies and reducing future storage and treatment needs. This is particularly evident in the case of Durango and Farmington, whose daily per capita use rates are extremely high. The USBR has undertaken no real consideration of water conservation in its EIS, thus giving no consideration to the least cost alternative.

The USBR estimated average per capita daily water use at 220 gallons per capita daily (gpcd) adjusted for the tourist and student populations. This projection appears to be in error. In arriving at the adjusted figure of 220 gpcd , it appears that no adjustments were made to account for the fact that tourists and students use less water on a per capita basis than permanent residents. Since day-use visitors may use 25 to 40 gallons per capita per day and seasonal visitors can be expected to use approximately 35-60 gallons per capita per day it appears that much less of the EIS's 280 gpcd for Durango's consumption can be attributed to the demands of tourists and students.

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Population projections, water requirements, existing supply, supply needed, and project supply

	Unit	Colorado service areas		New Mexico service areas				Total weighted average
		Durango	La Plata	Farmington	Aztec	Bloomfield	NTUA[1/]	
1980								
Population		19,000	1,600	47,000	8,600	8,100	10,300	94,600
Per capita use	gpcd[2/]	275	175	240	215	215	215	235
Water requirements	acre-feet	5,800	300	12,600	2,100	1,900	2,500	25,200
Existing supply	acre-feet	5,000	0	12,600	200	400	0	18,200
Supply needed	acre-feet	800	300	0	1,900	1,500	2,500	7,000
Project supply	acre-feet	800	300	0	1,900	1,500	2,500	7,000
1990								
Population		26,500	2,200	74,100	13,500	12,800	16,100	145,200
Per capita use	gpcd[2/]	252	175	240	215	215	215	235
Water requirements	acre-feet	7,500	400	19,900	3,200	3,100	3,900	38,000
Existing supply	acre-feet	5,300	0	18,100	200	400	0	24,000
Supply needed	acre-feet	2,200	400	1,800	3,000	2,700	3,900	14,000
Project supply	acre-feet	2,200	400	1,800	3,000	2,700	3,900	14,000
2000								
Population		33,600	2,800	105,600	19,200	18,200	23,000	202,400
Per capita use	gpcd[2/]	252	175	240	215	215	215	235
Water requirements	acre-feet	9,500	600	28,400	4,600	4,400	5,500	53,000
Existing supply	acre-feet	5,600	0	18,100	200	400	0	24,300
Supply needed	acre-feet	3,900	600	10,300	4,400	4,000	5,500	28,700
Project supply	acre-feet	3,900	600	10,300	4,400	4,000	5,500	28,700
2010								
Population		40,600	3,400	133,800	24,300	23,000	29,200	254,300
Per capita use	gpcd[2/]	252	175	240	215	215	215	235
Water requirements	acre-feet	11,500	700	36,000	5,900	5,500	7,000	66,600
Existing supply	acre-feet	5,600	0	18,100	200	400	0	24,300
Supply needed	acre-feet	5,900	700	17,900	5,700	5,100	7,000	42,300
Project supply	acre-feet	5,900	700	17,900	5,700	5,100	7,000	42,300
2020								
Population		48,900	4,100	169,600	30,900	29,200	37,000	319,700
Per capita use	gpcd[2/]	252	175	240	215	215	215	235
Water requirements	acre-feet	13,800	800	45,600	7,400	7,000	8,900	83,500
Existing supply	acre-feet	5,600	0	18,100	200	400	0	24,300
Supply needed	acre-feet	8,200	800	27,500	7,200	6,600	8,900	59,200
Project supply	acre-feet	8,200	1,000	19,700	5,800	5,300	7,600	47,600
Percent of project supply needed by 2000		50	60	50	75	75	70	
Percent deferred under Water Supply Act		50	40	50	25	25	30	

1/ Navajo Tribal Utility Authority.
2/ Gallons per capita per day.

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According to project documents, using the estimate given above, average use by students would range between 77,000 and 132,000 gallons per day, and water use by tourist would range between 75,000 and 125,000 gallons per day. Thus, instead of being the 220 gpcd used in the USBR's estimates, the average per capita adjusted rate is probably more on the order of 266 to 271 gallons per day. This extremely high water use rate points directly to the need to consider water conservation as a means of postponing or avoiding the costs of facilities to store and treat large quantities of additional water.

The development of the M&I water supply would occur by pumping water from the Animas river to the Ridges Basin Reservoir which would take place primarily during the Spring. The flows of the river in the winter would be 125 c.f.s and in the Summer 225 c.f.s. (the minimum flow necessary for the river's ecosystem and appearance according to the Bureau).

The Ridges Basin Reservoir would be at its maximum water level in May of each year but would only be at such a level in 19 of 49 years. Maximum drawdown for the reservoir would be in July and August by 22 feet annually (8% of maximum depth as measured at the dam). From April to September the surface area of the reservoir would be decreased from 2,160 acres to 1,950 acres. Poor water years or drought (which occur statistically in 26 of 49 years) would reduce this area even more.

The Ridges Basin Reservoir is expected to lose 3,300 acre-feet of water annually to evaporation and the Southern Ute Reservoir (if constructed) would lose 3,200 acre-feet.

The city of Durango obtains its raw water supply from both the Florida and Animas Rivers according to project documents. The city has an absolute direct flow right of 8.92 cfs from the Florida River and 6 cfs from the Animas River, plus a conditional direct flow right from the Animas River of 44 cfs. The city also has storage rights for four reservoirs totaling 3,272.5 acre-feet. The Durango City Pipeline diverts water from the Florida River about 10 miles east of the city and has a capacity of 10.1 cfs. The pipeline delivers water to the Durango Reservoir No. 2 (Terminal Reservoir). The reservoir has an active capacity of 129.5 acre-feet.

The Animas Pump and Force Main consists of a pumping plant on the Animas River and a 1.3 mile pipeline leading to the Terminal Reservoir. These facilities have a capacity of about 9.25 cfs to the reservoir and 1.01 cfs to the Municipal Golf Course and Fort Lewis College for irrigation.

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Two other pumping plants on the Animas River provide raw water for irrigation of the Green Mountain Cemetery and Durango High School grounds. Each of these plants has a capacity of 1.33 cfs.

The city of Durango is to receive 8,200 acre-feet of municipal and industrial water from the reservoir annually. Durango presently diverts water for M&I use from the Florida River immediately downstream of Lemon Dam and pipes it to a reservoir immediately east of the city for treatment, storage and distribution. During high demands, additional water is pumped into the reservoir from the Animas River. Durango accounts for 95% of the M&I demand in the area.

Under the original project plans, the rural water users and the Ute Mountain Utes would need to provide secondary storage for municipal and industrial water delivered through the Dryside Canal because the canal could have freezing and maintenance problems during the Winter months. Hence, pumping in the canal will only occur from April through October. Water is available from the Dry Side Canal (for M&I) April, May, August, September, and October. Water is not available June and July because the capacity of the Dry Side Canal is used for irrigation water.

Most rural users either rely on private wells or because of problems such as undependable supplies or poor quality, haul their water for domestic consumption. An example of the rural water users' needs can be seen near Marvel, Colorado where 1,500 people haul their water from a spring nearby. Under the phased construction of the project it is unclear how these needs are going to be met.

Under the original plans, the La Plata Diversion Dam would be 7.5 acres in size and 8.5 feet deep.

The size of the Southern Ute Diversion Dam would be 17 acres and 9.5 feet deep.

The plans discussed in the EIS for the Southern Ute Dam call for a reservoir which is 2.6 miles long with 70,000 acre-feet capacity (40,000 active which provides 1,386 surface area and 30,000 dead storage which provides 821 surface acres. There would be 37 surface additional acres at the top of dead storage and 1421 acres at the top of surcharge. 10 miles of fence around the reservoir will be required for management purposes.

There is considerable disagreement over the water use figures for the local area. Supposedly conservation measures such as metering, raising rates, and restricting lawn watering have been instituted in the communities. Through the incorporation of such measures, the Bureau

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of Reclamation has used a 20% reduction in the per capita consumption figures - dropping use from 280 down to 220 to reflect the conservation assertedly taking place in the area.

The city of Durango has a right of use of 5,600 acre-feet of water from the Florida River. They also have rights on the Animas River to be developed by the project. Durango's planned use is:

500	acre-feet	1980
3,900	acre-feet	2000
8,200	acre-feet	2020

Single Purpose Alternative

It is worth noting that when the Bureau of Reclamation evaluated a municipal and industrial alternative for the project, that instead of using the 3 and 1/4% 100-year period that the Animas La Plata project was evaluated at, that a 7% interest rate over 50-year period was used. The project documents never indicate that a single purpose M&I alternative was not economically feasible.

FISH AND WILDLIFE

15,139 acres of land would be required for project features. The ownership of this land is as follows:

7,539 acres of private land
4,296 acres of State of Colorado and New Mexico
2,505 acres of Tribal land
799 acres of Federal land

According to the project's EIS, a total of about 13,684 acres of land now committed to wildlife habitat would be acquired for project use. 4,183 acres of this would be irrevocably committed to reservoir storage, canals, roads, and other structures. The remaining 9,501 acres would be committed to such long term project uses as recreation areas, wildlife management areas and rights of way.

Construction of the Ridges Basin Reservoir would require the relocation of a large big game management area. Only 4,000 of the area's existing 7,000 acres will be replaced. It is unknown where this replacement land will be located. Project documents indicate that about 1,600 acres could be found north of U.S. Highway 160 and 900 acres west of Ridges Basin with an additional 1,000 acres within the Boundary of the Southern Ute Reservation. The remaining 500 acres has not

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been identified.

2,500 acres of the 7,000 acres of land would be lost permanently to the building of the Ridges Basin Reservoir and other project features. In exchange, there will be acquired 1,600 acres of oakbrush vegetation and 900 acres of pinyon juniper. The area will be chained, seeded and have management practices instituted specifically for wildlife according to project documents.

At the Southern Ute Reservoir, 1,400 acres of habitat will be inundated. In exchange, about 1,000 acres of land will be obtained within the proposed land acquisition boundary on the Reservation and be developed and managed for wildlife.

The EIS on the project had this to say about the impacts on habitat:

> The overall condition for wildlife will be that of continuous reduction in habitat, - caused by the continuing development of more area for housing and other needs of the increased population.
>
> This reduction in habitat affects all species of wildlife in some way or another; it is eliminating food resources as well as cover for many species. As more and more development occurs, the animals now in the project area are being forced to occupy less desirable habitat and to over-populate certain areas.

The wildlife population is made up of the following:

Mule Deer	1,000	area residents (CO)
	4,000	migratory (CO)
	380	area residents (NM)
	200	area residents Ridges Basin (CO)
Elk	200	residents
	2,000	migratory
	200	winter at Ridges Basin

The project area also contains the endangered species of bald eagles, peregrine falcons and Colorado River squawfish.

The bald eagles nest next to the project area in Ridges Basin part of the area being considered for recreational development. The Bureau of Reclamation is supposed to develop a Bald Eagle Management Plan for the two reservoirs.

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The mule deer will lose 4,700 acres of habitat which is to be replaced with 2,500 acres of purchased land. The elk will lose 2,230 acres of winter range by the construction of the Ridges Basin Reservoir. The land adjacent to the reservoir is in poor condition and not capable of supporting this increase in the number of animals, therefore according to the EIS "mortality will occur".

The game fishing in the Animas river is severely limited because of a combination of poor water quality and seasonal flow fluctuations. Rainbow and brown trout are intensively stocked in the river.

According to the DPR:

> the section of the Animas River about 15 miles above Durango down to the city has a good stocked year-round trout fishery with an adequate aquatic insect population for fish production; however, the poor stream habitat, the transition from cold water to warm water, the large flow fluctuations, and some residual toxicity from heavy metals contribute to the low diversity indices found in the aquatic community.
>
> Furthermore, the high concentrations of iron, manganese, copper, zinc, cadmium, molybdenum, cyanide, mercury, and silver at Durango are a direct result of the metals contributed to the stream in its headwaters. Metal concentrations vary throughout the year, possibly with upstream activity or flows, although no reliable correlations can be found.

According to project documents there will be minimum bypass flows at the Durango Pumping Plant for the maintenance of fisheries in the Animas River of 225 cfs from April 1 through September 30, except when river flows fall below this level due to naturally low runoff and nonproject diversions. A minimum bypass of 125 cfs would be provided during the remaining months. This translates into an average annual volume of water on the order of 24,700 acre-feet.

The Ridges Basin Reservoir and the Southern Ute Reservoirs will be stocked with fry-fingerling size trout so that flat-water fishing can take place.

CULTURAL RESOURCES

There are over 3500 sites of archeological material in the project area. Many of these sites are attributable to the Anasazi Society. There will be a 7-year, 175-site sample inventory of such material undertaken with minimal data recovery from 1,000 sites to obtain information on

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settlement patterns.

Because of the large number of sites, an adequate cultural resource recovery program will require as much as 4% of the project's budget, well above the 1% ceiling mandated by federal law for mitigation costs. According to the Definite Plan Report for the project, the Bureau of Reclamation will be seeking Congressional authorization to exceed existing limitations on the expenditures of nonreimbursable project funds to mitigate loss and enhance cultural resources.

The cultural resources survey undertaken in 1975 for the project area identified 46 prehistoric sites and 10 historic sites that would be affected by the construction of the project. The limited evidence available suggests that the historic sites were not eligible for inclusion in the Register at the time of the survey.

Under original project plans, the Bureau of Reclamation was contemplating a visitor center to display and interpret Anasazi Tradition.

The portion of the project area within the Ute Mountain Ute Indian Reservation is currently listed in the National Register of Historic places as part of the Ute Mountain Ute Mancos Canyon Historic District. It is unclear what impact the construction of the project will have on that designation.

It is worth noting that the Mesa Verde National Park is very nearby (ten miles east of Cortez, Colorado) and could possibly be impacted by any planned energy development since it is a Class I air quality region. National Monuments at Natural Bridges, Arches, Canyon de Chelly, Hovenweep, Yucca House, and Aztec Ruins are also within a radius of about 100 miles of the project area.

RECREATION AND TOURISM

The climate of the area is suitable for year-round recreation and tourism. The winter provides plenty of snow and abundant sunshine, bringing people from all over the world to the ski areas of Purgatory and Telluride. The summers are warm but not unbearable, with low humidity and temperatures rarely exceeding 100 degrees. The summer provides hikers, bikers, white water rafters,and golfers a great opportunity to enjoy recreation in a bearable climate.

The mountains of the area offer a wide variety of recreational opportunities ranging from hunting, fishing, hiking, white water rafting, camping, skiing, and biking.

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The San Juan National Forest north of the project area is the primary attraction for visitors. This area has enjoyed 1.8 million visitor days with an average stay of one an one-half days.

At the Ridges Basin and Southern Ute Reservoirs a total of 2,720 people could be accommodated at one time for camping, fishing, boating, picnicking and sight-seeing for a total of 307,500 recreation days a year in the project area.

The 1,800 visitors per day at the Ridges Basin Reservoir would have:

574 parking spaces
10 miles of hiking trails
54 camping units
48 picnic units
34 boat slips
7 lane boat ramp

The 920 visitors per day at the Southern Ute Reservoir would have:

274 parking spaces
76 camping units
16 picnic units
19 boat slips
4 lane boat ramp

The Definite Plan Report indicates that some recreation at Ridges Basin and some whitewater boating in the Animas River below Durango would be lost as a result of the project. Because of the flow changes in the Animas River, 3,400 recreation days would be lost and 15,200 recreation days reduced (hiking, sight-seeing on Animas River, recreation floating and kyaking and commercial river floating) by the operation of the project.

The USBR estimates that 5% of the area's rafting revenues will be lost due to project development. The USBR has estimated that the losses of boating opportunities anticipated with project development, can be evaluated at rates of $4 to $9.50 for each recreation day depending on the types of boating and the river flow at the time of the boating experience.

The report of the President's Commission on Americans Outdoors states that the demand for white water river recreation is increasing while the resource of white water is shrinking. Recreational use of Colorado's rivers more than doubled in the last ten years, from 142,000 use days in

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1976 to more than 350,000 in 1985. Two of Colorado's prized boating rivers, the Gunnison and the Dolores, have had white water recreation opportunities eliminated or greatly diminished by federally funded water projects which have directly inundated canyons or reduced river flows to the point where floating is no longer possible. This will happen to the Animas if this project is constructed.

WATER QUALITY

The project is not expected to produce any water quality improvement. Moreover, the EIS is deficient in its discussion of the project's ability to meet water quality standards. The only discussion of this subject appears on page C-24 where the EIS refers to the Bureau's commitment to meeting water quality standards in the Animas river during construction of the project. The EIS contains no further information specifically related to the ability of the project to meet water quality standards. The EIS should describe the impacts of the project in relation to the numerical standards from the state's stream classification and anticipated classification of the water quality in reservoirs.

The question of drinking water standards is also important in this respect. The city of Durango's water would be made available from the Ridges Basin Reservoir Inlet Conduit to the city's treatment plant. In order to receive the water, a settling basin will be constructed to remove 6,300 cubic yards of sediment a year. This sediment will have to be hauled away periodically.

For the water users in the Breen, Colorado area, a water treatment plant will need to be constructed to use project water. The same will hold true for the rural water users and the Ute Mountain Utes receiving water through the Dryside Canal.

Wastewater Effluent

The Durango wastewater treatment plant produces an effluent. This treated effluent is presently discharged into the Animas River a short distance upstream of the Project's Durango pumping plant. The Durango pumping plant would therefore receive river waters containing treated wastewater for discharge into Ridges Basin Reservoir. Since Project waters from the Reservoir or the Durango Pumping Plant will be utilized as a raw water source for drinking water, it would be advisable as part of the Project to convey the effluent from the wastewater treatment plant to a point downstream of the Durango Pumping Plant. The Bureau has recently indicated that this change would take place.

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Uranium Mill Tailings

The tailings pile from the abandoned uranium mill adjacent to the Animas River is also upstream of the Durango Pumping Plant. As part of the project, the effect of these tailings, including any runoff or seepage from the tailings, on the quality of the river waters should be thoroughly investigated. Alternatives to the Durango pumping plant and/or a different sites for the pumping plant should be explored.

The USBR has given at least brief consideration to the ramifications of these hazardous problems:

> "The present pumping plant and settling basin site is located on a bench west of an existing county road and the location of the new Colorado State Highway 160-550 route. The bench was used as a disposal area for waste solutions from a vanadium-uranium mill and contains radioactive materials. The present owner of the tract, Ranchers' Exploration and Development Corporation, was planning to remove this material and two large piles located upstream to another location for processing of recoverable materials; however, the corporation has withdrawn its license application and has no plans to move the materials. If the material and the accompanying hazards would not be removed by the beginning of construction, an alternative location would probably be used. Different alternatives are being investigated to determine the best solution to the problem."

Radium is the most hazardous radioactive element contained in uranium mill wastes. Its maximum permissible concentration in drinking water is exceedingly small, and its ingestion in water or in contaminated food or milk is regarded as extremely dangerous. Hence, uranium mill waste discharges to a stream may seriously interfere with such water uses as domestic supply, crop irrigation, and stock watering.

The uranium mill at Durango has been in continuous operation since 1948. In 1950 at the request of the interested states samples of water were collected from river locations above and below the mill. Dissolved radium amounted to 0.2 and 4.5 c/l respectively. The flow in the river was 220 c.f.s. at the time of sampling.

In 1955 a second brief survey was performed at Durango. Samples of water, mud, algae, and aquatic insects were collected from the river above and below the mill, as well

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effluents. At the river flow of 250 c.f.s. dissolved radium was again 0.2 c/l above the mill and 3.3 c/l below. The algae and aquatic insects above and the contained 6 uuc of radium per g of ash while below they contained 660 and 360 uuc/g, respectively. The two effluents from the mill contained 76 and 25 uuc/l of dissolved radium. The gross alpha activity of suspended solids in the main effluent was 33,200 uuc/l.

