



STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER

Statement
Of
Thomas C. Turney
State Engineer
State of New Mexico
Before the
House of Representatives
Subcommittee on Water and Power
Of the
House Committee on Resources
On
H.R. 3112, *To Amend the Colorado Ute Indian Water Rights
Settlement Act*

May 11, 2000

Mr. Chairman and Committee members—thank you for the opportunity to testify on H.R. 3112. I testify on behalf of the State of New Mexico. H.R. 3112 authorizes the Secretary of the Interior, acting through the Bureau of Reclamation, to construct, operate and maintain certain water diversion and storage facilities under the Animas-La Plata Project authorized by Public Law 90-537, approved September 30, 1968. It is our understanding that the facilities authorized for construction by H.R. 3112 would be operated consistent with provisions of the Animas-La Plata Project Compact, which was approved by the Congress in Public Law 90-537. We support this bill as it proposes to amend the Colorado Ute Indian Water Rights Settlement Act of 1988 to provide for final settlement of the claims of the Ute Indian tribes. The bill authorizes a smaller, reconfigured project than originally contemplated at the time of 1988 Act.

The project has significant benefits for many communities in Northwest New Mexico. The need for a dependable water supply for Northwest New Mexico has long been recognized. Communities along the Animas River divert water from a river which has historically, during periods of extended drought, run dry. Upstream raw water storage must be provided so that water can be released into the river when the river approaches a low flow stage. If water is not available in the river, communities will simply run short of water for drinking or bathing or other municipal purposes. But doing without water is not really an option. People cannot survive without water. Wet water in a dry state such as New Mexico is a necessity -- not a luxury. The reconciled Animas-La Plata project is designed to provide a source of wet water, during these periods of low river flow, for both Indian and non-Indian communities in New Mexico. New Mexico must strongly support a project that provides dependable, wet water for its citizens.

H.R. 3112 is the result of laborious negotiations. The bill creates a reconciled project, which, while providing wet water to New Mexico, also contains many additional features. The reconciled project significantly reduces capital costs; it reduces river depletions to a level that will provide protection for an endangered species; and it provides protection for senior New Mexico water right holders. It further provides for an assignment of portions of the water right permit, issued by the State Engineer to Reclamation, to New Mexico project beneficiaries who have or will actually put the water to beneficial use.

The bill includes language to insure that the Animas- La Plata project can deliver wet water to the Navajo Nation communities in the area of Shiprock. Over the past two decades, Shiprock's population has swelled. The conveyance pipeline contained within the bill, as a non-reimbursable feature, is essential to address the public health and safety of these Navajo communities. Our support of this Navajo Nation municipal pipeline assumes that the Navajo Nation will not file additional claims against the New Mexico non-Indian beneficiaries of the project.

Comments have been made by one of my sister agencies on Reclamation's Draft Supplemental Environmental Impact Statement for the project regarding the impact of the project on stream bottom deposits. Stream bottom deposits are a part of surface water quality standards promulgated by the New Mexico Water Quality Control Commission -- a Commission upon which I sit as a constituent agency. The State does not believe that a violation of water quality standards would be a necessary result of the project, or that such an impact from the project would necessarily preclude the project from going forward. We believe that Reclamation has additional information that can be used to answer concerns regarding any possible impacts relating to stream bottom deposits. Alternatively, we anticipate Reclamation will be able to provide various mitigation measures, perhaps implemented through ongoing operation and maintenance practices. New Mexico stands ready to work with the project beneficiaries, using sound science, to identify approaches, if any are needed, to ensure that the reconciled project meets New Mexico Standards for Interstate Surface Waters.

It is very important, not only to New Mexico water users, but to all water users of the San Juan River system, that storage of Animas River flows be implemented in order to make the water supply available from the San Juan River system usable for development of the water apportioned to the States of Colorado and New Mexico by the Upper Colorado River Basin Compact. Further, storage and regulation of Animas River flows, in concert with the regulation afforded by Navajo Reservoir, can enhance the success of the San Juan River Basin Recovery Implementation Program to achieve its goals to conserve endangered fish species and to proceed with water development in the San Juan Basin.

In closing, H.R. 3112 will aid in providing a more dependable water supply for Indian and non-Indian communities in northwest New Mexico. Northwest New Mexico is growing and it is important to provide an adequate water supply for the area's future.

Thank you.