On the basis of these figures and the observed effluent flows it was estimated that as much as 160 lb/day of dissolved uranium was wasted to the river, and a maximum of 0.8 mg/day of dissolved radium was released. In the undisolved state an estimated 30 mg of radium were released daily. As will be seen, this figure has real significance in terms of river water quality.

E.C.Tsivoglou and M. Stein have described the dangers of excessive radium levels in their article "Industrial Waters". The polluting of the Animas River caused by discharge of uranium milling wastes from the uranium ore refinery at Durango, Colorado, deleteriously affected public water supplies at Aztec and Farmington, New Mexico, individual water supplies of ranchers and others who take raw water from the river for irrigation, fishing, swimming, and stock watering in New Mexico.

Discharges of nonradioactive chemicals to the Animas River by uranium mill at Durango, Colorado, have proven toxic to fish and aquatic life in the Animas River and such discharges have created conditions inimical to such fish and aquatic life. These facts demonstrate the importance of assessing such wastes in terms of the total human intake of related radioisotopes rather than simply in terms of water concentrations of individual radionuclides.

When the consulting firm of Black & Veatch reviewed the various alternatives for meeting Durango's future needs in 1981 they provided additional concern with respect to the mill tailings situation:

> " The second item pertains to the tailings pile from the abandoned uranium mill adjacent to the Animas River. The tailings are also upstream of the Durango Pumping Plant. As part of the Project (The Bureau's Animas La Plata Project), the effect of these tailings, including any runoff and/or seepage from the tailings, on the quality of the river waters should be thoroughly investigated. If such investigations indicate an adverse effect on the river waters, steps should be taken, as part of the Project, to eliminate these adverse effects in some manner."

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The USBR has not taken into account the hazards of building the pumping plant facility near the tailings pile. EPI suggests a thorough investigation of the problem. According to an article in the Durango Herald in March of this year the manager for the project to remove the tailings pile for the Department of Energy indicated that "once the tailings are removed, more soluble elements such as arsenic, zinc and cadmium will be flushed out of the alluvial groundwater. Contaminants also have made their way into deeper groundwater...will take from 40 to 140 years to clear out once the tailings are removed."

Heavy Metals

The headwaters of the Animas River occur north of the town of Silverton, once a heavy mining area. As a result the EIS had this to say:

> Heavy metal pollution is a water quality problem only in the Animas River. High concentrations of iron, manganese, copper, lead, zinc, silver, cadmium, mercury and arsenic along with acid water cause the river to be nearly devoid of fish and aquatic insects and unusable for domestic and agricultural purposes.
>
> Aeration caused by the streams continual turbulent action and high quality inflow from tributaries act to improve the river's overall quality as the river reaches Durango.
>
> Manganese concentrations in the water could become a concern for user, since conventional sedimentation-filtration water treatment facilities do not adequately remove dissolved concentrations of manganese.
>
> Concentrations of several heavy metals in the Animas River periodically exceed drinking water standard.

The Definite Plan Report indicates that the headwaters of the Animas River are essentially a dead stream as a result of heavy metals from mining activities. Furthermore, the principle tributaries of the Animas River in the project area are Junction Creek, Lightner Creek, Basin Creek, Cascade Creek, Hermosa Creek and the Florida River. Except for the Florida River which has its flows regulated by Lemon Dam, the tributaries often go dry in late summer according to project documents.

The La Plata and Mancos rivers also pick up some heavy metals, primarily zinc, silver, cadmium, cyanide and mercury.

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The EIS's conclusion that conventional water treatment will remove enough of the heavy metals in raw water supply to meet drinking water standards on a consistent basis is unsubstantiated. More data on instream metals concentrations needs to be reviewed, together with the performance of existing treatment systems in the area.

It is risky to assume that treatment beyond conventional techniques is unnecessary without further evaluation of heavy metals loading, removal efficiencies of conventional treatment systems, and contingency plans for dealing with emergencies. These evaluations are especially important in view of the local capital expenditures that must be made for treatment facilities before the water can be put to use.

The DPR indicates:

> Heavy metals are present in the Animas River at Durango, as described earlier in the section on present conditions. Some of these heavy metals already present a water treatment problem for Durango's domestic water supply. New water treatment facilities for Durango service area, to be built in coordination with the project, should be designed to reduce the excessive metal concentrations. Durango's raw water would continue to be supplemented from the Animas River through a connection with the line supplying water into Ridges Basin Reservoir. During those times when the pumping plant is not operating and when Durango's water demand is greater than that being pumped, the city's raw water supply would come from the reservoir. Therefore, Durango's water treatment problems due to heavy metals will remain the same with or without the project.

Given the past history of mining development upstream from Durango, if any future mining takes place and water pollution occurred from such mining, the Durango Pumping Plant would be shut down to prevent the contamination from being pumped into the reservoirs.

The EIS indicates that the fate of the heavy metals in the Ridges Basin Reservoir is dependent on many factors, most of which indicate that the reservoir sediments would retain most of the metals, substantially reducing the potential for water quality problems. The Bureau proposes to establish and maintain monitoring programs in both the Ridges Basin and Southern Ute Reservoirs so that water quality studies analyzing data on nutrients, salts, suspended solids, trace elements and bacteria could be performed. In addition, the retention of heavy metals would be monitored in Ridges Basin

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Reservoir.

The DPR indicates "the fate of heavy metals in Ridges Basin Reservoir is dependent on thermal stratification, dissolved oxygen depletion in the hypolimnion, water chemistry, heavy metals retention, and sediment-water interface geochemistry in the reservoir".

The best discussion of water quality problems in the project area can only be found in the DPR Water Supply Appendix. This Appendix indicates countless instances of where water quality standards were exceeded in test samples taken for the project. The following are such examples for the Animas River:

> The total and dissolved manganese concentrations of the water quality samples taken at Durango average 142 ug/L and 130 ug/L, respectively. The EPA maximum advisable secondary drinking water criteria for dissolved manganese is 50 ug/L.
>
> The dissolved form of this metal could cause aesthetic problems to domestic water users such as unpleasant taste and odor, staining of plumbing fixtures, and deposits on food during cooking (emphasis added).
>
> Cadmium concentrations in the river at Durango exceed both drinking water standards and aquatic live criteria at times. Total concentrations in the eight samples taken in 1977 and 1978 averaged 24 ug/L of which about 4 ug/L was dissolved.
>
> The National Interim Drinking Water Standard for cadmium is 10 ug/L. The aquatic life criteria ranges from 1.2 to 12 ug/L for various hardnesses of water. For agricultural use 10 ug/L is the recommended criteria. The available data show the recommended limits for domestic agriculture, and aquatic life have all been exceeded at times.

The picture of the La Plata River is not much different. According to the DPR:

> In summary, the water quality of the La Plata River at Farmington has been drastically affected by man's uses. Irrigation has had the major impact with metal mining secondary. The dissolved solids and cadmium content could limit agricultural and domestic uses. The aquatic community is mainly limited by extreme variations in flow, which seem to overshadow the chemical characteristics.

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Table 54
Quality of diversions and return flows

Use	Diversions: Quantity (acre-feet)	Diversions: Quality (mg/l)	Diversions: Salt (tons)	Return Flows 1/: Quantity (acre-feet)	Return Flows 1/: Quality (mg/l)	Return Flows 1/: Salt (tons)	Salt pickup (tons)
Colorado							
La Plata Water Conservancy District							
Municipal and industrial use							
Durango service area	8,200	230	2,560	4,100	630	3,510	950
La Plata service area	1,000	230	310	500	630	430	120
Subtotal	9,200		2,870	4,600		3,940	1,070
Irrigation							
North La Plata gravity area	1,000	90	220	500	120	220	0
North La Plata area 2/	39,100	230	12,230	7,600	1,340	13,850	1,620
Dryside area	29,000	230	9,070	5,800	1,340	10,570	1,500
Stateline area	2,100	650	2,030	500	4,660	3,170	1,140
Subtotal--Irrigation	72,200		23,550	14,400		27,810	4,260
Subtotal--La Plata Water Conservancy District	81,400		26,420	19,000		31,750	5,330
Southern Ute Indian Tribe							
Municipal and industrial use	26,500	670	24,150	2,500	1,340	4,560	3/ 19,590
Irrigation							
North La Plata area	1,600	240	520	800	1,650	590	70
Dryside area	1,700	230	530	400	1,360	730	200
Subtotal	3,300		1,050	700		1,320	270
Subtotal--Southern Ute Indian Tribe	29,800		25,200	3,200		5,880	3/ 19,120
Ute Mountain Ute Indian Tribe							
Municipal and industrial use	6,000	230	1,880	0		0	-1,880
Irrigation							
North La Plata gravity area	200	147	40	100	320	40	0
Dryside area	25,600	230	8,010	5,100	1,320	9,160	1,150
Subtotal--Irrigation	25,800		8,050	5,200		9,200	1,150
Subtotal--Ute Mountain Ute Indian Tribe	31,800		9,930	5,200		9,200	-730
Municipal and industrial total	41,700		28,900	7,100		8,500	-20,680
Irrigation total	101,300		32,650	20,300		38,130	5,680
Colorado total	143,000		61,550	27,400		46,630	-14,720
New Mexico							
La Plata Conservancy District irrigation	16,000	670	14,580	3,100	4,660	19,610	5,030
Ute Mountain Ute Indian Tribe irrigation	800	230	250	200	1,320	360	110
San Juan area municipal and industrial use							
Aztec service area	5,800	310	2,450	2,900	715	2,900	450
Farmington service area	19,700	360	9,110	9,850	790	10,580	1,470
NTUA service area	7,600	140	1,510	3,800	790	4,080	570
Bloomfield service area	5,300	180	1,300	2,650	530	1,990	690
Municipal and industrial total	38,400		16,370	19,200		19,460	3,090
Irrigation total	16,800		14,830	3,300		19,990	5,140
New Mexico total	55,200		31,200	22,500		39,450	8,250
Municipal and industrial project total	80,100		45,270	26,300		27,960	-17,310
Irrigation project total	118,100		47,480	23,600		58,120	10,860
Project total	198,200		92,750	49,900		86,280	-6,470

1/ Figures shown are averages for a 100-year period of operation.
2/ Not including lands near the State line.
3/ Negative values indicate salt removal from industrial uses.

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Diversion and Salinity

All of the flow of the La Plata river will be diverted to the Southern Ute Reservoir. Return flows from the project land (988 acres and 1,874 acres) receiving water will be diverted back into the Southern Ute Reservoir. The flows from the Dryside Canal would also return to the Southern Ute Reservoir. The reservoir would be maintained at one-half capacity during average runoff years.

Nutrient loads from irrigated lands and the Ridges Basin Reservoir are not quantifiable, leaving some doubt as to the trophic state of the Southern Ute Reservoir due to nutrient loading according to the EIS.

Because of the diversion of 154,000 acre-feet of water out of the Colorado river system, the project will increase salinity levels at the Imperial Dam by 17.9 mg/l (1.7%). There would be a 300% increase in the average flow-weighted salinity of the La Plata River downstream of the Southern Ute Diversion Dam which would be caused by the project return flows and reuse of irrigation water. It is estimated that the Animas River would have a 10% increase in salinity.

It is estimated that the Animas La Plata project would increase salinity levels in the Colorado river at Imperial dam by 18.6 mg/L as a result of the concentrating effect of stream depletions and reduce salinity levels by 0.7 mg/L as a result of the salt reduction from return flow. Irrigation water would leach the remaining salts from upper lands and deposit them in the lower class six shale bottoms where drainage is restricted.

The average annual increase, based on the 100-year average would total 17.9 mg/l as measured at Imperial dam, about 1.7 percent above current levels. Studies by the USBR conclude that increasing salinity causes both direct and indirect economic losses in the Colorado River Basin estimated at $343,000 annually for each increase of 1 mg/l at Imperial Dam for a total of $6 million annually from building the Animas La Plata Project.

In agriculture, losses come from decreased crop yields, increased management costs, and the application of various adaptive practices. In the municipal and industrial areas, the losses arise primarily from increased water treatment costs, accelerated pipe corrosion and appliance wear, increased use of soap and detergents, and decreased palatability of drinking water.

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In its comments on the EIS, the U.S. Environmental Protection Agency seriously questioned the accuracy of the USBR's salinity control claims. The EPA believes that the costs and delays associated with salinity control projects cast serious doubt as to the duration of these "temporary" increases. Even under the most optimistic of salinity control scenarios, 20 years of salinity levels on the order of 100 mg/liter above the 879 mg/liter level could exceed $686,000,000 in damages before the trend toward increases in salinity is reversed. No reliable estimate can be made of the damage that will occur before the target salinity levels are finally achieved.

In order to avoid these environmental and economic costs, EPA has advocated consideration of a salinity offset policy similar to the offset policy that has been used to permit new clean industry in nonattainment areas where air quality standards are violated. Under the offset policy, new air pollution sources are permitted only if emissions from existing sources are reduced to compensate for emissions from the new facility and the new facility has pollution controls that result in the lowest achievable emission rate for the pollutant in question.

Under a salinity offset policy, increased salt loading or concentration by a project such as Animas La Plata would require corresponding salinity reductions elsewhere in the basin. Thus, a development scheme which adversely impacts water quality would be allowed to proceed only if it were mitigated by some other activity which would at least nullify these adverse effects. The test for adequacy in mitigation should be that a control project or strategy is being actively and successfully implemented concurrently with the project. The proposed Animas La Plata project fails to meet this test.

The USBR appears to have overlooked the salinity impacts of surface mining. Field studies conducted elsewhere in Colorado indicate that surface mining may increase salt yields by nearly two tons per acre per year, an increase of more than 500% above the salt yield from undisturbed ground. In view of the approximately 8000 acres that would be surface mined in the study area, the cumulative increases in groundwater salinity could be very significant.

The EPA concludes that the high costs of providing storage in the Animas La Plata project, the expense of pumping and treating (possible beyond conventional treatment) Animas River water for drinking water supply purposes, and the present inefficient use of water in Durango require a complete analysis of the area's water needs and the opportunities for conservation. Farmington's excessively high per capita water use also indicates the need for

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similar analyses of its water supply options.

EPI's review of project reveals no analysis of the impact on groundwater quality as a result of applying irrigation water to project lands.

POWER

The project as planned would not produce any power; in fact, it is a huge user. The power for the project would be transmitted to the Shiprock Substation of the Colorado River Storage Project by a 115 KV line or would be purchased for use by project facilities elsewhere.

Because of the design of the Animas La Plata project, water must be lifted 525 feet from the Animas river to the Ridges Basin Reservoir and then another 264 to 330 feet from the reservoir to the Dry Side Canal. From the Dry Side Canal the water would go west and be pumped up into steel tanks 145 -220 feet high to create water pressure for three of the laterals. The power needs to accomplish this are:

	annual	annual
To Ridges Reservoir	25,500Kw avg	105,508,000 Kwh
To Dry Side Canal	23,600Kw avg	50,531,000 Kwh
To steel tanks	3,740Kw avg	6,709,000 Kwh
TOTAL	52,840Kw avg	162,748,000 Kwh

To put these power needs into a perspective, the EIS indicates that the energy needs of the project could serve the annual residential use for a city of about 63,000 people.

Additional lift figures were provided in the Definite Plan Report for pumping plants at Alkali Gulch (134 feet), Ute Mountain (166 feet), Southern Ute (299 feet) and Third Terrace (137 feet).

The amount of water pumped at the Durango Pumping Plant would be determined by:

1. the flow in the Animas River
2. the downstream nonproject needs
3. the project New Mexico M&I water demand
4. the minimum bypass to maintain the aquatic system
5. the capacity of the pumping plants (430 cfs)
6. the amount of water in Ridges Basin Reservoir

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ENERGY DEVELOPMENT

Assessment of the Project's merits and feasibility is complicated by uncertainties in the resource development plans and goals of affected tribal groups.

In testimony before the House Appropriations Subcommittee on Energy and Water on March 25, 1981, Vice-Chairman Baker of the Southern Ute Indian Tribe had this to say about the need for the Animas La Plata Project:

> ...The nation's need for energy provides us with an opportunity to become economically self-sufficient. Our lands contain an abundance of natural gas and coal which, with an adequate supply of water, can be developed. Tribal members will have the chance to develop skills and get jobs. Sufficient agricultural, domestic, and industrial water needed for our health and economic stability is allocated to the Southern Ute Indian Tribe by the Animas La Plata Project. In addition, our relatives in the Ute Mountain Ute Indian Tribe will receive waters which they sorely need for municipal and agricultural use.
>
> Competition for water in our arid region is fierce, and for our protection, the Department of Justice has filed a lawsuit to determine our reserved rights. Even if we are legally successful, our use of the waters of the Animas and La Plata Rivers would deprive our non-Indian neighbors of water they need and use for agricultural and municipal use. Furthermore, there would still be a need for our tribe to develop water storage facilities.

In testimony presented a year earlier to the same subcommittee by Mr. Baker the following justification for the project was given:

> ...the tribe has agreed with its white and Spanish neighbors as to the extent of water which would be available to the tribe from the Project. For example, for the development of the coal on the Southern Ute Indian Reservation we have been allocated 26,600 acre feet under the project. We agree with this allocation and will work for and within the project to maximize our energy resources with this amount of water.

This question of what the water is really needed for - human consumption, energy development or economic development - needs further examination by Congress, especially if it is tied to the development of the Animas

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La Plata project.

In the meetings with the Tribal representatives the picture of needing water so Tribal members will no longer have to truck water in or carry it to their homes is presented. So is the picture of developing an agricultural base for export of agricultural products - leaving aside the fact that their non-Indian neighbors will be producing the same products for some of the same markets. And last but not least is the picture presented in testimony of developing energy resources.

Even though the EIS on the project could not address specific concerns about such development because there was at the time no specific plan by the Tribes, a "hypothetical analysis of impacts" was included.

If the Southern Utes were solely interested in mining the coal and having it marketed in the Southwest, they would need 625 acre-feet of water annually for a 9.1 million ton run-of-mine coal development operation which would be 35 years in operation.

Similarly, the Ute Mountain Utes would only need 65 acre-feet of water annually for an 891,000 ton mining operation that would operate for 35 years.

In both cases an expanded rail spur would be necessary in order to move the coal.

If the Southern Utes were interested in developing a coal-fired steam generation operation (four 435 megawatt units with a 35 year plan life), that operation would need 1,000 acres of land and 26,000 acre-feet of water annually (that is to say, all of the M&I water they would receive from the Animas La Plata Indian Water Rights Agreement). The construction time would be 4 years per unit for a total of 11 years commencing the first year of water delivery from the project. The operation would need 5.1 million tons of coal per year.

The Ute Mountain Utes proposal calls for one 275 megawatt unit, requiring 250-500 acres of land with 4,100 acre-feet of water per year (one-half of the Ute Mountain Ute M&I yield from the Agreement). The unit would use 810,000 tons of coal a year.

A Coal Gasification scenario involving a 250 million cubic-foot-per-day Lurgi coal gas plant was also examined. Only coal reserves removable by strip mining operations on the Southern Ute Reservation are sufficient for such a plant. This would take 2 and one-half years to construct plus 2 years to construct the mine and require 8.8 million

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tons of coal per year. 7,800 to 10,000 acre-feet of water per year would be required.

With respect to the availability of coal, according to project documents there are three coal bearing geologic formations underlying the reservations. From oldest to youngest, they are the Dakota Sandstone, the Menefee Formation, and the Fruitland Formation. A portion of the coal located in the Fruitland Formation is considered to be economically recoverable at the present time. The Fruitland Formation is estimated to contain a total of 2,320 million tons of coal within 500 feet of the surface and 439 million tons within 250 feet of the surface. Of the 439 million tons, 400 million tons are located on the Southern Ute Reservation.

Aside from the environmental issues which might arise from stripmining and air pollution from the plants, any of the proposals can be expected to increase local population dramatically-- 1,000 to 7,000 people depending on the scenario pursued.

It is significant that no coal development exists in the area at present. Furthermore, Pittsburg-Midway Co. has the rights to approximately 28,000 acre-feet of water which would be stored by the project; if the project is to include coal energy development it is more likely to be undertaken by this company rather than the Indians.

The Definite Plan Report on the project indicates that the Four Corners Powerplant southwest of Farmington and the San Juan Generating Plant northwest of Fruitland burn coal mined in the vicinity of the project area to produce electric power for transmission to several neighboring states. Three additional plants are scheduled for construction adjacent to the San Juan Plant which would serve as further competition for the potential Indian energy development.

JOBS AND EMPLOYMENT FROM THE PROJECT

Seasonal Employment

Tourism contributes significantly to the local economy in Colorado and to a lesser extent in New Mexico. In the Durango area of La Plata County about one-third of all jobs are in tourism/recreation services and sales, while in the Farmington area of San Juan County about one-third of the jobs are in mineral production--gas, coal, and petroleum--and in related services and sales.

Employment in both counties is affected by the composition of the overall industrial sector and by their location in areas with large numbers of tourist attractions. Both obtain

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substantial revenues from motels, restaurants, cafes, and other travel-related enterprises.

The seasonal nature of the tourism industry in the Durango area significantly affects other local industries, with jobs and sales receipts declining substantially in winter. Moreover, this effect is considerably more pronounced in the Durango area than in Farmington. These basic differences produce other dissimilarities in the job market in the two areas.

As the mineral industry continues to grow in Farmington, the entire area expands because of increased job opportunities and economic needs. The Durango area economy is bolstered by the state college and the ski resort twenty-five miles outside the city limits. Seasonal tourism has a role with the ski resort, as winter is the main season for tourism. The school receives about 3,500 students every August through April and about 1,500 students in the summer months of May through early August.

Project documents state that the economic development of the area has been restricted by a number of factors, including shortage of usable water supply. Three major industries -- agriculture, tourism and lumber -- are essentially seasonal, creating unemployment problems during the winter months. Project documents indicate that winter is the Durango area's specific employment problem.

Agriculture provides income to approximately 9 percent of the labor force in La Plata County and about 3 percent in San Juan County. In the project area, about 1 out of 16 families receives direct income from farming. The other 15 families receive income from retail trade, tourism-recreation services, the state college and public services.

The main source of farm income is livestock, with crop production of lesser importance. The total value of crop and livestock production on land to receive project water was nearly $3,200,000 in 1978, as projected from Bureau of Reclamation farm budget studies.

The entire San Juan Basin, which includes the project area, is quite isolated. Any products marketed outside the basin must be trucked long distance to the market areas. Since there are no railroads in the area and freight rates on bulky products are generally prohibitive, most of the forage crops and part of the local grain are fed to livestock. The livestock are then shipped out, usually as feeders and are finished in other areas. The only crops shipped out of the area in significant amounts at the present time are wheat and beans.

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Mining and Minerals

The mining of gold, lead, and zinc was once a prosperous industry and was responsible for the first settlements in the San Juan Basin. This industry is now greatly curtailed because of unfavorable mineral prices. Some mines at Silverton, on the Animas River, are active. (These mines produce metal toxins which will be discussed further in the environmental section of the report.)

Significant coal reserves exist on the Ute Mountain Ute and Southern Ute Reservations in or near the project area. Under present economic conditions, coal recoverable by surface mining methods amounts to about 39 million tons with 250 feet of overburden on the Ute Mountain Ute Reservation and 400 million tons with 250 feet of overburden on the Southern Ute Reservation.

The economic importance of the mineral industry in the project area is demonstrated in San Juan County's contribution of 11 percent, or $283,764,000 of New Mexico's total mineral production value in 1976; La Plata county contributed slightly less than 2 percent, or $16,282,964, of Colorado's total mineral production value in that year.

Project Employment

The construction of the Animas La Plata project will take ten years. During that time it will employ 1,150 private and government employees at its peak (in the 8th year). This accounts for 664 direct jobs and 465 indirect jobs in the local economy. The population influx of workers and others would be 186 the first year, 3,728 at the peak of construction, with an average of 1,810.

Unemployment is one of the biggest problems facing the Southern Ute Tribe. In 1976, unemployment was 35.9%. The rate varies from year to year depending on government and tribal projects in the area.

For example, following the completion of a waterline project on the reservation in 1977, the unemployment rate increased to 64.2%. The Southern Ute Tribe, according to project documents, has an estimated labor force of 314; and with an unemployment rate of 35-65%, this represents 110 - 200 unemployed people annually. From this unemployed labor force, the Bureau estimated that 10% of the unskilled construction labor could be supplied.

This would represent 5 or 6 Indians in the initial construction years to 20-25 employees in the peak construction years.

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According to project documents, the Indians in the area would get 42 jobs during the peak of construction because of worker preferential treatment in accordance with the Indian Self-Determination and Education Assistance Act. This employment would drop the unemployment percentage on the reservations from 46% down to 40%.

According to 1978 unemployment rates, unemployment has generally been the most severe on the Indian Reservations, where about 62% of the Ute Mountain Utes and 73% of the Southern Utes were unemployed.

It is estimated that from a $400,000 annual payroll ('79 estimates) for operation and maintenance of the project, $77,000 would be paid to Indian employees. This is based on the assumption that 10% of the employees for both districts would be Indians, and approximately three Indians would be required to operate facilities on the reservation.

The construction schedule for the project is on the following page.

Because of the dividing the project into a Phase 1 and Phase 2 the original construction schedule for the project is unknown. Furthermore, the impact that this phasing will have on the operations and maintenance personnel plans for the various districts involved is also unclear. It is worth noting however, what had been contemplated (see next page).

Future Employment

According to the EIS, future employment in the project area depends in part on the Nation's energy supply. However, the document does indicate the following. With respect to jobs in agriculture:

181 jobs in both agriculture and related business when the project is complete. It should be noted that it will take 5 to 10 years for the full service lands receiving irrigation to reach full economic potential once the water is delivered.

80 new jobs on farm for the Ute Mountain Utes

10 (seasonal) jobs at the Southern Ute Reservation

According to project documents, the assessed valuation of La Plata County would be $153 million in the final year of project construction with the project. Interestingly, the

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Table 7
Total construction costs and
award date for Phase 1 features

Feature	Phase 1 ($1,000)	Construction award date	Phase 2 ($1,000)	Total cost ($1,000)
Ridges Basin Reservoir	100,000	Spring 1988	0	100,000
Southern Ute Reservoir	0		43,000	43,000
La Plata Diversion Dam	0		1,700	1,700
Southern Ute Diversion Dam	2,400	Winter 1996	0	2,400
Durango Pumping Plant	35,000	Winter 1992	0	35,000
Ridges Basin Pumping Plant	38,000	Winter 1994	3,900	41,900
Red Mesa Pumping Plant	5,100	Fall 1995	0	5,100
Alkali Gulch Pumping Plant	0		2,700	2,700
Ute Mountain Pumping Plant	0		3,600	3,600
Southern Ute Pumping Plant	0		2,900	2,900
Third Terrace Pumping Plant	0		2,500	2,500
Ridges Basin Inlet Conduit	23,000	Winter 1992	0	23,000
Dry Side Canal	33,000	Winter 1993	3,000	36,000
Long Hollow Tunnel	40,000	Fall 1990	0	40,000
Southern Ute Inlet Canal	6,000	Summer 1994	3,400	9,400
New Mexico Irrigation Canal	0		2,400	2,400
Durango M&I Pipeline	1,900	Winter 1996	0	1,900
Shenandoah M&I Pipeline	2,400	Winter 1995	0	2,400
Laterals	56,900	Fall 1992	47,020	103,920
Drains	5,100		2,700	7,800
Permanent operating facilities	3,200	Fall 1994	1,600	4,800
Operation & maintenance housing	0		170	170
Capitalized equipment	1,500		1,700	2,200
Cultural resources	12,000		5,500	17,500
Future year capacity	1,600		0	1,600
Recreation facilities				
Ridges Basin Reservoir	6,600	Fall 1995	0	6,600
Southern Ute Reservoir	0		3,200	3,200
Wildlife mitigation	5,200		120	5,320
Transmission facilities	900	Spring 1994	2,390	3,290
Total	379,300		133,000	512,300

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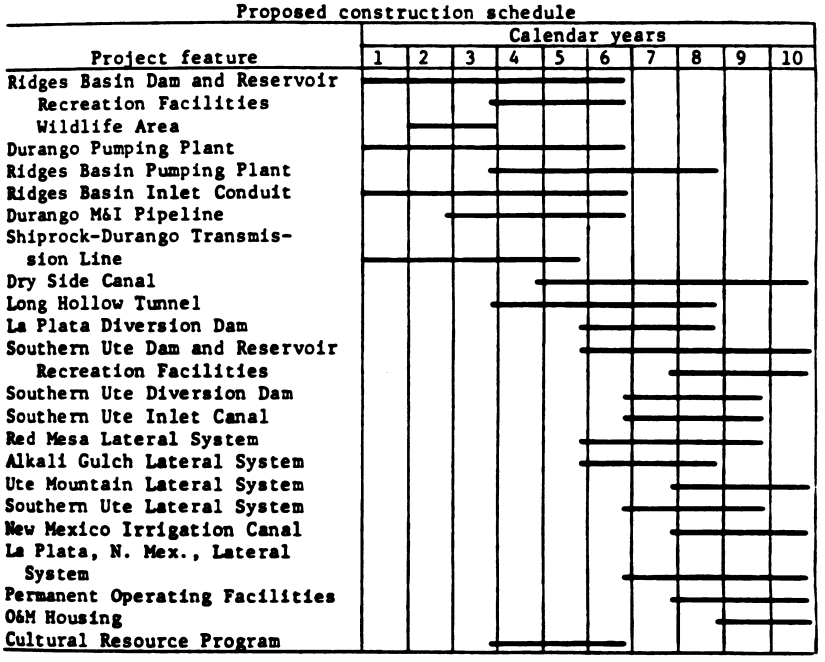
Figure A-12
Proposed construction schedule



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assessed valuation of the county would be $148 million without the project, a 3.4% difference, increasing in the year 2020 to 5%. San Juan County would remain the same with or without the project.

The average annual permanent employment opportunities (jobs) in agriculture would be:

300 Direct
80 Indirect
---
380 Total

21 Operation and Maintenance

401 Total

According to project documents, the benefits from employment of Indians from the Ute Mountain Ute and Southern Ute Indian Tribes will be realized from farm labor. The tribes have a labor force ('79) of 1,060 of which 645 are presently unemployed. Increased farm labor available to Indians will provide an equivalent of 26 jobs per year.

The magnitude of benefits associated with hired labor on Indian full service lands is estimated at $129,700 annually resulting from 39,921 hours of hired labor at $3.25 per hour. The following are data on employment and unemployment for the Southern Ute and Ute Mountain Ute Indian Tribes for 1978.

	Southern Ute	Ute Mountain Ute	Total
Residents	848	1,425	2,273
Labor Force	468	591	1,060
Employed	192	222	414
Unemployed	277	368	645
Male	101	136	237
Female	176	232	408

Thus, it appears that energy development is really the only key for job development in the area. According to the project documents, huge population increases from 1,000 to 7,000 in the work force would be associated with the various coal development scenarios.

PROJECT ECONOMICS

The separable cost-remaining benefit method has been used by the Bureau in allocating costs for the Project. Under this method, costs associated with a single purpose are assigned to that purpose, and joint costs are shared among all

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participants based on the amount of their justifiable expenditures. The justifiable expenditure is the present worth of the annual benefits for that participant or the costs of the most likely Federal single-purpose alternative project that would provide comparable services and benefits.

The costs for constructing the project are on the following page.

Costs for single purpose alternatives have been estimated for irrigation and municipal and industrial water. Construction costs, interest during construction, and operation, maintenance, and replacement costs were computed using the same price level, interest rates, estimating procedure, and when appropriate, the cost level as the multipurpose project.

The benefit/cost ratio for the project has changed over the history of the project. The following table indicates those changes:

	Direct Benefits	Total Benefits
1968	1.0/1	1.6/1
1979	1.27/1	1.39/1
1987	1.5/1	1.6/1

The Bureau did not include in its analysis the costs of the salinity effects resulting from depleting 154,800 a/f of stream flow by the project.

Before the project was divided into a Phase I and Phase II the following information gave a glimmer of what the project features were going to cost the city of Durango:

TOTAL REIMBURSABLE COSTS CITY OF DURANGO
Animas - La Plata PROJECT

		1981 Costs ($1000)
Separable features		
Durango Pumping Plant	cc	4,351
Ridges Basin Inlet Conduit	i	1,330
	annual omr	90
Durango M&I Pipeline		1,820
		162

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Project repayment
($1,000)

	Construction cost	Interest during construction	Annual OM&R
Irrigation			
Phase 1			
Prepayments	634	0	0
Ad valorem tax	9,433	0	0
Local cost sharing	37,625	0	0
Subtotal	244,955	57,421	1,703.60
Phase 2	119,649	12,349	423.62
Subtotal irrigation	361,604	37,421	2,289.22
Municipal and Industrial Water (all in Phase 1)			
Animas-La Plata Water Conservancy District			
Up front	7,300	0	0
Repayment contract	2,978	3,749	114.33
State of Colorado	5,600	2,042	0
San Juan Water Commission	12,777	4,913	60.93
Southern Ute Tribe	57,831	21,282	494.39
Ute Mountain Ute Tribe	8,947	3,559	106.28
Navajo Indian Tribe	3,153	1,189	13.93
Subtotal	98,586	36,623	790.96
Non-reimbursable Fish and Wildlife and Cultural Resources			
Phase 1	30,850	5,456	286.27
Phase 2	13,351	1,978	204.38
Subtotal	44,211	7,434	490.65
Colorado Water Resource and Power Development Authority			
Phase 1	4,900	0	0
Total Phase 1	379,300	79,510	2,789.83
Total Phase 2	133,000	14,327	837.70
Total Project	512,300	**,***	*********

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Total separable costs	6,171
	1,492
	93
Joint Features	
Durango Pumping Plant,	
Ridges Basin	5,514
Conduit, Ridges Basin	1,134
Dam & Reservoir	7
Shiprock-Durango Turnline	
Permanent Operating	
Facilities, Salvage, ect.	
Total allocated Costs	11,685
	2,626
	97
Reimbursable costs	11,685
	2,626
Total capital costs	14,311
Annual equivalent 09460)	1,354
TOTAL ANNUAL COSTS	1,451

The cost to the city remains at the above figures regardless of the acre-feet of project waters actually received and utilized each year. The USBR has reduced these costs to annual costs allocated to Durango over the repayment period. These annual costs, adjusted with the current Federal interest rate, are as follows:

Capital Costs		
1990 - 1999	Annual Cost	$ 738,000
2000 - 2039	Annual Cost	1,354,000
2040 - 2049	Annual Cost	616,000
OM&R Costs		
1990 - 2049	Annual Cost	97,000

*Assumes first 3,900 ac-ft of Project waters available and purchased in 1990.

Based on these figures and the quantity of water available to Durango from the Project, the annual cost of Project water would be:

Period	Annual Cost	Available Water	Annual Cost
	$	ac-ft	$/ac-ft

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Project Costs

Table 6 arrays the costs associated with the facilities just described. Some of the costs were calculated in plan formulation in July 1977 and were indexed up to January 1978 costs. Also shown on the table are the detailed costs used in the Definite Plan Report. The plan formulation estimate is $280,000,000 plus $20,000,000 interest during construction for a total investment of $300,000,000. The actual detailed cost estimate was $335,600,000 with $22,300,000 interest during construction for a total investment of $357,900,000. The plan formulation costs were within 20 percent of the detailed estimate, indicating the reliability of reconnaissance cost estimating procedures.

Table 6
Plan of development
Costs associated with facilities

Facility	January 1978 construction costs: Plan formulation cost	Definite Plan Report cost
Ridges Basin Reservoir	$52,000,000	$51,000,000
Southern Ute Reservoir	24,000,000	24,000,000
Durango Pump Plant Complex 1/	25,500,000	39,500,000
Ridges Basin Pump Plant Complex	23,500,000	30,000,000
Sprinkler pump plants	6,500,000	12,300,000
Dry Side Canal	50,000,000	54,000,000
New Mexico Irrigation Canal	4,200,000	2,000,000
Southern Ute Inlet Canal	3,200,000	5,300,000
Southern Ute Diversion Dam	1,100,000	2,000,000
La Plata Diversion Dam	800,000	1,300,000
Pipe laterals	72,000,000	80,990,000
Drains	3,600,000	5,140,000
Lost Canyon transmission line	5,400,000	8,640,000
Durango Pipeline	6,000,000	1,250,000
Recreation facilities	1,400,000	6,000,000
Permanent operation facilities	800,000	4,200,000
Operation and maintenance housing	0	130,000
Fish and wildlife	0	4,600,000
Archaeology	0	3,000,000
Future year capacity	0	1,000,000
Total construction cost	280,000,000	336,350,000
Interest during construction	20,000,000	21,893,000
Total investment	300,000,000	358,243,000

1/ Includes Ridges Basin inlet conveyance system.

Table 7 shows the annual operation, maintenance, and replacement costs used in plan formulation studies.

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Summary of project costs

	Construction cost	Interest during construction	Annual operation, maintenance, and replacement costs
Section 5 facilities			
Ridges Basin Dam and Reservoir	51,000	3,481	25
Durango Pumping Plant	24,000	2,639	903
Ridges Basin Pumping Plant	30,000	1,521	391
Ridges Basin Inlet Conduit	15,500	1,708	0
Durango municipal and industrial pipeline	1,250	39	0
Shiprock-Durango transmission line	6,600	657	70
Southern Ute Dam and Reservoir	24,000	1,351	23
Southern Ute Diversion Dam	2,000	172	28
Southern Ute Inlet Canal	5,300	354	0
La Plata Diversion Dam	1,300	113	19
Dry Side Canal	29,000	1,951	73
Long Hollow Tunnel	25,000	2,800	0
Red Mesa Pumping Plant	3,800	139	52
Red Mesa laterals	19,000	964	39
Red Mesa Pumping Plant transmission line	600	22	7
Alkali Gulch Pumping Plant	2,000	41	31
Alkali Gulch laterals	7,200	223	15
Alkali Gulch Pumping Plant transmission line	390	9	3
Dry Side laterals	14,000	714	16
Ute Mountain Pumping Plant	2,600	142	36
Ute Mountain laterals	29,000	1,473	60
Ute Mountain Pumping Plant transmission line	390	21	3
Southern Ute Pumping Plant	2,100	46	19
Southern Ute laterals	790	17	8
Southern Ute Pumping Plant transmission line	440	10	6
Third Terrace Pumping Plant	1,800	40	17
New Mexico Irrigation Canal	2,000	42	38
La Plata-New Mexico laterals	11,000	370	26
Third Terrace Pumping Plant transmission line	220	5	2
Red Mesa drains	990	5	0
Alkali Gulch drains	410	2	0
Dry Side drains	1,550	7	0
Ute Mountain drains	690	3	0
La Plata-New Mexico drains	1,500	7	0
Permanent operating facilities	2,800	189	0
Permanent operating facilities and equipment	1,400	29	0
Operation and maintenance housing	130	3	0
Service facilities, depreciation, and salvage	0	317	0
Archaeological salvage	3,000	230	0
Future year capacity 1/	1,000	37	0
Subtotal	325,750	21,893	1,910
Section 8 facilities			
Ridges Basin recreation facilities	3,900	239	128
Southern Ute recreation facilities	2,100	70	99
Fish and wildlife mitigation facilities	4,600	81	0
Subtotal	10,600	390	227
Total (all facilities)	336,350	22,283	2,137

1/ Irrigation O&M assistance during the early years before all of the irrigation blocks are in service.

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Project water charges would be determined for individuals as follows.

1. An account charge of $50 per account.

2. A project pressure charge per acre, excluding operation, maintenance, and replacement costs of $4.20 in New Mexico and $1.80 in Colorado.

3. A project water charge per acre-foot, excluding operation, maintenance, and replacement costs of $2.10 for full service lands in Colorado; $2.90 for supplemental service lands in Colorado; $4.60 for full service lands in New Mexico; and $6.20 for supplemental service lands in New Mexico. Table 72 shows how these values are derived.