*San Juan - 3
ALP*

**STATEMENT OF
DAVID J. HAYES, DEPUTY SECRETARY OF THE INTERIOR,
BEFORE THE HOUSE RESOURCES COMMITTEE
SUBCOMMITTEE ON WATER AND POWER
ON H.R. 3112,
the "COLORADO UTE SETTLEMENT ACT AMENDMENTS OF 1999"**

MAY 11, 2000

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear today to testify for the Administration on H.R. 3112, a bill to modify the Colorado Ute Water Rights Settlement Act of 1988 to provide for a final settlement of the claims of the Colorado Ute Indian Tribes. Those remaining claims exist in the Animas and LaPlata River basins in Southeastern Colorado and their resolution also requires a resolution of issues associated with the Animas-La Plata project (ALP). H.R. 3112 aims to resolve this matter once and for all. We thank Congressman McInnis for introducing the bill.

It is no secret that this settlement and its relation to ALP has been an extremely controversial matter. As a result, implementation of the settlement has been long-delayed, denying the Tribes the benefit of the agreement they reached with their non-Indian neighbors, the State of Colorado, and the United States in the mid-1980s. Although a significant number of concerns with the original ALP were valid and needed to be addressed, that project no longer exists. Instead, the Department of the Interior is currently completing analysis of a new, greatly slimmed-down project. H.R. 3112 bears strong resemblance to the preferred alternative plan for this project mapped out in Interior's Draft Supplemental Environmental Impact Statement. Thus, while the Administration is still reviewing environmental, economic and policy matters related to many of the bill's specific provisions, we welcome this bill as providing an appropriate vehicle for bringing much needed finality to the matter of Animas.

The Administration will support H.R. 3112, if it is amended to address several concerns

discussed below, as well as any additional issues and findings that might be identified in our final Supplemental Environmental Impact Statement and Record of Decision, which we plan to complete this summer. We appreciate Congress' interest in moving ahead on Animas, and urge them to continue to focus on the issue this year. We look forward to working with the Subcommittee to ensure that the necessary changes are made so that legislation amending the Colorado Ute Water Rights Settlement can be enacted into law this session.

Before discussing the specifics of H.R. 3112, I would like to briefly provide some background and context to highlight the importance of this legislation and the need for resolution of the matter this year.

Background

In 1988, Congress enacted the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100-585) which ratified the 1986 Colorado Ute Indian Water Rights Final Settlement Agreement. In committing the United States to this settlement, Congress agreed that resolution of the Colorado Ute Tribes' water rights claims could be accomplished in a manner which included providing the Tribes a water supply from ALP, a Bureau of Reclamation project authorized by the Colorado River Basin Project Act of September 30, 1968 (Public Law 90-537), as a participating project under the Colorado River Storage Project Act of April 11, 1956 (Public Law 84-485). All parties recognized that construction of ALP would depend upon compliance with other applicable laws, including NEPA and Reclamation statutes.

The original ALP would have diverted the flows of the Animas, La Plata, and San Juan Rivers (by exchange) for primarily irrigation and municipal & industrial (M&I) purposes.

More specifically, the Project would have utilized an average water supply of 191,230 acre-feet (af) annually. This amount included 111,130 af of irrigation water to be used on 17,590 acres of non-Indian land currently being irrigated, and 48,310 acres of Indian and non-Indian land not presently being irrigated. The balance of the 191,230 af supply would have provided a 40,000 af annual M&I supply to non-Indian communities in Colorado and New Mexico while 40,100 af of M&I water would be provided to the Southern Ute Tribe, Ute Mountain Ute Tribe, and the Navajo Nation. The size and scope of the original project is more fully described in a 1979 Bureau of Reclamation (Reclamation) Definite Plan Report, a 1980 Final Environmental Impact Statement, a 1992 Draft Supplement to the Final Environmental Statement, and a 1996 Final Supplement to the Final Environmental Statement.

Notwithstanding the prompt implementation of other elements of the Colorado Ute Water Rights Settlement, construction of ALP was not initiated. Initially, the existence of endangered species in the San Juan River basin raised a number of issues which needed resolution. Subsequently, other environmental, cultural resource, financial, economic, and legal concerns served to stymie project construction and therefore settlement implementation.

In 1996, in an attempt to resolve the continuing disputes surrounding the original project, Colorado Governor Roy Romer and Lt. Governor Gail Schoettler convened the project supporters and opponents in a process intended to seek resolution of the controversy involved in the original ALP and to attempt to gain consensus on an alternative approach to finalizing the settlement. Although the Romer/Schoettler Process did not achieve consensus, the process produced two major alternatives, one structural and one non-structural. The structural alternative was the basis for proposed legislation introduced in 1998, which was known as "ALP Lite." Notwithstanding our support for developing a settlement alternative

which would supply wet water to the Tribes, the Administration could not support the ALP Lite bills due to a number of concerns. Most notable was the fact that the bills, while purporting to represent a down-sized project, would have enabled the original project to be built at some point in the future when and if additional water could be developed consistent with endangered species concerns. Of equal concern was a provision intended to circumvent critical environmental laws, including the Endangered Species Act, Clean Water Act, and the National Environmental Policy Act (NEPA). We also were concerned about short-circuiting requirements of Reclamation law and Administration policy related to sound economic and financial analysis, planning, and project structure.