4. A prorated share of operation, maintenance, and replacement costs allocated to irrigation each year. Since operation, maintenance, and replacement will vary from year to year, a dollar amount will not be shown in the petition. The petition should indicate how operation, maintenance, and replacement charges will be determined for individual water users. It is recommended that operation, maintenance, and replacement charges be assessed to project pressure and project water.

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1990-1999	835,000	3,900	214.10
2000-2039	1,451,000	8,200	176.95
2040-2049	713,000	8,200	86.95

However, the USBR has estimated that the Durango area will only use 2,200 ac-ft of Project waters in 1990; 3,900 ac-ft in 2000; 5,900 ac-ft in 2010; and 8,200 ac-ft in 2020. Using these figures, the cost per ac-ft annually would be:

Year	Estimated Annual Cost	Water Used	Annual Cost
	$	ac-ft	$ / ac-ft
1990	835,000	2,200	379.55
2000	1,451,000	3,900	372.05
2010	1,451,000	5,900	261.19
2020	1,451,000	8,200	176.95

* Figures taken from Black&Veatch

Given the changes that have occured by dividing the project into Phase I and II and the negotiations that are still going on it is difficult to break out the costs now as opposed to 1981. The following table from the Bureau does give an idea of the project repayment under the current plan (see next page).

In addition, the Bureau has provided the following preliminary information on the Phase 1 annual water charges: (see next page).

COST SHARING AGREEMENT

In 1985, the United States Congress mandated that the participants in the Animas La Plata Project develop a reasonable arrangement for cost sharing that will be satisfactory to the Secretary of the Interior. The Secretary agreed to the cost sharing plan, which contains a combination of non-federal funding and phased construction, with the second phase to be constructed through non-federal financing.

The non-federal financing of project construction is being provided by an escrow account created by the Colorado Water Resources and Power Development Authority, a series of annual payments and a lump-sum payment by the Animas La Plata Water Conservancy District, a lump-sum payment by Montezuma County, annual payments from a development fund for New Mexico municipal and industrial water facilities

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Table 11
Phase 1 annual water charges

	Annual repayment charge ($1,000)	Annual O&M ($1,000)	Total annual charges ($1,000)	Water supply (acre-feet)	Annual charge per acre-foot ($)
Irrigation					
Colorado					
Non-Indian					
Full service	199	736	935	41,200	22.7
Supplemental service	67	246	313	13,800	22.7
Southern Ute Tribe					
Full service	19	43	62	2,700	23.0
Ute Mountain Ute Tribe					
Full service	*				
New Mexico					
Non-Indian					
Full service	31	130	161	7,500	21.4
Supplemental service	9	40	49	2,300	21.4
Ute Mountain Ute Tribe					
Full service	*			900	
Municipal and Industrial					
Colorado					
Durango	732	27	759	2,500	304.0
Rural	465	35	500	2,000	250.0
South Durango	706	22	728	2,000	364.0
Animas-La Plata Water Conservancy District	509	29	538	2,700	199.0
Southern Ute Tribe	8,814	494	9,293	26,500	351.0
Ute Mountain Ute Tribe	1,392	106	1,498	6,000	250.0
New Mexico					
Farmington	1,252	39	1,291	19,700	66.0
Aztec	369	11	380	5,800	66.0
Bloomfield	337	10	347	5,300	66.0
Navajo Indian Tribe	483	15	498	7,600	66.0

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Summary of average annual water charges

	Cost of construction and reimbursable interest during construction	Water supply (acre-feet)	Annual operation, maintenance, and replacement costs
Irrigation1/			
La Plata Water Conservancy District, Colorado			
Year 1		12,580	137,100
Year 2	7,100	61,700	722,400
Year 3	7,100	72,200	834,000
Year 4	9,300	72,200	834,000
Year 5	81,200	72,200	834,000
Year 6	120,800	72,200	834,000
Year 7	224,200	72,200	834,000
Years 7-51	258,100	72,200	834,000
Years 52-53	251,000	72,200	834,000
Year 54	248,800	72,200	834,000
Year 55	176,900	72,200	834,000
Year 56	137,300	72,200	834,000
Year 57	33,900	72,200	834,000
La Plata Conservancy District, New Mexico			
Years 3-5		16,000	159,000
Years 6-7	43,400	16,000	159,000
Years 8-55	118,400	16,000	159,000
Years 56-57	75,000	16,000	159,000
Municipal and industrial water users2/			
Durango			
Years 1-10 (block 1)	364,400	4,100	67,000
Years 11-50 (blocks 1 and 2)	639,100	8,200	67,000
Years 51-60 (block 2)	274,700	8,200	67,000
La Plata rural area			
Years 1-10 (block 1)	69,300	600	12,000
Years 11-50 (blocks 1 and 2)	115,700	1,000	12,000
Years 51-60 (block 2)	46,400	1,000	12,000
Subtotal La Plata Water Conservancy District			
Years 1-10 (block 1)	433,700	4,700	79,000
Years 11-50 (blocks 1 and 2)	754,800	9,200	79,000
Years 51-60 (block 2)	321,100	9,200	79,000
Farmington			
Years 1-10 (block 1)	263,800	9,800	46,000
Years 11-50 (blocks 1 and 2)	529,000	19,700	46,000
Years 51-6- (block 2)	265,200	19,700	46,000
Aztec			
Years 1-10 (block 1)	116,600	4,350	13,000
Years 11-50 (blocks 1 and 2)	155,780	5,800	13,000
Years 51-60 (block 2)	39,100	5,800	13,000
Bloomfield			
Years 1-10 (block 1)	106,700	4,000	12,000
Years 11-50 (blocks 1 and 2)	142,400	5,300	12,000
Years 51-60 (block 2)	35,700	5,300	12,000
Southern Ute Indians			
Years 1-10			363,000
Years 11-50	3,947,100	26,500	365,000
Years 51-60	3,947,100	26,500	365,000
Ute Mountain Ute Indians			
Years 1-10			78,000
Years 11-50	691,800	6,000	78,000
Years 51-60	691,800	6,000	78,000
Navajo Tribal Utility Authority			
Years 1-10 (block 1)	143,000	5,300	18,000
Years 11-50 (blocks 1 and 2)	204,400	7,600	18,000
Years 51-60 (block 2)	61,400	7,600	18,000

1/ Does not include ad valorem tax revenues.
2/ Last payment on each municipal and industrial water block may vary slightly.

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Payout schedule
Municipal and industrial water
Southern Ute and Ute Mountain Ute Indians1/
(Interest rate--4.595 percent)
(Unit--$1,000)

Year of study	Fiscal year	Southern Ute Indian Tribe						Ute Mountain Ute Indian Tribe						Year of study	Fiscal year
		Total payment	Payment to interest	Payment to principal	Unpaid balance	Allowable unpaid balance	Plant in service	Total payment	Payment to interest	Payment to principal	Unpaid balance	Allowable unpaid balance	Plant in service		
0	1989	2,161.0	0	2,161.0	57,596.0	57,577.0	57,577.0	2,516.0	0	2,516.0	10,059.0	10,041.0	10,041.0	0	1989
1	1990	0	0	0				0	0	0				1	1990
2	1991													2	1991
3	1992													3	1992
4	1993													4	1993
5	1994													5	1994
6	1995													6	1995
7	1996													7	1996
8	1997													8	1997
9	1998													9	1998
10	1999	0	0	0	57,596.0			0	0	0	10,059.0			10	1999
11	2000	3,967.1	3,785.3	181.8	57,414.2			641.8	641.6	28.4	10,030.6			11	2000
12	2001		3,776.6	172.5	57,241.7				641.5	30.1	10,000.1			12	2001
13	2002		3,765.2	183.9	57,057.8				639.5	32.1	9,968.0			13	2002
14	2003		3,751.1	198.0	56,681.8				637.6	34.4	9,933.6			14	2003
15	2004		3,738.2	208.9	56,672.9				635.1	36.7	9,896.9			15	2004
16	2005		3,726.4	222.7	56,250.2				632.7	39.1	9,857.8			16	2005
17	2006		3,709.7	237.4	56,012.8				630.1	41.7	9,816.1			17	2006
18	2007		3,696.0	253.1	55,759.7				627.4	44.4	9,771.7			18	2007
19	2008		3,677.6	269.7	55,490.0				624.4	47.4	9,724.3			19	2008
20	2009		3,659.6	287.5	55,202.5				621.3	50.5	9,673.8			20	2009
21	2010		3,640.4	306.5	54,896.0				618.0	53.8	9,620.0			21	2010
22	2011		3,620.4	326.7	54,569.3				614.4	57.4	9,562.6			22	2011
23	2012		3,598.8	348.3	54,221.0				610.7	61.1	9,501.5			23	2012
24	2013		3,575.9	371.2	53,849.8				606.6	65.2	9,436.3			24	2013
25	2014		3,551.4	395.7	53,454.1				602.3	69.5	9,366.8			25	2014
26	2015		3,525.3	421.8	53,032.3				597.7	74.1	9,292.7			26	2015
27	2016		3,497.5	449.6	52,582.7				592.9	78.9	9,213.8			27	2016
28	2017		3,467.8	479.3	52,103.4				587.7	84.1	9,129.7			28	2017
29	2018		3,436.2	510.9	51,592.5				582.1	89.7	9,040.0			29	2018
30	2019		3,402.5	544.6	51,047.9				576.2	95.6	8,944.4			30	2019
31	2020		3,366.6	580.5	50,467.4				569.9	101.9	8,842.5			31	2020
32	2021		3,328.3	618.8	49,848.6				563.2	108.6	8,733.9			32	2021
33	2022		3,287.5	659.6	49,189.0				556.0	115.8	8,618.1			33	2022
34	2023		3,244.0	703.1	48,485.9				548.4	123.4	8,494.7			34	2023
35	2024		3,197.6	749.5	47,736.4				540.2	131.6	8,363.1			35	2024
36	2025		3,148.2	798.9	46,937.5				531.5	140.3	8,222.8			36	2025
37	2026		3,095.5	851.6	46,085.9				522.3	149.5	8,073.3			37	2026
38	2027		3,039.4	907.7	45,178.2				512.6	159.4	7,913.9			38	2027
39	2028		2,979.5	967.6	44,210.6				502.1	169.9	7,744.0			39	2028
40	2029		2,915.7	1,031.4	43,179.2				490.9	181.1	7,562.9			40	2029
41	2030		2,847.7	1,099.4	42,079.8				478.8	193.2	7,369.7			41	2030
42	2031		2,775.2	1,171.9	40,907.9				466.0	205.8	7,164.1			42	2031
43	2032		2,697.9	1,249.2	39,658.7				472.5	219.3	6,944.8			43	2032
44	2033		2,615.5	1,331.6	38,327.1				458.0	233.8	6,711.0			44	2033
45	2034		2,527.7	1,419.4	36,907.7				442.6	249.2	6,461.8			45	2034
46	2035		2,434.1	1,513.0	35,394.7				426.2	265.6	6,196.2			46	2035
47	2036		2,334.3	1,612.8	33,781.9				408.6	283.2	5,913.0			47	2036
48	2037		2,227.9	1,719.2	32,062.7				390.0	301.8	5,611.2			48	2037
49	2038		2,114.5	1,832.6	30,230.1				370.1	321.7	5,289.5			49	2038
50	2039		1,993.7	1,953.4	28,276.7				348.8	343.0	4,946.5			50	2039
51	2040		1,864.1	2,083.0	26,193.6				326.2	365.6	4,580.9			51	2040
52	2041		1,727.5	2,219.6	23,974.0				302.1	389.7	4,191.2			52	2041
53	2042		1,581.1	2,366.0	21,608.0				276.4	415.6	3,775.8			53	2042
54	2043		1,425.1	2,522.0	19,086.0				249.0	442.8	3,333.0			54	2043
55	2044		1,258.8	2,688.3	16,398.5				219.8	472.0	2,861.0			55	2044
56	2045		1,081.5	2,865.6	13,532.9				188.5	503.1	2,357.9			56	2045
57	2046		892.5	3,054.6	10,478.3				155.5	536.1	1,821.4			57	2046
58	2047		691.0	3,256.1	7,222.2				120.1	571.7	1,249.9			58	2047
59	2048	3,967.1	476.1	3,470.8	3,751.4	57,577.0		691.8	82.6	609.4	640.5	10,041.0		59	2048
60	2049	3,990.8	247.4	3,751.4	0	0	57,577.0	682.7	42.2	640.5	0	0	10,041.0	60	2049
Total		107,307.7	166,010.7	57,577.0				16,414.9	26,571.9	10,041.0					Total

1/ Includes reimbursable interest during construction: Southern Utes, $8,117,000; Ute Mountain Utes, $1,514,000.
2/ Credited from Colorado River Development Fund and contributed funds.

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Payout schedule[1/]
Municipal and Industrial water
Navajo Tribal Utility Authority
(6.59% percent)
(Unit--$1,000)

Year of study	Fiscal year	Block 1--5,500 acre-feet Annual payment[2/]--$141,000 Payment to interest	Payment to principal	Unpaid balance	Plant in service	Block 2--2,100 acre-feet Annual payment[2/]--$41,400 Payment to interest	Payment to principal	Unpaid balance	Plant in service	Totals Total payment	Payment to interest	Payment to principal	Unpaid balance	Allowable unpaid balance	Plant in service	Year of study	Fiscal year
					2,881.0				891.0								
0	1989		3.0	2,880.0						3.0	0	3.0	2,880.0			0	1989
1	1990	197.2	5.8	2,874.2		0	0	0		143.0	197.2	5.8	2,874.2			1	1990
2	1991	196.8	6.2	2,868.0							196.8	6.2	2,868.0			2	1991
3	1992	196.4	6.6	2,861.4							196.4	6.6	2,861.4			3	1992
4	1993	195.9	7.1	2,854.3							195.9	7.1	2,854.3			4	1993
5	1994	195.5	7.5	2,846.8							195.5	7.5	2,846.8			5	1994
6	1995	195.0	8.0	2,838.8							195.0	8.0	2,838.8			6	1995
7	1996	194.5	8.5	2,830.3							194.5	8.5	2,830.3			7	1996
8	1997	193.9	9.1	2,821.2							193.9	9.1	2,821.2			8	1997
9	1998	193.3	9.7	2,811.5		0	0	0			193.3	9.7	2,811.5			9	1998
10	1999	132.7	10.3	2,801.2					891.0	143.0	132.7	10.3	2,806.2			10	1999
11	2000	192.0	11.0	2,790.2		48.0	2.5	888.5		206.4	190.9	11.5	2,800.7			11	2000
12	2001	191.3	11.7	2,778.5		58.7	2.7	885.8			190.0	14.4	2,866.3			12	2001
13	2002	190.5	12.5	2,766.0		58.4	2.8	883.0			189.1	15.1	2,851.0			13	2002
14	2003	189.7	13.3	2,752.7		58.4	3.0	880.2			188.1	16.3	2,836.7			14	2003
15	2004	188.8	14.2	2,738.5		58.2	3.2	878.8			187.0	17.4	2,817.1			15	2004
16	2005	187.8	15.2	2,723.3		58.0	3.4	875.4			185.8	18.6	2,798.7			16	2005
17	2006	186.8	16.2	2,707.1		57.7	3.7	871.7			184.5	19.9	2,778.8			17	2006
18	2007	185.8	17.2	2,689.9		57.5	3.9	867.8			183.3	21.1	2,757.7			18	2007
19	2008	184.6	18.4	2,671.5		57.2	4.2	863.6			181.8	22.6	2,735.1			19	2008
20	2009	123.4	19.6	2,651.9		57.0	4.4	859.2			180.4	24.0	2,711.1			20	2009
21	2010	122.1	20.9	2,631.0		56.7	4.7	854.5			178.8	25.6	2,685.5			21	2010
22	2011	120.8	22.2	2,608.8		56.4	5.0	849.5			177.2	27.2	2,658.3			22	2011
23	2012	119.3	23.7	2,585.1		56.0	5.4	844.1			175.3	29.1	2,629.2			23	2012
24	2013	117.7	25.3	2,559.8		55.7	5.7	838.4			173.4	31.0	2,598.2			24	2013
25	2014	116.1	26.9	2,532.9		55.3	6.1	832.3			171.4	33.0	2,565.2			25	2014
26	2015	114.3	28.7	2,504.2		54.9	6.5	825.8			169.2	35.2	2,530.0			26	2015
27	2016	112.4	30.6	2,473.6		54.5	6.9	818.9			166.9	37.5	2,492.5			27	2016
28	2017	110.4	32.6	2,441.0		54.0	7.4	811.5			164.4	40.0	2,452.5			28	2017
29	2018	108.2	34.8	2,406.2		53.5	7.9	803.6			161.7	42.7	2,409.8			29	2018
30	2019	105.9	37.1	2,369.1		53.0	8.4	795.2			158.9	45.5	2,364.3			30	2019
31	2020	103.5	39.5	2,329.6		52.4	9.0	786.2			155.9	48.5	2,315.8			31	2020
32	2021	100.9	42.1	2,287.5		51.8	9.6	776.6			152.7	51.7	2,264.1			32	2021
33	2022	98.1	44.9	2,242.6		51.2	10.2	766.4			149.3	55.1	2,209.0			33	2022
34	2023	95.1	47.9	2,194.7		50.5	10.9	755.5			145.6	58.8	2,150.2			34	2023
35	2024	92.0	51.0	2,143.7		49.8	11.6	743.9			141.8	62.6	2,087.6			35	2024
36	2025	88.6	54.4	2,089.3		49.1	12.3	731.6			137.7	66.7	2,020.9			36	2025
37	2026	85.0	58.0	2,031.3		48.2	13.2	718.4			133.2	71.2	1,949.7			37	2026
38	2027	81.2	61.8	1,969.5		47.4	14.0	704.4			128.6	75.8	1,873.9			38	2027
39	2028	77.1	65.9	1,903.6		46.5	14.9	689.5			123.6	80.8	1,793.1			39	2028
40	2029	72.8	70.2	1,833.4		45.5	15.9	673.6			118.3	86.1	1,707.0			40	2029
41	2030	68.2	74.8	958.6		44.4	17.0	656.6			112.6	91.8	1,615.2			41	2030
42	2031	63.2	79.8	878.8		43.3	18.1	638.5			106.5	97.9	1,517.3			42	2031
43	2032	58.0	83.0	795.8		42.1	19.3	619.2			100.1	104.3	1,413.0			43	2032
44	2033	52.6	88.4	707.2		40.8	20.6	598.6			93.2	111.2	1,301.8			44	2033
45	2034	46.6	94.4	612.8		39.5	21.9	576.7			86.0	118.5	1,183.1			45	2034
46	2035	40.8	100.0	512.8		38.0	23.4	553.3			78.8	126.6	1,056.9			46	2035
47	2036	33.2	108.0	404.8		36.5	24.9	528.4			69.7	134.7	922.2			47	2036
48	2037	26.0	117.0	287.8		34.8	26.6	501.8			60.8	143.6	778.6			48	2037
49	2038	18.3	126.7	161.1		33.1	28.3	473.5		206.4	51.4	153.0	625.6	2,976.0		49	2038
50	2039	10.0	138.1	0		31.2	30.2	443.3		223.5	41.2	182.3	443.3	891.0		50	2039
51	2040	0	0			29.2	32.2	411.1		61.4	29.2	32.2	411.1			51	2040
52	2041					27.1	34.3	376.8			27.1	34.3	376.8			52	2041
53	2042					24.8	36.6	340.2			24.8	36.6	340.2			53	2042
54	2043					22.4	39.0	301.2			22.4	39.0	301.2			54	2043
55	2044					19.9	41.5	259.7			19.9	41.5	259.7			55	2044
56	2045					17.1	44.3	215.4			17.1	44.3	215.4			56	2045
57	2046					14.2	47.2	168.2			14.2	47.2	168.2			57	2046
58	2047					11.1	50.3	117.9			11.1	50.3	117.9			58	2047
59	2048					7.8	53.6	64.3			7.8	53.6	64.3	891.0		59	2048
60	2049	0	0	0		4.2	64.3	0		68.5	4.2	64.3	0	0	2,976.0	60	2049
Total		5,089.1	2,881.0		2,881.0	1,184.1	891.0		891.0	10,249.2	7,271.2	2,976.0					Total

1/ Includes $410,000 reimbursable interest during construction.
2/ Last payment may vary.

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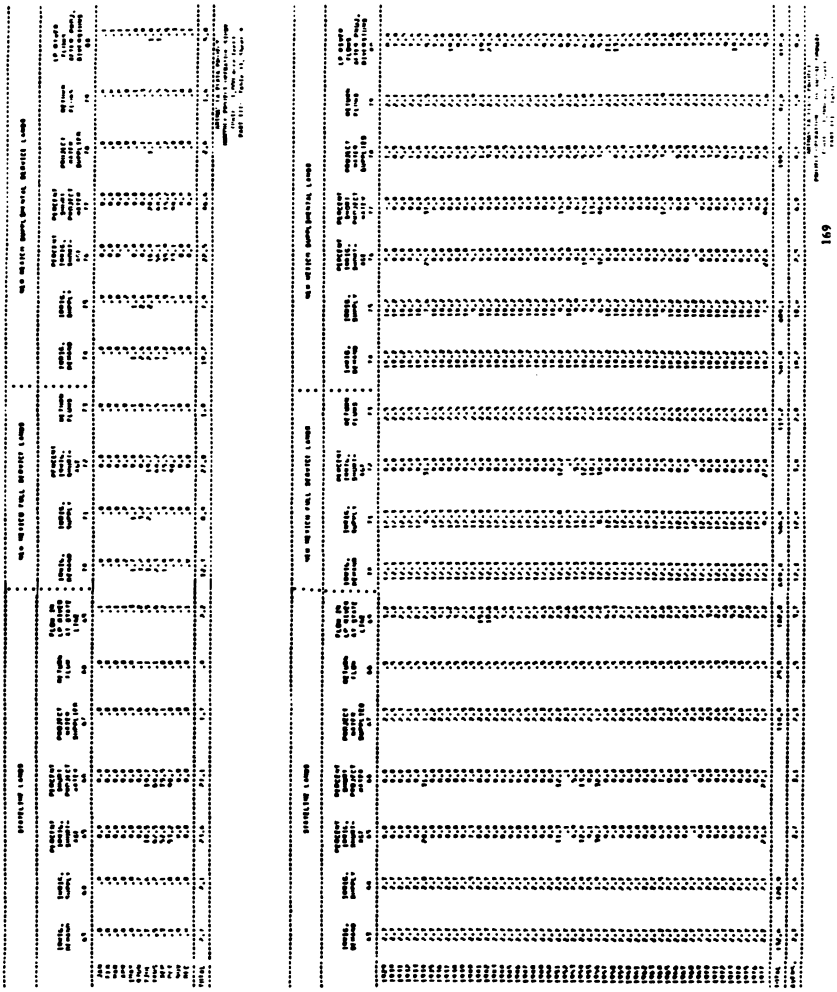

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Summary of project costs

	Construction cost	Interest during construction	Annual operation, maintenance, and replacement costs
Section 5 facilities			
Ridges Basin Dam and Reservoir	51,000	3,481	25
Durango Pumping Plant	24,000	2,639	903
Ridges Basin Pumping Plant	30,000	1,521	391
Ridges Basin Inlet Conduit	15,500	1,708	0
Durango municipal and industrial pipeline	1,250	39	0
Shiprock-Durango transmission line	6,600	657	70
Southern Ute Dam and Reservoir	24,000	1,351	23
Southern Ute Diversion Dam	2,000	172	28
Southern Ute Inlet Canal	5,300	354	0
La Plata Diversion Dam	1,300	113	19
Dry Side Canal	29,000	1,951	73
Long Hollow Tunnel	25,000	2,800	0
Red Mesa Pumping Plant	3,800	139	52
Red Mesa laterals	19,000	964	39
Red Mesa Pumping Plant transmission line	600	22	7
Alkali Gulch Pumping Plant	2,000	41	31
Alkali Gulch laterals	7,200	223	15
Alkali Gulch Pumping Plant transmission line	390	9	3
Dry Side laterals	14,000	714	16
Ute Mountain Pumping Plant	2,600	142	36
Ute Mountain laterals	29,000	1,473	60
Ute Mountain Pumping Plant transmission line	390	21	3
Southern Ute Pumping Plant	2,100	46	19
Southern Ute laterals	790	17	8
Southern Ute Pumping Plant transmission line	440	10	6
Third Terrace Pumping Plant	1,800	40	17
New Mexico Irrigation Canal	2,000	42	38
La Plata-New Mexico laterals	11,000	370	26
Third Terrace Pumping Plant transmission line	220	5	2
Red Mesa drains	990	5	0
Alkali Gulch drains	410	2	0
Dry Side drains	1,550	7	0
Ute Mountain drains	690	3	0
La Plata-New Mexico drains	1,500	7	0
Permanent operating facilities	2,800	189	0
Permanent operating facilities and equipment	1,400	29	0
Operation and maintenance housing	130	3	0
Service facilities, depreciation, and salvage	0	317	0
Archaeological salvage	3,000	230	0
Future year capacity 1/	1,000	37	0
Subtotal	325,750	21,893	1,910
Section 8 facilities			
Ridges Basin recreation facilities	3,900	239	128
Southern Ute recreation facilities	2,100	70	99
Fish and wildlife mitigation facilities	4,600	81	0
Subtotal	10,600	390	227
Total (all facilities)	336,350	22,283	2,137

1/ Irrigation O&M assistance during the early years before all of the irrigation blocks are in service.

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by the San Juan Water Commission, and appropriations by the Colorado General Assembly. Unspecified non-federal contributors will finance all of Phase 2 facilities. Federal financing of the project will only apply to feature constructed during Phase 1.

Project financing

Phase-1-Non-federal financing	
State of Colorado	
Colorado Water Resource and	
Power Development Authority	42,400,000
General Assembly appropriation	5,600,000
Animas La Plata Water Conservancy District	
Lump-sum payment	7,300,000
total of annual payments	75,000
Montezuma County	50,000
San Juan Water Commission	12,800,000
Subtotal	68,225,000
Phase 2--Non-federal financing	
Non-federal sources of finance	133,000,000
Total non-federal financing	202,225,000
Phase 1--Federal financing	311,075,000
Total project financing	512,300,000

In addition to the project financing outlined above, the United States Congress will have to appropriate $49.5 million in three annual payments for both tribes to create tribal development funds. The state of Colorado will have to deposit $5 million toward these funds and will spend approximately $6 million to construct the Towaoc pipeline and domestic distribution system on the Ute Mountain Ute Indian Reservation. These agreements where initially made in the contracts of the Dolores project.

Previous projects participating in the CRSP have the power repayments scheduled to be made as a lump sum in the last year of the 50 year repayment period. With the Animas La Plata Project, however, the cost-sharing negotiators agreed to pursue repayment from the power revenues over a 30-year period with equal payments to be made during each year.

To obtain repayment, the Conservancy District in Colorado has authority under Colorado law to levy and collect taxes on all real property within the district's boundaries. The maximum tax assessment in Colorado for a water conservancy district with assessed valuation of more than $50,000,000 (once organized) is 1/2 mill for each dollar of assessed

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valuation prior to the delivery of project water. After the delivery of project water, the maximum levy can be increased to 1.0 mill (this can go up to 3 mills with vote) . The taxes levied by the Conservancy District are collected through normal county taxing mechanisms and turned over to the district for its use.

The District and the Bureau anticipate an increase in ad valorem tax revenues as follows according to project documents: (see next page).

DAM SAFETY

All quadrants of the Ridges Basin Reservoir site have been mined. There are six mine extractions in the vicinity of the dam site. These could be stops, shafts, or lateral tunneling, as the coals are contained within many levels of the various formations. Miners still alive in the area could possible shed some light on what could be found underground. Incredibly, even with recent mining activity, the state mining engineer does not have these underground surveys. The little the engineer had has long been discarded. Just as incredible is the fact that these mine workings are not included in the USBR documents. USBR reports are unavailable.

One of the mines, Carbonero #67, began to burn in the 1920's. This underground fire burned for a period of years and could conceivably still be burning as there have been sightings of wintertime steam vents in the area. Carbonero, which opened in 1870 and operated for more than 50-years, caved in circa 1928, causing what was referred to locally as "moving mountain", a slide involving more than 40 acres of land on the north side of Carbon Mountain opposite the north or right abutment of the dam, which is on the south side of Carbon Mountain. The geometry of the materials of the slide demonstrate the instability of the mountain, in that the slide is uniform.

The coal seam there is thick--80 feet--and extensive. The existence of this mine, the extent of the coal seam, and the number of years of mining, however, were not mentioned in either the EIS or the DPR.

The extent of the drifts into Carbon Mountain is unknown. The phrase "...minor exploratory openings would be back-filled and sealed off" mentioned in the EIS refers to a mine on the north side of Ridges Creek which is the location for the right abutment of the dam. The mine opening here should be the opposite side of the Carbonero coal of the Fruitland Formation. A mine exploratory would indicate the presence of a very thick sequence of very soft coal

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Estimated ad valorem tax revenues
from the La Plata Water Conservancy District in Colorado
(Unit—$1,000)

Calendar year of assessed valuation	Year of study	Historical and projected assessed valuation		Year of collection and availability		Revenues at ¼ mill	
		Existing district	County	Calendar year	Year of repayment study	Annual	Total for period
1956		1,559					
1957		1,523					
1958		1,610					
1959		1,811					
1960		1,999					
1961		2,238					
1962		2,236					
1963		2,222					
1964		2,133					
1965		2,133					
1966		2,122					
1967		2,090					
1968		1,852					
1969		2,064					
1970		2,058					
1971		1,969	44,415				
1972		2,114	46,909				
1973		2,058	52,309				
1974		2,090	58,886				
1975		2,194	67,722				
1976		2,493	83,894				
1977		2,783	91,116				
1978		1/50,000					
1979		53,000					
1980		56,180					
1981		59,551					
1982		63,124					
1983		66,911					
1984		70,926					
1985		75,182					
1986		79,692					
1987	1	84,474		1988	1	42.2	42.2
1988	2	89,542		1989	2	44.8	44.8
1989	3	94,915		1990	3	47.5	47.5
1990	4	100,610		1991	4	50.3	50.3
1991-2000	5-14	125,625		1992-2001	5-14	62.8	628.0
2001-2010	15-24	185,956		2002-2011	15-24	93.0	930.0
2011-2020	25-34	275,260		2012-2021	25-34	137.6	1,376.0
2021-2030	35-44	407,452		2022-2031	35-44	203.7	2,037.0
2031-2043	45-57	642,501		2032-2044	45-57	321.3	4,176.9
Total (rounded)							9,333.0

1/ Value of expanded conservancy district estimated at $50,000,000 in 1978

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containing thin partings of clay-sand within the high water line contrary to the Bureau's claims. ("WILL IT HOLD WATER," report by Marvin E. Smith)

The structure of Ridges Basin Dam site consists entirely of unconformable cretaceous strata. The Durango Anticline is folded near the site and the monocline is flexed, being broken and deformed at six locations along a somewhat continuous faulting. One fault is directly under the location of the proposed Durango Pumping Plant where it splits into two separate segments. One goes directly into the north northeast flank of Carbon Mountain, adjacent to the slide. This segment splits at a point 1/4 mile south-southwest of the plant, where it cuts west across the north saddle to Carbon Mountain. There it joins a sibling fault. The fault then traverses southwest along and through the mid-section of the reservoir, upthrusting 15 to 45 feet on the north side.

The General Geology Map is insufficient and inaccurate. (See, for example, USBR E.I.S. page B-24 and DPR, page 40.) The statement, "A pattern of fault planes lies subparallel to a ridge through the reservoir basin and dam site but there has been no active faulting in recent times," does not square with the EIS's assertion on page B-26. Not all of the faults are mapped, and the mapping of the faults that is available is inaccurate. For example, the fault within the basin is downthrown on the south side, not on the north as shown on the EIS map page B-24.

The sandstone strata are highly permeable. Thus, the latter fault is probably a direct conduit to the subterranean sandstone formations. These sands are local sources of supply of water and hydrocarbons. The Pictured Cliffs, Cliff House, and Point Lookout (all sandstone formations), are favorite zones in the San Juan Basin. Thus the water will probably disappear into the Cliff House and Point Lookout sands as fast as the Animas La Plata can bring the water into the reservoir.

The United States Geological Survey clearly defines a fault zone right under the siting of the Durango Pumping Plant. The reservoir segment of the fault series cuts the reservoir area in half. The width of the fault zone there is varied; to seal it to ensure that there will be only "minor seepage" would be very expensive.

[redacted]

According to a report undertaken by the consulting firm of Black & Veatch for the city of Durango in 1981, the city owns or is availed of both direct flow rights and storage

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decrees for waters from the Florida River. Waters subject to the direct flow rights are diverted at the river intake and conveyed through the Durango City Pipeline to the Terminal Reservoir. The absolute direct flow decrees are as follows:

Appropriate Date	Adjudication Date	Amount cfs	1978 Basin Rank	Rank on FL River
3/27/[illegible]	11/8/1923	3.250	16	1
7/15/1877	11/8/1923	1.000	19	2
4/15/1878	11/8/1923	2.920	22	3
7/15/1878	11/8/1923	1.000	28	6
6/1/1881	11/8/1923	0.083	48	11
6/15/1881	11/8/1923	0.167	49	12
5/1/1885	11/8/1923	0.500	71	18
		8.920		

The report goes on to indicate that the storage decrees are related to reservoirs and/or reservoir sites in the City's Watershed Grant. The decrees are absolute but inactive and are as follows:

Appropriation Date	Adjudication Date	Amount a/f	1978 Basin Rank
6/8/[illegible]	3/21/1966	2,220	246
6/8/1899	3/21/1966	570	246
6/8/1899	3/21/1966	42	246
6/8/1899	3/21/1966	246	246
		3,078	

With respect to the Animas River, the Black & Veatch Report indicates the City has direct flow rights for waters in the Animas River. Some of the decrees are absolute, others are conditional. The direct flow rights on the Animas River diverted through the Animas River Pumping Station and Force Main which are absolute decrees are as follows:

Appropriation Date	Adjudication Date	Amount cfs	1978 Basin Rank
6/15/[illegible]	11/8/1923	1.000*	4
5/1/1878	11/8/1923	0.330*	23
2/3/1883	3/21/1966	6.000	238

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* Owned by the South Durango Water District but assigned to the City for use.

Direct flow rights on the Animas River diverted through the Animas River Pumping Station and Force Main which are conditional decrees are as follows:

Appropriation Date	Adjudication Date	Amount cfs	1978 Basin Rank
2/3/1883	3/21/1966	41.000	238

Direct flow rights on the Animas River that are conditional and are diverted through the facilities indicated are as follows:

Facility	Appropriation Date	Adjudication Date	Amount cfs	1978 Basin Rank
West Side Pumping Station	2/3/1883	3/21/1966	2.000	238
Memorial Park Pumping Station	2/3/1883	3/21/1966	1.000	238
			3.000	

The indications are that Durango has a 50 cfs conditional water right on the Animas River which could be used to develop their future M&I water supply. It should be remembered that Durango's City Pipeline's capacity is 8.92 cfs.

[redacted]s)

According to the Final Settlement Agreement of December 10, 1986 on the Colorado Ute Indian Water Rights, the general purpose of the Agreement is:

1. the settlement of existing disputes or future controversies concerning the Tribes' right to beneficially use water in southwest Colorado;

2. the settlement of the litigation filed by the United States on behalf of the Tribes in the Colorado District Court for Water Division No. 7;

3. the enhancement of the Tribes' opportunities to derive an economic benefit from the use of their reserved water rights;

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4. the enhancement of the Tribes' ability to meet their repayment obligations under the Agreement; and

5. the authorization for the Tribes to sell, exchange, lease or otherwise temporarily dispose of their water.

Indian water rights are based on the Winters Doctrine of Federal Reserved Water Rights, Winters v. United States, 207 U.S. 564 (1908), holding that when the United States reserved land for the Indian reservations, it also implied reserving sufficient water rights to fulfill the purpose of the reservation. In subsequent interpretative decisions, courts have based reserved rights on the number of acres in the reservation that can be irrigated and farmed productively. A number of cases are pending in state and federal court to determine whether municipal, industrial, energy development and other uses are included in those reserved rights.

Southern Ute and Ute Mountain Ute claims to water in the Animas, La Plata, Florida, Pine, Mancos, and Dolores rivers in Southwestern Colorado have not been quantified by any court. In the Animas La Plata Project the Bureau of Reclamation provided estimates for irrigation and mineral resource development water needs.

With respect to the Tribes participating in the Animas La Plata Project the following should be understood:

NAVAJO NATION

Although the Navajo Tribe is shown as receiving 7,600 acre-feet of water from the Animas La Plata Project, they have not participated in the Indian Water Rights Settlement. Furthermore, according to the legal assessment of Durango's water rights in a study done by the law firm of Moses, Wittemyer, Harrison and Woodruff, the Navajo Tribe has no claim to the Animas or the La Plata rivers for the following reasons:

1. Neither river flows through the Navajo reservation as required by the Winters Doctrine.

2. The Navajo Irrigation Project provides substantial water for irrigation. In giving their support to the project the Navajo's signed an agreement that the Navajo Irrigation Project water supply would satisfy their claims in the upper reaches of the San Juan River and its tributaries.

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UTE MOUNTAIN UTES

The current population figures show that there are fewer than 1500 Ute Mountain Utes living on the reservation located in Southwestern Colorado and Northern New Mexico. The Tribe is to receive 25,600 acre-feet of water for irrigation and 6,000 acre-feet for municipal and industrial water from the Animas La Plata Project.

According to the Winters Doctrine they do not have a claim on either the Animas or La Plata Rivers since those rivers do not cross their reservation. The Ute Mountain Utes do have a claim on the Mancos River. The Dolores project, built to relieve the Indian claims on the Mancos River, provides the Tribe with 22,900 acre-feet for irrigation and 1,000 acre-feet of water for municipal and industrial purposes. However, the Tribe has not signed a contract for the available water.

Additional sources of water are available to the Ute Mountain Utes. The Dolores project has excess water for sale. A study done by the Soil Conservation Service shows that 10,000 acre-feet of water can be saved by lining ditches and other salinity control measures used in the Mancos Valley. Additionally, 40,000 acre-feet of savings is available if salinity measures are used in the McElmo project.

SOUTHERN UTES

Current population figures show approximately 1050 Southern Utes living on the reservation in Southwestern Colorado. The Tribe has legitimate claims on both the Animas and La Plata rivers. Under the current Animas La Plata Project design the Southern Utes receive 3,300 acre-feet of water for irrigation and 26,500 acre-feet for municipal and industrial purposes, an allocation determined by the Bureau of Reclamation. Additionally the Southern Utes have water rights on the Pine River project providing 21,616 acre-feet of water. Another 213 cubic feet/second is available from direct flow rights on the Pine River. The Florida Project provides 2,000 acre-feet in Lemon Reservoir for irrigation.

WATER RIGHTS (La Plata River)

According to the Definite Plan Report, in Colorado, direct flow water rights totaling 601 cfs for 21 ditches diverting from the main stem of the La Plata River have been adjudicated for the irrigation of 20,100 acres of land. Of this amount approximately 273 cfs of water rights are for diversions above the proposed La Plata Diversion Dam. The Red Mesa Ward Reservoir Company has a storage right for

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1,176 acre-feet, the present capacity of its reservoir.

In New Mexico direct flow water rights totaling 123 cfs for 14 ditches diverting from the La Plata River have been adjudicated for the irrigation of 5,500 acres of land.

WATER RIGHTS (Animas River)

Essentially all irrigable land in Colorado and New Mexico along the Animas River receives a partial water supply from the river and has done so for many years according to the DPR. Above the proposed Durango Pumping Plant, there are a total of 300 cfs of direct flow and 650 acre-feet of storage rights prior to the project rights and 123 cfs of direct flow and 3.7 acre-feet of storage rights subsequent to the project rights.