Notwithstanding the Administration's objections to ALP Lite, we remained committed to continuing a dialogue with the Ute Tribes and their non-Indian partners in pursuit of an appropriate means to obtain a just and final settlement for the Tribes. To facilitate this dialogue, the Administration developed a proposal to finalize implementation of the Colorado Ute water rights settlement (Administration Proposal). This proposal was presented to the Tribes and other ALP stakeholders at a meeting hosted by Governor Romer in August 1998.

The Administration Proposal was developed in accord with the United States' trust responsibility to the Colorado Ute Tribes and intended to ensure the Tribes the benefits they negotiated in the original settlement. Intrinsic to implementation, of course, is the need to address a number of long-standing concerns associated with ALP. For this reason, the proposal contained a number of controversial points, including elimination of the irrigation component of ALP and a reduction in the size of the reservoir to support only the maximum depletions currently allowable under the Endangered Species Act. Specifically, the reservoir is less than half the size originally contemplated and is an off-stream facility which allows

the Animas River to remain free flowing. The proposal also incorporated non-structural concepts by utilizing water acquisition to supply the balance of the Tribes' settlement water rights. Most importantly, the Administration Proposal was premised on full environmental review, including a review of competing non-structural proposals to settle the Tribes' water rights claims. To ensure that the review was timely, we began the process in January 1999 and released a draft Supplemental Environmental Impact Statement (SEIS) on January 14 of this year. The draft SEIS recommends a modified version of the Administration Proposal as the best alternative to resolve the Tribes' water rights claims with the least environmental impacts.

Importance of Resolving the Ute Tribes' Water Rights Claims

It is well established by the Winters doctrine that the establishment of an Indian Reservation carries with it an implied reservation of the amount of water necessary to fulfill its purposes with a priority date no later than the creation of the reservation. Indian reserved water rights are unique in character and not subject to State water law. In addition, they are typically very early in priority and sizable in quantity since they are premised on sufficient water being reserved to ensure full utilization of Indian reservations, both presently and in the future. Given these reserved water rights traits and the problems they present for the States and local water users desiring certainty in water management, Indian water rights settlements have become extremely important in the arid western United States.

The Colorado Ute Tribes' reserved water rights arise from an 1868 Treaty with the United States which established the Ute Reservation in Southwestern Colorado. Opponents of the settlement have asserted that the Tribes' 1868 water rights were extinguished by an 1880 Act of Congress which allotted a significant part of the Southern Ute Reservation. The Solicitor

of the Department of the Interior, however, recently issued a legal opinion concluding that the Ute Tribes' water rights retain their 1868 priority date.

As noted earlier, the Tribes' water rights were quantified in the 1986 Settlement Agreement. The 1986 Agreement contained a contingency in the event ALP was not constructed. That contingency allows the Tribes a five year window beginning January 1, 2000, to reinitiate the adjudication of their water rights claims if water from ALP is not available. Exercise of that contingency, however, is in no one's best interests. First, the intent of the 1986 Agreement should be honored. It was essentially a package deal providing significant water supplies to the Tribes but also subordinating certain water rights on the expectation that federal water supplies would be made available. Second, with well over 50,000 acres of arable lands on the Ute Reservations in the LaPlata and Animas River basins and a combined annual average flow of over 500,000 acre-feet per year, a sizable claim would be made on behalf of the Tribes in any reinitiated adjudication. If the 1986 Settlement is not implemented, a lengthy, expensive, and acrimonious proceeding which will adversely affect the citizens of two states will commence, placing a cloud on water supplies throughout southwestern Colorado and northern New Mexico.

H.R. 3112

To finalize the original water rights settlement, H.R. 3112 authorizes the Secretary to construct a smaller ALP designed to provide for an annual average depletion of 57,100 af to be used for M&I purposes. If constructed, this down-sized project would include an inactive storage pool and recreation facilities determined appropriate per an agreement between the Secretary and the State of Colorado. Of the project's available depletions, the Ute Tribes would receive 16,525 af each. The Ute Tribes also would share a \$40 million Tribal

Resources Fund to be expended for water acquisition and/or resource enhancement. These Tribal benefits provided under H.R. 3112 would constitute a final settlement of Tribal water rights to the Animas and LaPlata Rivers in Colorado. To a large extent, H.R. 3112 mirrors the Administration Proposal. Differences do exist, however, and those differences as well as the common ground are discussed below.