Below the pumping plant there are 61 cfs of direct flow rights in Colorado and 599 cfs of direct flow rights and 6,574 acre-feet of storage rights in New Mexico prior to the project rights. Subsequent to the project rights, there are 149 cfs of direct flow and 642,800 acre-feet of storage rights in Colorado and 7,200 acre-feet per year of direct flow and 672 acre-feet of storage rights in New Mexico. There are 21 ditches in Colorado and 20 ditches in New Mexico with rights prior to the project rights.

PROJECT WATER RIGHTS

In the adjudication of 1966, the Southwestern Water Conservation District obtained water rights from the Animas and La Plata Rivers in Colorado Water Division No. 7 for project use according to the DPR. Both storage and direct flow rights were acquired with an assigned priority date of September 2, 1938. The water rights will be transferred from the Southwestern Water Conservation District to the Animas La Plata Water Conservancy District after the latter District's boundaries are extended to include the entire prject service area in Colorado. The rights are based on the project plan at the time of authorization and would be modified to correspond to the present plan. The Durango service area has an absolute direct flow water right prior to the project's rights of 19.25 cfs, 8.92 cfs of which are on the Florida River and 10.33 cfs on the Animas River according to project documents. The service area also has conditional direct flow water rights prior to the project of 44 cfs and succeeding the project of 4.20 cfs. The Durango service area would subordinate a total of 41.75 cfs of its water rights to the project. The service area will retain the 8.92 cfs right on the Florida River and a total of 16.78 cfs on the Animas River.

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According to the Water Supply Appendix of the Definite Plan Report:

> The usable existing water supply of the Durango Service area is constrained by Florida River dry year flows and the city of Durango's 12-mgd treatment plant capacity (since expanded). To convey Animas River water to the exisitng treatment facilities requires considerable energy costs because of the 430-foot elevation difference between the river at the pumping plant and the treatment plant. Because of the high pumping costs, the city of Durango is planning to only use the 16.78 cfs of Animas River water for irrigation and emergencies. Use of these rights by Durango would be limited by contract to the summer months to minimize their effect on the project (emphasis added). Total demand under project conditions would be met by using the Florida River as a base supply which would continue to be treated at the existing Durango treatment facility. This supply would be supplemented from the Animas La Plata project to meet peak demands. Treatment of project water for the Durango service area would be at a treatment plant which would be constructed near Ridges Basin Reservoir by the Conservancy District according to project documents. The usable existing base supply of the Durango service area from the Florida is 5,600 acre-feet.

ALTERNATIVES: THE TAX PAYERS PERSPECTIVE

Presented with a $535 million dollar project that benefits 179 farmers and with the likelihood that a population of 12,000 will have to pay for the energy and water supply of a population of 38,000, the taxpayers of the Durango water district are understandably in an uproar. The project has prompted the taxpayers to organize into a coalition called Taxpayers for an Animas La Plata Referendum. The coalition's members reside within the proposed boundary which will be the local taxing, governing body that will enter into a contract with the Federal Government concerning the Animas La Plata Project.

The project has been marketed by the USBR as a way to settle long standing Indian water disputes, to meet increased demand for water, and to bolster the local economies of Durango, Farmington, and the surrounding communities.

Kenny Beck, a USBR economist, has spoken to farmers at local Grange meetings. "Some time, some day, it's going to swing back," Mr. Beck declared, a promise that farming is going to become profitable again in the future. "It's like

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an ol'boy told me about the cattle business," said Beck, standing under the American flag. "If you're in this business, you've got to ride it through the ups and downs." Mr. Beck needs to reevaluate the nation's farming economy and the problem of oversupply.

The area to be irrigated in the region suffers from a short growing season, a surplus of cheap alfalfa produced by the nearby Navajo Irrigation project, distant markets, and unsuitability for sprinkler irrigation (due to broken and hilly terrain). The most limiting factor, however, may be the irrigators' reluctance to sign up for project water.

The USBR's "no project alternative" declaration reads: "The net result of no project alternative would be for agriculture igating one acre of land as $5,808.00. The high cost reflects the cost of pumping all irrigation water 900 feet uphill. Anyone foolish enough to sign up for project water will surely suffer the same fate as the full-service farmers in the nearby Dolores project who are suing the USBR to be relieved of their contract obligation, knowing they will lose their land if forced to take water they cannot afford.

Some Indian water rights advocates claim that Animas La Plata would settle the Indian claims on the San Juan River and its tributaries.

This is a gross oversimplification of a complex problem. Indian water rights claims in the San Juan Basin are not limited to the two small Ute Tribes in Colorado. Ute tribal claims on the San Juan and its tributaries arise from the so-called Winters Doctrine (see p.52, infra), a federal court decree issued in 1908 which says that the Utes have a right to "adequate" water for their reservation lands. No one knows what "adequate" means. Tribal officials say publicly that Animas La Plata would settle this claim on the river; privately they admit that this is a con job.

The cost to the Southern Ute people, if the Animas La Plata project is built, amounts to $5,000 per year per tribal member. The tribe has had less than a thousand members for fifty years. This large water bill will severely cut into any profits the tribe would derive from development of the reservation's extensive coal resources.

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PROJECT ALTERNATIVES

(Scenario 1): The Black & Veatch Report

In reviewing documents for this report EPI found that the city of Durango had requested the consulting firm of Black & Veatch to review the city's existing water system and proposed plans and make a set of recommendations concerning future needs.

One of the main recommendations made in the consultant's report was that:

> " a storage capacity of 1,050 acre-feet (substantially less than the 8,200 acre-feet per year contemplated in Animas La Plata Project documents). It should not be necessary for the City to pay for more water than it will need; therefore, this term of the repayment contract between the City and the Animas La Plata Conservancy District should be renegotiated in light of the City's projected storage needs as determined by Black & Veatch."

With respect to Durango's M&I needs, according to Black & Veatch:

> " The Animas La Plata Project, as presented by the USBR, is more costly for the City than other alternatives. One alternative, using only part of the Project facilities and utilizing existing City facilities and water rights, is less expensive than the Project. Another alternative, utilizing City facilities and rights exclusively and expanding some of those facilities, is the least expensive for the City while providing flexibility of action in case the population growth is not as great as estimated."

The Report continues:

* For a number of reasons, the City's Animas River rights, if properly perfected and adjudicated as final decrees, will constitute firm rights, and there should be adequate water in the Animas River even under low flow conditions to satisfy those rights. The City should take action to perfect these rights and to secure adjudicated final decrees.

* If the City participates in the Animas La Plata Project, it should not agree to conform or limit its Animas River decrees to any bypass conditions of

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Animas River flows at Durango.

* Regardless of City participation in the Animas La Plata Project, the City should pursue development of its Animas River Rights and should expand its existing Terminal Reservoir to assure an adequate water supply.

* If the City decides the benefits of participation in the Animas La Plata Project exceed the costs of participation, the City should request revisions in allocation of Project's costs as now defined to reduce the City's costs and to permit more flexibility in drafting future City water needs from the Project.

* If the Animas La Plata Project is constructed, the effluent from the City's Wastewater Treatment Plant should be conveyed to a point below the Durango Pumping Plant as part of the project, for discharge into the Animas River. Also, the effect of the abandoned uranium mill tailings on the Animas River quality should be thoroughly investigated and, if necessary, corrective action taken as part of the Project.

* If the City decides not to participate in the Animas La Plata Project, it should adopt Alternative 3B as presented in the body of the report and should initiate steps to implement that plan to develop and assure an adequate raw water supply for growth of the City.

(Alternative 3B developed by Black & Veatch calls for Animas River Pumping and Storage System With Alternative Water Demands and 1934 Stream Flow Conditions. This alternative uses lower water demands and the lower summer Animas River flow. The Animas River Pumping Station would be expanded to a firm capacity of 8,000 gpm by 2005, a new 16-inch force main would parallel the existing force main, the City's water treatment plant would be expanded to an 18 mgd capacity by 2005, and the Terminal Reservoir Dam would be raised 20 feet by 1990 and another 10 feet by 2010 to increase storage capacity.

The following tables indicate the costs of the alternatives and the expected impact on the residential bi-monthly bill: (see next page).

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Alternative	Total Additional Cost 1990-2020 Period $	Average Additional Cost Per Bi-Monthly Residential Bill $
1	6,095	33
2A	4,972	27
3A	3,557	19
2B	2,953	16
3B	1,965	11

The above cost figures take into consideration the increasing number of residential accounts as the service area grows.

TABLE 9-7

COMPARISON OF TOTAL ANNUAL COSTS

YEAR	ANIMAS-LA PLATA ALT. 1 $1000	MODIFIED ANIMAS-LA PLATA ALT. 2A $1000	MODIFIED ANIMAS-LA PLATA ALT. 2B $1000	ANIMAS RIVER P.S. & STORAGE ALT. 3A $1000	ANIMAS RIVER P.S. & STORAGE ALT. 3B $1000
1990	835	981	407	413	210
1995	835	1,909	407	1,518	210
2000	3,682	2,594	711	1,728	210
2005	3,773	2,621	1,521	1,777	1,069
2010	3,924	2,648	1,534	1,946	1,294
2015	4,014	2,830	1,547	2,156	1,108
2020	4,101	2,157	1,561	1,618	1,134
2025	2,146	2,157	1,561	1,618	1,134
2030	2,146	2,157	958	1,618	533
2035	2,084	2,157	958	1,498	331
2040	1,346	1,132	593	1,254	331
2045	1,346	1,132	593	1,254	331
TOTAL OF ANNUAL PAYMENTS	$151,880	$122,704	$61,837	$93,655	$39,622

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(Scenario 2): Elimination of Irrigation Uses

If Irrigation were omitted as a project purpose, Durango Pumping Plant and Ridges Basin Inlet Conduit could be reduced in size from 430 to 75 cubic feet per second (cfs). Ridges Basin Pumping Plan could be reduced from 710 to 70 cfs. All specific irrigation facilities including Red Mesa, Alkali Gulch, Ute Mountain, Southern Ute, and Third Terrace Pumping Plants and Transmission Lines, New Mexico Irrigation Canal, and all laterals and drains could be omitted. The future year capacity cost could also be omitted. The reduction in cost resulting from elimination of irrigation as a project purpose is estimated at $157, 970,000 construction ('79 dollars), $8,713,000 interest during construction, and $1,127,000 annually in operation, maintenance, and replacement costs. These costs are all separable to irrigation.

(Scenario 3): Ridges Basin Reallocation

According to the Bureau of Reclamation documents, the most likely set of facilities to develop municipal and industrial water in Colorado without the project would be a 25,000 a/f Ridges Basin Reservoir, which would be the storage reservoir for all Colorado users. The reservoir would be filled by the potential Drive-In Pumping Plant located about 2 miles downstream from the location of the planned Durango Pumping Plant. Durango water would then be pumped from the reservoir by the municipal and industrial Durango Pumping plant to a point 2 miles to the north where a proposed treatment plant would be located. From here, the water would be conveyed 3 miles to the north end of Durango.

Water for the Ute Mountain Utes and La Plata Drainage in Colorado would be pumped west by the Ute Mountain Ute Pumping Plants #1 and #2 and conveyed by the Ute Mountain Ute Pipeline to the Ute Mountain Ute Indian Reservation. La Plata rural water would be provided near where the pipeline crosses the La Plata River.

Southern Ute Indian municipal and industrial water would be provided in the Animas River, with releases from Ridges Basin Reservoir when the riverflows would be insufficient. Water would be diverted just below the potential Drive-In Pumping Plant into a potential Southern Ute municipal and industrial canal which would convey the water to the McDermott area, on the east side of the coal field.

New Mexico water would be pumped by a potential Aztec Pumping Plant from the Animas River into a potential 12,000 a/f Aztec Reservoir, north of Aztec. Water would then be released as needed back to the Animas River when riverflows

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would be insufficient to meet demands.

The investment for this proposal was amortized at 7 percent over 30 years. The interest rate and period were determined by the Regional Office, based upon the bonding capability of typical cities in the region. The annual M&I benefits based upon the alternative source of water for the users without the project and that used in most plan formulation studies, are $8,100,000.

(Scenario 4): Use of New Mexico M&I water; Federal mediation possibility

Another possibility to be explored would be to provide 87,300 acre-feet of water to industrial water users. This would result in a plan similar to the M&I plan discussed above, except that New Mexico M&I water would also be included in Ridges Basin Reservoir. The assumption here is that a middleman, the Federal Government, could get all the users to cooperate in building and operating common facilities. It is unlikely that such cooperation could be achieved otherwise.

Animas River water would be pumped into a small Ridges Basin Reservoir (50,000 a/f, 850-acre water surface, 155-foot high, 1,000-foot crest length) by a potential 70-cfs Drive-In Pumping Plant located about 3 miles downstream from the location of the proposed Durango Pumping Plant. New Mexico M&I water and Southern Ute M&I water would be served by releases from Ridges Basin Reservoir to the Animas River when the riverflows would be insufficient to meet demands. New Mexico M&I water would flow downstream to be picked up by users in New Mexico. Southern Ute M&I water would be diverted into a 40-cfs Lower Animas Canal and conveyed 20 miles southwest to the coal resource near McDermott Arroyo.

Durango M&I water would be pumped by a 37-cfs Durango M&I Pumping Plant from Ridges Basin Reservoir, north 2 miles to a proposed treatment plant. From the treatment plant the treated water would be piped 3 miles to the northern side of Durango by the potential Durango Pipeline.

The Ute Mountain Ute Indian M&I water and rural M&I water for the La Plata River Drainage in Colorado would be pumped west by the potential 14-cfs Ute Mountain Ute Pumping Plants #1 and #2 from the reservoir. The Ute Mountain Ute Pipeline would carry the water 23 miles to the Ute Mountain Ute Indian Reservation boundary. The rural water for the La Plata River Drainage in Colorado would be released from the pipe near the La Plata River.

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The list of the features is shown on the following Table along with the estimated construction costs. The total estimated construction cost is $67 million plus $4 million of interest during construction yields, a total investment of $71 million. The estimated annual operation, maintenance, and replacement cost is $440,000, of which $240,000 is to provide 36,000,000 kilowatt-hours and 88,000 kilowatt-months per year for pumping.

The estimated potential benefits are $8,100,000. There would be no appreciable recreation or fish and wildlife benefits associated with this level of development. The benefit-cost ratio is 2.70 to 1.

(Scenario 5): Expand Irrigation of Indian Lands

If irrigation to full service Indian Lands were added to this alternative, sprinkler irrigation service to 12,000 acres of full service Ute Mountain Ute Indian land and 1,800 acres of full service Southern Ute Indian land could be provided. The Southern Ute Indian land is scattered among non-Indian land and cannot practically be served without serving non-Indian land; a water supply would be provided for the land but laterals to serve the land could not be provided.

The major facilities used to provide water in this alternative are similar in the plan of development, only smaller in size. Most of the facilities in the municipal and industrial water only alternative would not be the most efficient if irrigation water were added.

Under this plan, Animas River water would be pumped by a 150-cfs Durango Pumping Plant into the potential Ridges Basin Reservoir (175,000 acre-foot, 1,750 acre water surface, 250-foot high, 1,250-foot crest length). Durango M&I water would be released from Ridges Basin Reservoir north to a treatment plant (already built) and then conveyed 3 miles to Durango by the potential Durango Pipeline. New Mexico M&I water would be released back to the Animas River when there would be insufficient water in the river to meet demands in New Mexico.

Southern Ute and Ute Mountain Ute M&I and irrigation water plus the rural M&I water for the La Plata River Drainage in Colorado would be pumped out of the West side of Ridges Basin Reservoir by a 240-cfs Ridges Basin Pumping Plant. Water would then be pumped into a 240-cfs Dry Side Canal then conveyed 35 miles west to the Ute Mountain Ute Indian Reservation. Southern Ute M&I water would be released into the La Plata River, then diverted into Southern Ute Reservoir (70,000 a/f, 1,240 acre water surface, 162 foot

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high, 2,300 foot crest length) by a 375 cfs Southern Ute Diversion Dam and Inlet Canal.

The total construction cost for this alternative is estimated at $164 million and interest during construction would be about $11 million for a total investment of $175 million. The annual operation, maintenance, and replacement costs would be about $1,020,000 of which $550,000 would be to provide the 105,000,000 kilowatt-hours and 140,000 kilowatt-months per year for pumping.

The benefits associated with this level of development are estimated at $2,000,000 for irrigation, $8,100,000 for municipal and industrial, and $400,000 for recreation and fish. The total benefits are estimated at $10,500,000. The benefit/cost ration would be 1.50 to 1. A comparison of these alternatives follows on the next page.

CONCLUSION

> ...Of course, Felix Sparks, like a lot of western farmers, didn't believe in such a thing as federally subsidized water. "This business of federal Reclamation subsidizing irrigation water," he snorted, is absolute, utter, unmitigated crap."
>
> Subsidy, however, was exactly what Aspinall's and Spark's five projects would require, subsidy on a scale that made even the Bureau cringe. It fell to Dan

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Comparison of alternative levels of development

	M&I water only	M&I plus service to Indian lands	M&I plus service to Indian and supplemental lands1/	Plan of development
Acres served	0	13,825	34,950	67,700
Water supply (advance planning)				
Irrigation	0	29,600	84,900	115,000
Municipal and industrial	87,300	87,300	87,300	87,300
Total	87,300	116,900	172,200	202,300
Colorado River Storage Project (advance planning)	58,000	81,000	130,000	154,000
Construction cost	$67,000,000	$164,000,000	$194,000,000	$280,000,000
Interest during construction	4,000,000	11,000,000	13,000,000	20,000,000
Total investment	71,000,000	175,000,000	207,000,000	300,000,000
Annual costs				
Amortized investment	2,404,000	5,928,000	7,010,000	10,165,000
Operation, maintenance, and replacement costs2/	440,000	1,020,000	1,570,000	2,040,000
Colorado River Storage Project charge	116,000	162,000	260,000	310,000
Total	2,960,000	7,110,000	8,840,000	12,515,000
Annual benefits				
Irrigation (total)		2,000,000	4,140,000	8,500,000
Municipal and industrial	8,100,000	8,100,000	8,100,000	8,100,000
Recreation		300,000	300,000	300,000
Fish and wildlife		100,000	100,000	100,000
Total	8,100,000	10,500,000	12,640,000	17,000,000
Economic analysis				
Net annual total benefits	5,140,000	3,390,000	3,800,000	4,485,000
Benefit-cost ratio	2.70:1	1.50:1	1.40:1	1.35:1

1/ The supplemental lands are gravity irrigated through existing ditches.
2/ Includes power.

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> Dreyfus, the Bureau's house magician, to invent enough benefits to make them pass muster. "Those projects were pure trash," said Dreyfus in an unusually candid interview in 1981, as he prepared to retire from public service. "I knew they were trash, and Dominy knew they were trash. The way they got into the bill was, Aspinall called up Udall one day and said, 'No Central Arizona Project will ever get by me unless my five projects get authorized, too.' When Udall passed the word on to us, we were appalled. The Office of Management and Budget had just bounced Animas-La Plata. Now we had to give it back to them and make them reverse themselves. I had to fly all the way out to Denver and jerk around the benefit-cost numbers to make the thing look sound."
>
> Marc Reisner, Cadillac Desert, 1986

The review that the Environmental Policy Institute has undertaken on the Animas La Plata project raises the following concerns:

1. There is a fundamental need for a Supplemental Definite Plan Report for the project now that it has been divided into a Phase 1, Phase 2 structure.

2. There is a need for a new Environmental Impact Statement. The best information we could obtain from all the main reports we reviewed is essentially ten years out of date. Even these ten-year-old documents raised crucial issues that were never adequately addressed by the Bureau of Reclamation. In addition, dividing the project into a Phase 1 and Phase 2 is a major change in Federal action which should necessitate such a new Environmental Impact Statement. Furthermore, the enactment of major new laws such as the Safe Drinking Water Act, the Clean Water Act, thet Colorado River Salinity Control Act amendments) has imposed requirements that have not been addressed in the project documents. EPI also feels the discussion in the EIS concerning the uranium mill tailings was deficient.

3. The economic viability of the project which was questionable from the start needs to be reexamined under current economic criteria and to determine that in light of the Phase 1 and 2 approach whether an economically viable project can be constructed by the Federal government.

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4. There was no detailed discussion on the M&I plans of the Ute Mountain Utes and the Southern Utes in the project documents other than of a speculative nature. With an interest in selling or leasing their water out of state such additional information would be useful in evaluating whether this would necessitate the construction of the Animas La Plata project or could be accomplished by other non-structural means.

5. Since the completion of project documents, an upgrading of Durango's treatment plant has taken place. This upgrading and its associated use has an impact on future needs and costs associated with the construction of the project. The relationship of this plant with the area's associated water quality problems and construction of new treatment plants needs further examination with respect to the design and operation of the proposed Animas La Plata project.

6. Since the completion of project documents, the city of Durango has undertaken its own independent review of the area's future water needs (Black & Veatch report) which has raised serious questions on Durango's water needs vis-a-vis the Animas La Plata project. This information should be incorporated into any construction plans to meet the future water needs of the area.

7. The irrigation (agricultural) economy of the area and the repayment capacity of farmers has radically changed (for the worse) since the 1970's when the earlier studies for the project were undertaken. A new ability-to-pay analysis needs to be undertaken by the Bureau of Reclamation along with a serious review of the economic future of irrigated and dryland farming in the area to ascertain whether the Federal government should be constructing such capital intensive projects in the first place without a realisitic economic base.

8. New questions are being raised about impacts on endangered species in the Basin area if this project is constructed. Further investigation of these questions should take place.

9. Now that the project has been divided into a Phase 1 and 2, the fish and wildlife mitigation that was to have been undertaken is in question. Before construction begins on this project or a suitable alternative, these questions need to be addressed in a manner that puts fish and wildlife on equal terms with development intentions.

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10. The cultural resources recovery program that was to have been undertaken is also in question as a result of the Phased approach. There is also a legal questions on whether proper authorization for the increased financial allocation for recovery has been granted.

11. Recreation for the project has been scaled back as a result of the Phased approach and has not been properly evaluated in terms of the impact on the area's recreational needs.

12. New concerns are being raised over the safety of the site of the Ridges Basin Reservoir. An independent review of the site should be undertaken before the project proceeds into the construction phase.

13. Given the questionable benefits of the project, the tremendous amount of energy involved in moving the project water raises questions on whether this is the best use of a water resource that might be more beneficially put to use elsewhere.

14. There is very little job impact or job creation for the Indians and non-Indians in the project area as a result of building this project.

15. Alternatives which would better address the economic, environmental, and social climate were never seriously considered. The alternatives that EPI has outlined should be more thoroughly reviewed in light of their apparent cost-effectiveness and lessening of environmental damage.

In conclusion, the Environmental Policy Institute strongly recommends that this project go back to the drawing board. The Institute recognizes the tremendous political momentum which has built up as a result of reaching an Indian Water Rights Agreement. The Institute would caution that such momentum should not serve as the guiding force in driving a project beset with the extensive conflicts which have been outlined in this report.

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5. INDIAN CLAIMS (Black and Veatch Report)

5.1 Indian Water Rights - General Background

There are three Indian reservations downstream from Durango on the Animas, Florida and San Juan Rivers. These are the Navajo Reservation, the Ute Mountain Ute Reservation, and the Southern Ute Reservation. The Animas and Florida Rivers flow through the Southern Ute Reservation and the San Juan River flows through the Navajo and Ute Mountain Ute Reservations. The Indian tribes may have substantial claims, as yet unquantified, to water in these rivers, which claims could affect the water rights of Durango.

The Doctrine of Federal Reserved Water Rights, or the "Winters Doctrine" as it is named after the case of Winters v. United States, 207 U.S. 564 (1908), holds that the United States, when it reserved lands for Indian reservations, impliedly reserved sufficient water rights to fulfill the purposes of the reservation. In the most recent case in which the United States Supreme Court has addressed the subject of Federal reserved water rights, the Court recognized that there are many unanswered questions with respect to the scope of the implied reservation doctrine but reaffirmed the principle that the amount of water is determined by the purpose of the reservation. Further, the implied reservation of waters for the use of the Indians is asserted to have been intended to satisfy not only present uses, but future needs of the Indians as well.

In order to evaluate the effect of Indian claims on the water supply of the City of Durango, some prediction of the quantity as well as the priority of the Indian rights must be made. With respect to priority, the cases have generally held that the priority date of the federally reserved Indian rights is at least the date of creation of the reservation.

The quantity of water reserved by the Federal Government for use on Indian reservations is the crucial unanswered question. The case which has gone farthest toward developing a formula for quantification of Indian reserved water rights is Arizona v. California, 373 U.S. 546 (1963). There the rights of five Indian reservations to water from the mainstem of the Colorado River were quantified. There the Court found that the purpose of the reservations was to enable "the Indians to develop a viable agricultural economy." Therefore,

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the measure of the water rights reserved was at an "amount of water necessary to irrigate all of the practicably irrigable acreage on the reservation." The amount of "practicably irrigable acreage" was determined in Arizona v. California using then-current Bureau of Reclamation standards. It is therefore recommended that Bureau of Reclamation quantifications of irrigable acreage be used for planning purposes. This is discussed in more detail for the Southern Ute claims in Section 5.4.

Agriculture may not be the only purpose of the reservation. The extent to which the practicably irrigable acreage test will be applied to quantify Indian reserved rights in the future remains to be seen. Since it is the purpose of the reservation which controls, the practicably irrigable acreage test will apply only where it can be found specifically that the purpose of the reservation was to provide for Indian development of an agricultural economy. Unfortunately, the purposes for a reservation were seldom spelled out with any specificity by Congress in the documents creating the reservations. Courts, therefore, will consider a number of factors, including the circumstances surrounding the creation of the reservation, and the history of the Indians involved. In addition, it must be assumed that the government intended to deal fairly with the Indians, and therefore documents creating reservations and treaties with the Indians are to be construed liberally for the benefit of the Indians. Since the general purposes of a reservation are to be liberally construed, the argument has been made that waters were impliedly reserved for a wide range of uses, including municipal, industrial and recreational. While there has not yet been a case expressly finding an Indian reserved water right for energy and mineral resource development, or developing a formula for quantification of such claims, there are a number of cases pending in state and federal courts in which Indians are claiming reserved water rights for a wide variety of uses, including the Southern Ute Indian claims discussed below. For planning purposes, the quantification of the Indian water rights for resource development should be based on quantities actually required for that development. Here again the best presently available information would be the estimates provided by the Bureau of Reclamation.

The impacts of the claims of the three reservations on the water supply of the City of Durango are discussed separately in the following sections.

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5.2 Navajo Claims

There presently are large quantities of water dedicated to the Navajo Indian Irrigation Project (NIIP) amounting to one-third of New Mexico's total share of the Colorado River Basin water. There may be substantial Navajo claims to additional San Juan Basin water which are presently unquantified. However, these claims are not likely to directly affect Durango's water supply for the following reasons:

(1) Under the Upper Colorado River Basin Compact, any Indian uses are charged to the state in which the uses are made. Therefore, to an extent, Colorado users are insulated by New Mexico users whose water supply would be taken by Navajo claims before Colorado users' supplies could be reached.

(2) The NIIP provides substantial amounts of water to the Navajos. In giving their support to the NIIP, the Navajos represented that the water supply made available by the project would satisfy their claims to water in the upper reaches of the San Juan and its tributaries. See testimony of Paul Jones, Chairman of the Navajo Tribal Council, hearings on H.R. 2352, H.R. 2494, and S. 72 before the Subcommittee on Irrigation and Reclamation of the House Committee on Interior and Insular Affairs, 86th Cong. 2d. Sess. 70 (1960).

(3) Neither the Animas nor the Florida Rivers flow through the Navajo Reservation and the Navajos probably could not require deliveries from the Animas when water is available on the San Juan.

There is some possibility of an indirect effect of the Navajo claims. If the Navajo water rights were to be much larger than expected (in terms of consumptive use), to the extent that the water rights of non-Indian New Mexico uses were substantially impaired, New Mexico might seek a reformation of the Upper Colorado River Basin Compact. While such action is possible, based on our review of the compact and the records of compact negotiations, it is our view that such an attempt at reformation is likely to be unsuccessful.

5.3 Ute Mountain Ute Claims

The Ute Mountain Ute Reservation lands are neither appurtenant to nor practicably irrigable from the waters of the Animas River (with the exception of a

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small segment of the San Juan River which crosses the reservation at the Four Corners). It would also be quite expensive and impractical to develop Animas and Florida supplies for municipal, industrial or other uses on the Ute Mountain Ute Reservation. Therefore, in our view, it is unlikely that the purpose of that reservation included any intent to use Animas or Florida River water and the Ute Mountain Ute claims are unlikely to directly affect Durango's water rights.

5.4 Southern Ute Claims

Since the Animas and Florida Rivers flow through the Southern Ute Reservation, it is probable that the use of water from these rivers will be found to have been intended to fulfill the purpose of this reservation. The resolution of Southern Ute water right claims therefore has the potential of affecting Durango's water supply. The questions to be answered in the assessment of the magnitude of the effects are:

(1) What is the priority of the Southern Ute water rights?

(2) What is the total quantity of the Southern Ute water rights?

(3) From which streams will the Southern Utes take their water?

With regard to priority, it is generally accepted that the priority date of an Indian water right is the date of the creation of the reservation. (See Appendix B.) While Ute lands were initially reserved in 1868, there were a number of changes in the amount of land and various treaties were negotiated. The present boundaries of the reservation were defined in 1890. Although it is probable that the Southern Ute claims will be found to date from the 1868 initial reservation, thereby predating all the water rights of the City of Durango, later reservation dates are arguable which might leave some of the City's rights prior to those of the Indians.

With regard to the total quantity, as discussed in Appendix B, the quantity of the water right associated with an Indian reservation is the amount necessary to fulfill the purpose of the reservation. It is noted that the United States has applied for adjudication of Southern Ute claims, Case No. W-1603-76, Water Division No. 7, State of Colorado. The purposes specified in the applications are stated generally to include all uses necessary to fulfill the purposes of the reservation, including agricultural, municipal, industrial, recreational and a variety of other uses. The claims

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thus offer little information from which the quantities can be estimated, making it necessary to look to other sources. The Bureau of Reclamation (in preparation for the Animas-La Plata Project) has quantified potential uses by the Southern Ute tribe for both irrigation and mineral resource development. The Bureau has found that the quantity required for irrigation of the practicably irrigable acreage under the Animas-La Plata Project on the Southern Ute Reservation is 3,300 acre-feet per year. The Bureau's estimated quantity needed for mineral resource development is 26,500 acre-feet per year. Initial discussions with attorneys for the United States and for the tribe lead us to conclude that settlement of the claims at the magnitude of the Bureau's quantification, contingent upon construction of the Animas-La Plata Project, is likely. Thus, if the project is built, it is expected that the Southern Ute water rights will be quantified at the above Bureau estimates and that this water will be supplied through project works, leaving Durango's water supply unaffected.

Assuming the project were not built, it is felt that no accurate prediction of the possibility of the Indians' success in asserting rights to quantities of water can be made at this time. Nevertheless, some information is available which can be used as an indication of the possible magnitudes of the quantity of the Southern Ute water rights.

With regard to non-agricultural uses, the Bureau has estimated the potential Southern Ute requirements for municipal and industrial (M&I) purposes to be 26,500 acre-feet per year, which amounts to an average direct flow rate of approximately 37 cfs. This is the estimated M&I requirement for the entire reservation, and so the real question is how much of this amount will come from the Animas or Florida Rivers. Since most of this amount would probably be used for natural resource development, it is difficult to say which rivers the water will come from without knowing the geographic pattern of future Southern Ute resource development. It seems unlikely, however, that any significant portion of this amount would come out of the Florida River. In any case, if a major portion of the Southern Ute M&I water came out of one of the rivers, the other river would be left correspondingly unaffected.

With regard to Southern Ute irrigation, it has been brought to our attention that the tribe will probably claim on the order of 1,500 acres of land to be arable from the Florida River. It is also reputed that a

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relatively large portion of this claimed arable land will be clamed to be "practically irrigable." A rough estimate of the amount of water required to irrigate this much land may be about 3,000 acre-feet per year. It is noted that the tribe is presently being supplied with approximately 2,000 acre-feet per year from Lemon Reservoir. Thus, either a major portion of the Southern Ute irrigation from the Florida River will be supplied out of Lemon Reservoir, or, if the Southern Utes elect to pursue their own irrigation rights on the Florida, 2,000 acre-feet per year of Lemon Reservoir water will be freed up to supply junior rights which may have been displaced by Southern Ute claims.

A thorough analysis of this situation would require a more detailed look at the Florida River hydrology and priority scheme. This is not possible within the scope of the present work. The most significant factor in the assessment of the firmness of Durango's supply on the Florida River is the fact that the major portion of Durango's rights on the Florida are of the highest priority. Thus, any displacement of non-Indian rights by the assertion of Indian claims would occur first to all of the rights junior to Durango's before the City's supply is affected. The unlikelihood of such a drastic occurrence must be taken into account in the assessment of the firmness of Durango's Florida River supply.

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(Colorado Attorney General)

BRIEFING PAPER NO. 7: AGREEMENT SUMMARY

Colorado Ute Indian Water Rights

Final Settlement Agreement of December 10, 1986

The Agreement consists of seven articles: general purposes, definitions, quantification and determination, administration, leasing and off-reservation use, finality of settlement, and general provisions.

Article I - General Purposes

This article provides a brief introduction to the document and sets out its general purposes which are: (1) the settlement of existing disputes or future controversies concerning the Tribes' right to beneficially use water in southwest Colorado; (2) the settlement of the litigation filed by the United States on behalf of the Tribes in the Colorado District Court for Water Division No. 7; (3) the enhancement of the Tribes' opportunities to derive an economic benefit from the use of their reserved water rights; (4) the enhancement of the Tribes' ability to meet their repayment obligations under the Agreement; and (5) the authorization for the Tribes to sell, exchange, lease or otherwise temporarily dispose of their water.

Article II - Definitions

This article includes the Agreement's glossary of terms.

Article III - Quantification and Determination

Under the terms of the Agreement, the Ute Mountain Ute Indian Tribe will receive the right to beneficially use 25,100 acre-feet of water from the Dolores Project, 33, 000 acre-feet of water from the Animas-La Plata Project, and 27,400 acre-feet of

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water from the three streams flowing through the reservation. The Southern Ute Indian Tribe will receive the right to beneficially use 29,900 acre-feet of water from the Animas-La Plata Project and over 10,000 acre-feet of water from various other water sources serving the reservation. Both Tribes will receive underground water for individual domestic and livestock uses and will have their current water uses protected.

The water rights secured to the Tribe by the Agreement are called "project reserved waters" or "non-project reserved waters," with the exception of water from the Pine River and a state water right decreed to the Southern Ute Tribe from the existing Florida Water Conservancy Project (these rights are taken as nonreserved water rights or are taken pursuant to earlier decrees). All project and nonproject reserved water rights are subject to the provisions of the Agreement concerning administration (article IV), leasing and off-reservation use (article V), finality (article VI), and general provisions (article VII).

The Agreement identifies specific places of use, times of use, types of use and, to varying degrees, consumptive uses. Stream quantifications were done in a manner which gave the Tribes surplus waters, or waters not yet decreed to or used by existing state appropriators. Dispute concerning the use of these waters will be presented to the Colorado District Court for Water Division No. 7.

The construction of the Animas-La Plata Project and the completion of the irrigation facilities of the Dolores Project are keystones to the water rights settlement because without this additional storage and supply, there is insufficient water to meet the future needs of the Tribes and the current demands of the non-Indian communities. Non-Indian user populations in southwest Colorado and northwest New Mexico receiving benefits from the Animas-La Plata Project have committed to help finance the project. On June 30, 1986, their cost-share commitments were found by the Secretary of the Interior to meet the cost-share requirements set out by Congress in Section IV of Public Law 99-88.

Article IV - Administration

The article governs all project and nonproject reserved water rights used within the boundaries of the reservation. Off-reservation use of the waters is governed by Article V of the

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Agreement. The Agreement provides for joint State-Tribal administration of the water rights confirmed to the Tribes. It subjects the on-reservation use of Tribal waters to the requirements of change in water rights proceedings, beneficial use and resolution of disputes in Colorado District Court for Water Division No. 7.

Article V - Leasing and Off-Reservation Use

Subsection A concerns not only leasing but also the sale, exchange or temporary disposal of Tribal waters. The subsection's sole purpose is to overcome the restrictions of the Indian Non-Intercourse Act by allowing the Tribes to temporarily transfer title of their water to third parties. Subsection B addresses the off-reservation use of Tribal waters. It discusses two types of off-reservation use: (1) off-reservation and in-state use; and (2) off-reservation and out-of-state use. For the off-reservation and in-state use of reserved water, the Tribes agree to comply with all of the state laws, federal laws and interstate compacts that other non-Indian water users must comply with. For off-reservation and out-of-state use, the parties agree that the Tribes can use their water to the extent permitted by state law, federal law, interstate compacts, and international treaties, as these treaties pertain to the appropriation, use, development, storage, regulation, allocation, conservation, exportation or quality of the water of the Colorado River and its tributaries.

Article VI - Finality of Settlement

This article describes the process of finalizing the Agreement. In 1987 the parties will present a proposed stipulation reflecting the terms of the Agreement to the Colorado District Court for Water District No. 7. The water court will then give notice and hold the appropriate hearings to rule on objections to the stipulation. The parties will request that the court not enter a final consent decree until the Tribes, the State and the United States jointly certify that the federal and state legislative enactments necessary to implement the Agreement have been obtained.

Even after the Agreement is made final and entered as a

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judgment of the court, the parties have agreed that the Tribe's water right and breach of trust claims on the Mancos, Animas, and La Plata Rivers can be revived if the Dolores project (for the Mancos River) or the Animas-La Plata Project (for the Animas and La Plata Rivers) is not completed.

Pursuant to the agreement, necessary enactments by Congress include: Waiver of the Non-Intercourse Act; project construction costs deferrals; project operation, maintenance and repair cost deferrals; waiver of federal reclamation law; authorization and appropriation of $49.5 million for the Tribal Development Funds; waiver of the Tribal water right claims (provided that the waiver of the claims relative to the Animas and La Plata Rivers are not final until the Animas-La Plata Project is constructed and the waiver of the claims relative to the Mancos River are not effective until the combined Highland-Towaoc Canal is constructed); and a directive to the Secretary of the Interior to comply with the administrative article.

Necessary Colorado legislative enactments include: Authorization and appropriation of $5 million to the Tribal Development Fund; authorization of the amount necessary to complete the Towaoc pipeline and domestic water distribution system; and authorization and appropriation of $5.6 million for the construction of project facilities. The Colorado General Assembly has already authorized the money necessary for the construction of the Towaoc pipeline and domestic water distribution system.

Article VI - General Provisions

The last article of this document includes miscellaneous agreements. The State agrees that the Tribes can seek additional water rights in accordance with state law; the parties reserve the right to litigate any questions not resolved by this Agreement; the parties agree that the law of abandonment will not be applied to Tribal water rights; the parties expressly reserve all rights not granted or recognized in the Agreement; the Tribes agree that if a reserved water right is recognized in this document for use on a parcel of land already irrigated under a state decree, the state decreed water right will be relinquished; the parties agree that offers or compromises made in the course of negotiation of the document can not be construed as admissions against interests or be used in any legal proceeding other one for approval and interpretation of the Agreement; the Secretary of the Interior agrees not to request reassignment of the Dolores

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Water Conservancy District's water rights pursuant to their contract with the district; the Bureau of Reclamation agrees to give preference to the Tribes to design or construct the Dolores or Animas-La Plata Projects in accordance with the law; and the United States and the state disclaim any interpretation in the Agreement which can be read to commit or obligate them to expand funds which have not been appropriated or budgeted.

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(Department of Interior)

Final Draft
June 27, 1986

AGREEMENT IN PRINCIPLE

CONCERNING THE

COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT

AND

BINDING AGREEMENT FOR

ANIMAS-LA PLATA PROJECT COST SHARING

INTRODUCTION

The United States, the State of Colorado, the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, and certain non-Indian water users have reached an agreement in principle: (i) concerning the quantification, determination, and settlement of the reserved water rights claims of the Tribes; and (ii) providing for the uniform and cooperative administration of those rights. The final water rights settlement agreement will include the provision of water to the Tribes from the Dolores Project and Animas-La Plata Project and the determination of water rights of the Tribes to various streams in southwest Colorado. On March 14, 1986, an Agreement in Principle was entered into among the numerous non-Federal entities setting forth a comprehensive settlement and quantification of these reserved water rights claims. A final settlement agreement clarifying the March 14, 1986, Agreement in Principle (including a confirmation that the water rights to be secured to the Tribes by the settlement are in recognition and fulfillment of the reserved water rights claims of the Tribes) and implementing the provisions of this agreement in principle shall be executed by the non-Federal entities and the United States on or before July 31, 1986.

The United States, the State of Colorado, certain political subdivisions of the States of Colorado and New Mexico, the Ute Mountain Ute Indian Tribe and the Southern Ute Indian Tribe have also reached and they hereby set forth a binding agreement for the cost-sharing and financing of the Animas-La Plata Project in satisfaction of the requirement of Congress in Chapter IV of Public Law 99-88 "Department of the Interior, Bureau of Reclamation, Construction Program" (99 Stat. 293, at pp. 319-320). The non-Federal entities state that they are capable of and willing to participate in project cost-sharing and financing in accordance with the terms of this agreement. The Secretary of the Interior hereby determines that the non-Federal entities' financing plan demonstrates a reasonable likelihood of the non-Federal interests' ability to satisfy the terms and conditions of this agreement as set forth herein.

This Animas-La Plata Project cost-sharing agreement is an integral part of, and is contingent upon, a final settlement of the litigation filed in Colorado District Court for Water Division No. 7 for the quantification of the reserved water right claims of the Southern Ute and Ute Mountain Ute Indian Tribes in the State of Colorado.

WATER RIGHTS SETTLEMENT

The final water rights settlement agreement will provide for, among other things, the following:

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1. A consent decree to be prepared by the Colorado parties, the United States and the Tribes providing for a comprehensive quantification and determination of the reserved water right claims of the Tribes and providing for the uniform and cooperative administration of the decreed waters. This consent decree shall be submitted for approval by the District Court for Water Division No. 7, State of Colorado, and duly approved by the court on terms agreeable to the parties. Entry of a final decree shall be contingent upon enactment of legislation which:

a. Authorizes the Tribes, pursuant to the requirements of 25 U.S.C. 177, to lease or temporarily dispose of water to the extent otherwise permitted by applicable Federal and State law, interstate water compacts, and treaties.

b. Provides for deferral, without interest, of the repayment costs allocable to municipal and industrial water supplies, including operation and maintenance costs, allocated to the Tribes from the Dolores and Animas-La Plata Projects. As an increment of water is leased or otherwise used, repayment of that increment's prorata share of the allocable costs shall commence.

c. Assures that the Tribes are not restricted by application of federal Reclamation laws from using and/or leasing waters allocated to the Tribes from the Dolores and Animas-La Plata Projects.

d. Authorizes appropriation of the federal share of the $60.5 million Tribal Development Fund provided for in the settlement.

e. Provides that performance by the United States of the actions required by the aforementioned legislative provisions will be conditioned on the Tribes executing a waiver and release of all claims concerning water rights whether in rem or against any party to the settlement other than those which may arise under the terms of the settlement.

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

2. The creation of Tribal Development Funds for the Tribes, with $20.0 million for the Southern Ute Tribe and $40.5 million for the Ute Mountain Ute Tribe, said funds to be created as follows:

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

b. Such amount as needed, estimated at $6.0 million, to be expended by the State of Colorado for construction of the Towaoc pipeline and domestic water distribution system for the Ute Mountain Ute Tribe as a credit to the Ute Mountain Ute Development Fund. Said construction will be initiated within one year of the execution of the final settlement agreement, and shall be completed within one year of the initiation of construction.

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

In consideration for the Ute Mountain Ute Tribe's agreement to accept delayed payment of the Federal contribution to its Tribal Development Fund, the Secretary of the Interior, the State of Colorado, and the Ute Mountain Ute Tribe shall use their best efforts to acquire for the Ute Mountain Ute Tribe, for recreation purposes, not less than 100 acres of land with access to McPhee Reservoir of the Dolores Project from lands which had been recently transferred from the Department of the Interior to the Department of Agriculture.

3. Appropriate finality provisions to protect Federal, Tribal, and State interests in the settlement.

ANIMAS-LA PLATA COST SHARING AGREEMENT

Cost sharing and financing of the Animas-La Plata Project shall be as follows:

1. The facilities of the project, or mutually acceptable alternatives, shall be constructed in two phases as identified below:

Phase One Facilities

Ridges Basin Dam and Reservoir
Durango Pumping Plant
Ridges Basin Inlet Conduit
Ridges Basin Pumping Plant and Transmission Facilities
Long Hollow Tunnel
Durango Municipal and Industrial Pipeline
Shenandoah Pipeline
Recreation, Fish and Wildlife and Cultural Resources Phase One
Dry Side Canal Phase One
Operation and Maintenance Facilities Phase One
Southern Ute Inlet (partial)
Southern Ute Diversion Dam
Red Mesa Pumping Plant, Laterals and Transmission Facilities
Alkali Gulch Laterals Phase One
La Plata New Mexico Laterals Phase One
Dry Side Laterals Phase One
Drains Phase One
New Mexico Interim Facilities

Phase Two Facilities

Southern Ute Dam and Reservoir
Southern Ute Inlet (partial)
New Mexico Irrigation Canal
Ute Mountain Ute Pumping Plant, Laterals, and Transmission Facilities
Drains Phase Two
Recreation, Fish and Wildlife and Cultural Resources Phase Two
Dry Side Canal Phase Two
Alkali Gulch Laterals Phase Two
Alkali Gulch Pumping Plant and and Transmission Facilities
Dry Side Laterals Phase Two
La Plata New Mexico Laterals Phase Two
Operation and Maintenance Facilities Phase Two
Southern Ute Pumping Plant, Laterals, and Transmission Facilities
Third Terrace Pumping Plant and Transmisssion Facilities
La Plata Diversion Dam

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Contingent upon appropriations by the Congress, Phase One facilities shall be constructed by the Bureau of Reclamation within a period of not less than 12 years from the date of this agreement. Phase Two facilities will be constructed by one or more of the non-federal entities signatory to this agreement on such schedules as they deem practicable.

2. As part of their non-federal contributions, the non-Federal entities agree to non-federally finance the Phase Two facilities listed above. Until the completion of Phase Two facilities, this phasing of facilities has the effect of making the Southern Ute Tribe's municipal and industrial water and the Ute Mountain Ute Tribe's municipal and industrial and irrigation water available at Ridges Basin Reservoir. In addition, it has the effect of deferring the irrigation of 10,700 acres of full service land in Colorado and the irrigation of 1,900 acres of full service land in New Mexico.

3. Construction of Phase One facilities will be financed as follows:

a. $30 million contribution to be deposited by the Colorado Water Resources and Power Development Authority, less the amount not to exceed $75,000 to be spent by the Authority for the surface geology survey in 1986, into an escrow account within 30 days following the initiation of irreversible construction or pre-construction activities by the Secretary for the development of Phase One of the Animas-La Plata Project. Escrow funds, including interest earned thereon, will be available on demand by the Secretary to fund no more than twenty percent of the total estimated Phase One development costs in any year.

b. $7.3 million to be provided by the Animas-La Plata Water Conservancy District in a lump-sum payment to the Secretary no later than September 30 of the year prior to the year in which the Secretary declares that municipal and industrial water is expected to be available to non-Indian beneficiaries in Colorado. Allocable costs in excess of $7.3 million attributable to inflation will be repayable pursuant to a repayment contract between the Secretary and the District with such escalation for inflation of materials and labor costs not to exceed 30 percent. Escalation of overhead costs will be treated in accordance with paragraph 6 below.

c. $75,000 to be provided by the Animas-La Plata Water Conservancy District in payments of $5,000 per year, payable on or before October 1 of each year, commencing the first year the Secretary expends funds for the Animas-La Plata Project.

d. $50,000 to be provided by Montezuma County to the Secretary in a lump-sum payment within 30 days following initiation of irreversible construction activities by the Secretary for Phase One.

e. An estimated $12.8 million, to be provided by the San Juan Water Commission through the agency of San Juan County, will be available to the Secretary to fund the estimated annual cost of developing the New Mexico non-Indian municipal and industrial water share of the Phase One facilities, such funds to be provided on a schedule of applicable actual costs related to New Mexico municipal and industrial water facilities. Allocable costs in excess of $12.8 million attributable to inflation will be repayable pursuant to a repayment contract between the Secretary and the San Juan Water Commission with such escalation for inflation of materials and labor costs not to exceed 30 percent. Escalation of overhead costs will be treated in accordance with paragraph 6 below.

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f. $5.6 million to be provided by the State of Colorado, contingent upon appropriations by the Colorado General Assembly, to the Secretary for Ridges Basin Dam. Such funds shall be provided on a schedule acceptable to Colorado and the Secretary beginning in the first year of construction of said dam.

g. All other funds needed to satisfactorily complete construction of the Phase One facilities shall be provided by the United States, contingent upon appropriations by the Congress.

4. No expenditure of federal funds by the Secretary will be made for irreversible construction actions or activities in the development of the Animas-La Plata Project prior to passage of the legislation enumerated in Paragraph One under the heading Water Rights Settlement and prior to implementation of 30-year straight-line repayment of those costs of the Animas-La Plata Project to be repaid by Colorado River Storage Project power revenues.

5. Repayment contracts must be executed by Indian and non-Indian beneficiaries of the Animas-La Plata Project with the Secretary of the Interior for repayment of the reimbursable costs of the project. In determining the reimbursable costs of the Project, the financial contributions of the non-federal entities to the construction of Phase One facilities shall be credited to the allocable costs of each project function as follows:

Function	Amount ($ millions)
New Mexico Non-Indian Municipal and Industrial	$ 12.8
Colorado Non-Indian Municipal and Industrial	$ 12.9
Colorado Non-Indian Irrigation	$ 37.625

6. The repayment contracts will include provisions to recover any escalation of construction costs for Phase One facilities. In negotiating the escalation provisions, consideration will be given to fixing overhead costs charged to the Animas-La Plata Project by the Secretary.

7. All operation, maintenance and replacement costs not deferred under legislation will be borne by the non-Federal entities under the provisions of repayment contracts, subject to applicable Reclamation Law.

8. Any use of water other than that contemplated in the Final Environmental Impact Statement for the Animas-La Plata Project shall be subject to compliance with the National Environmental Policy Act.

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Dated this 30th day of June, 1986.

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

IN WITNESS THEREOF, the parties hereto have caused this agreement to be executed as of the date first above written by their respective officers and representatives, and warrants that each is duly authorized by the respective entity to execute this agreement which shall bind the parties hereto, their successors and assigns.

For the State of Colorado

For the State of Colorado

For the Colorado Water Resources and Power Development Authority

For the Southern Ute Indian Tribe

For the Animas-La Plata Water Conservancy District

For the Ute Mountain Ute Indian Tribe

For the New Mexico Interstate Stream Commission

For the San Juan Water Commission

For Montezuma County

For the Secretary of the Interior

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Dated this 28th day of June, 1986.

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

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For the Colorado Water Resources and Power Development Authority

For the Southern Ute Indian Tribe

For the Animas-La Plata Water Conservancy District

For the Ute Mountain Ute Indian Tribe

For the New Mexico Interstate Stream Commission

For the San Juan Water Commission

Thomas K. Cobbed
For Montezuma County

For the Secretary of the Interior

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For the State of Colorado

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For the Southern Ute Indian Tribe

For the Animas-La Plata Water Conservancy District

For the Ute Mountain Ute Indian Tribe

For the New Mexico Interstate Stream Commission

For the San Juan Water Commission

For Montezuma County

For the Secretary of the Interior

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For the State of Colorado

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For the Southern Ute Indian Tribe

For the Animas-La Plata Water Conservancy District

For the Ute Mountain Ute Indian Tribe

For the New Mexico Interstate Stream Commission

For the San Juan Water Commission

For Montezuma County

For the Secretary of the Interior

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For the State of Colorado

For the State of Colorado

For the Colorado Water Resources and Power Development Authority

For the Southern Ute Indian Tribe

For the Animas-La Plata Water Conservancy District

For the Ute Mountain Ute Indian Tribe

For the New Mexico Interstate Stream Commission

wm B English
For the San Juan Water Commission

For Montezuma County

For the Secretary of the Interior

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Working for the Nature of Tomorrow

NATIONAL WILDLIFE FEDERATION

1412 Sixteenth Street, N.W., Washington, D.C. 20036-2266 (202) 797-6800

December 14, 1987

The Hon. Morris K. Udall
Chairman
Committee on Interior & Insular Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Please accept this statement for the record of the hearing held by the Committee on Interior & Insular Affairs on September 16, 1987, regarding H.R. 2642, the Colorado Ute Indian Water Rights Settlement Act.

The National Wildlife Federation is opposed to enactment of H.R. 2642 in its present form. The bill, along with the settlement agreement it seeks to implement, is premised upon the construction of the costly Animas-La Plata Project of the Bureau of Reclamation. In our view, this is the fatal flaw in the legislation and the settlement agreement.

The Animas-La Plata Project -- if it works as intended -- would:

* bring new land *into* agricultural production, at a time when the Federal government is signing up farmers to take some 45 million acres *out* of production;

* *waive* enforcement of the acreage limitations of Reclamation law, at a time when Congress is seeking to *strengthen* enforcement of such laws;

* *increase* salinity in the Colorado River system, while the Federal government is running 3 to 5 years behind on its 900 million-dollar program to *reduce* salinity in the Colorado;

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* damage or destroy an *existing* local industry -- commercial whitewater rafting -- in the hope of attracting highly speculative, water consuming industry *far into the future*; and,

* spend over a half billion dollars on a *new* project, while an *existing* half billion dollar project nearby goes underused.

The Tribes have been caught between a state water bureaucracy determined to preserve its prerogatives and a Federal water bureaucracy desperate to maintain its construction program. Under these circumstances, it is little wonder that the end result so poorly serves the public interest and so obviously departs from common sense.

The Animas-La Plata Project is a poor investment.

Animas-La Plata was authorized for construction in 1968, intended to serve both Indians and non-Indians in the project area. The project has been plagued by controversy over the last 20 years, and for good reason. The Bureau of Reclamation itself has identified only 92 cents of benefits -- generously discounted at just 3.25% -- for each dollar of costs for Phase I of the project. (Executive Summary of the Draft Agreement for the Settlement of Indian Water Right Claims and Funding of the Animas-La Plata Project, June 30, 1986.) The economic benefits of the project are in fact far less if calculated using the current statutory discount rate of 8.625% and if more realistic assumptions concerning crop prices and yields and industrial growth were incorporated into the benefit-cost analysis.

The share of the total capital costs of Animas-La Plata that are allocated to irrigation amount to $5,808 per acre, but only $47, less than 1%, would ever be repaid by irrigators (Reclamation Project Data Sheet, 1/31/87). The benefits, as reflected by the change in land values, will likely range from $300 to $1,000 per acre, less than 20% of the capital cost of making irrigation water available. Most of the lands to be irrigated are situated over one mile above sea level, where crop production is limited by short growing seasons. Moreover, the subsidization of new irrigation and increased crop production is inconsistent with the objectives of the Food Security Act of 1985, which seeks to retire marginal cropland. Indeed, through July of this year, farmers and ranchers in Colorado had accepted Federal government payments to take over 1,580,000 acres

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of land out of production as part of the Conservation Reserve Program.

Moreover, a large portion of the water to be provided by the project is designated for municipal and industrial (M&I) use, and earmarked for future industrial use, rather than immediate potable use. However, we are not aware of a single water-using industrial firm that has even signed a letter of intent, let alone a contract, for project water. The M&I water that is likely to be required to service gradual population and economic growth can be supplied by more cost-effective alternatives.

The Animas-La Plata Project is environmentally damaging.

The environmental problems associated with the construction and operation of Animas-La Plata are well known and substantial. Among them are the following:

- The State of Colorado's Bodo Wildlife Area, which provides important winter range for elk and other big game, will be inundated by Ridges Basin Reservoir;

- The flows of the Animas River will be greatly depleted by project withdrawals, dealing a serious blow to the well-established whitewater rafting industry and causing significant losses to the river's fishery;

- Increased salinity in the Colorado River at Imperial Dam, the point of reference for meeting our treaty obligations to Mexico for Colorado River water quality;

- The loss of over 50 megawatts of electric power -- enough energy to meet the needs of a city of 60,000 people -- just to pump water more than 800 feet high out of the Animas River.

Sensible alternatives are available to meet Federal trust responsibilities to the Tribes.

It is apparent that the implementation of the 1986 Settlement Agreement still faces a host of intractable problems associated with the construction of Animas-La Plata and the intended use of project

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water. Environmental problems are significant, agricultural objectives are in conflict, and interstate allocations appear to be threatened. Any one of these issues could sink a more worthy Reclamation project. The combination of these concerns will surely sink the Animas-La Plata Project.

Under these circumstances, and faced with the likelihood that the 100th Congress will adjourn without enacting H.R. 2642 or its companion, S. 1415, we believe that the parties might want to give consideration to an alternative settlement -- one that can bring more benefits to both Tribes more quickly than H.R. 2642, even if it were signed into law today, and do so with far less expenditure of economic and environmental resources.

The main components of such an agreement could include the following:

1. The Tribal Development Funds, as contained in current legislation.

2. Cost-effective irrigation development of reservation lands, such as those serviceable from interconnection with the Dolores Project or by minimal pumping from the Animas or Mancos Rivers;

3. Allocation of the electric power generating capacity and energy from the Colorado River Storage Project (CRSP) that has previously been dedicated for project use directly to the Tribes; and,

4. Such additional Federal and State contributions to the Tribal Development Funds as may be necessary for more comprehensive development of the social and physical infrastructure of Tribal lands.

In short, we recommend "cashing out" the water rights claims of the Tribes, not only with wet water and development dollars, but also with a real asset in current demand -- electric power. This power -- power that the Bureau of Reclamation would waste to pump water 800 feet uphill -- could provide an immediate cash flow of over $6 million to the Tribes. This estimate is based upon the spread between the current cost of CRSP power provided to the Colorado River and Navajo reservations and the current price of CRSP power provided to investor owned utilities, according to the most recent annual report of the Western Area Power Administration.

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There is ample precedent for such an allocation of Federally generated power for resale in section 107 of the Hoover Power Plant Act of 1984, relating to repayment of the Central Arizona Project. I would point out that CRSP preference customers are no worse off, since this power would have been dedicated to the Animas-La Plata Project anyway. The Tribes will of course be free to dispose of this power in such a way as to make provision for their own needs for growth and development on Tribal lands.

It should be noted that the net present value of an annual cash flow of $6,444,000 resulting from power sales for a 50-year period is $73.5 million. When computed at the same discount rate used to compute benefits of the Animas-La Plata Project itself, the present value of the power revenues is over $158 million.

Conclusion

We recommend that H.R. 2642 be substantially modified to facilitate a fair and generous settlement of Colorado Ute water rights claims, as outlined above, and to deauthorize the principal features of the Animas-La Plata Project. Such a modification would allow the Secretary of the Interior to meet his important trust obligations to the Tribes, at far less cost to the Federal taxpayer and to the natural environment. Thank you for the opportunity to submit these views.

Sincerely,

E. R. Osann

Edward R. Osann, Director
NWF Water Resources Program

cc: The Hon. Don Young
The Hon. George Miller
The Hon. Charles Pashayan, Jr.
The Hon. Ben Nighthorse Campbell
The Hon. Bill Richardson

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