Section 3 - Amendments to Section 6 of the Colorado Ute Indian Water Rights Settlement Act of 1988

Environmental Compliance

As just described, section 3 (which amends section 6 of the 1988 Act) authorizes the Secretary to construct a limited-size ALP to settle the Colorado Ute water rights claims. This project, for the most part, is in broad terms consistent with the preferred alternative in the Department of the Interior draft SEIS. One exception, however, is the amount of water allocated to the Ute Tribes. H.R. 3112 provides approximately 6,000 acre-feet less M&I water than the Administration Proposal. The Administration respects the Tribes' exercise of self-determination in negotiating with their non-Indian neighbors. To the extent the Ute Tribes support this reallocation of water, the Administration is willing to consider it subject to additional analysis as part of preparing its final SEIS.

Important to the structure of H.R. 3112, is the provision expressly conditioning the project authorization on compliance with federal laws related to the protection of the environment. The bill makes clear that it is not to be construed as predetermining the outcome of analyses being conducted pursuant to those laws. Given that full environmental compliance is a fundamental principle of the Administration Proposal, this concept is critical to Administration support of H.R. 3112.

Once again, we understand that the Ute Tribes have exercised their sovereign prerogative and support the specific project authorized here. Furthermore, we agree that no settlement alternative is viable at this time unless the Tribes are in agreement. Nonetheless, we believe that preserving the Secretary's discretion in conducting environmental compliance is extremely important. We are pleased that the Subcommittee, the Tribes, and the other settlement proponents agree.

Deauthorization

The Administration Proposal also sets forth the principle that construction of a down-sized project would represent full and final implementation of the Colorado Ute Water Rights Settlement and that authorization of additional ALP project features would be rescinded. While H.R. 3112 requires subsequent Congressional authorization for any additional facilities to be used in conjunction with the facilities provided in this legislation, the Administration objects to the fact that the bill lacks a provision more clearly deauthorizing the extensive number of project features previously authorized but not currently contemplated.

We recommend that paragraph 3(a)(3) be revised to state: "If constructed, the facilities described in paragraph (1)(A) shall constitute the full extent of the Animas-LaPlata Project. Any other previously authorized project features shall not be constructed without further authorization from Congress."

Finally, it should be noted that H.R. 3112 contemplates an assignment of the Department of the Interior's interest in the New Mexico water permit to fulfill the New Mexico purposes of ALP. In concert with the language we suggest above, this provision helps to effectuate deauthorization of the scope of the original project in New Mexico.

Repayment

H.R. 3112 provides that in lieu of a typical repayment contract under Reclamation law, the non-Indian municipal and industrial water capital repayment obligations may be satisfied upon the payment in full of such obligations prior to the initiation of construction activities. That repayment obligation is to be determined pursuant to an agreement between the Secretary and the appropriate non-Indian entity.

The Administration Proposal established the principle that the non-Indian ALP partners should fully absorb the costs associated with their share of the project in accordance with Reclamation law and Administration policy. An up-front financial contribution with no final cost allocation, even when that contribution is negotiated in good faith and based on conservative cost estimates, would shift the risk of unforeseen cost increases to federal taxpayers and is therefore not in accord with Reclamation law and policy. The Administration does not support this approach.

As an alternative, we believe the approach taken in the 1986 Cost-Sharing Agreement which provides for up-front financing of project development and a final allocation of construction costs is consistent with Reclamation law and policy and should therefore be replicated here. This approach also includes the specification of a repayment ceiling to provide some certainty as to the financial exposure of the repayment entities.

The draft SEIS contains a preliminary version of the cost allocation for the modified project but that information is being updated. We have been encouraged by all interested parties to develop, as soon as possible, a specific cost-share approach. The Administration has been

working on this issue and we expect to have a specific proposal for consideration by Congress and interested parties within the next month.

As a contingency, in the event that no final agreement on cost-share is reached, we recommend an additional provision be added to section 3. This new subsection should specify that in the event the project is to be constructed and an agreement on cost-share is not reached with each of the non-Indian entities provided an allocation of project water by March 1, 2001, that entity or entities' allocation of reservoir storage shall be reallocated and distributed to the Colorado Ute Tribes. This provision is particularly important because the Colorado repayment entities may reject an allocation of project water so that they can instead obtain the use of water through an agreement with the Ute Tribes. The New Mexico parties, however, may be concerned that some depletions which would otherwise occur in New Mexico may be reallocated to the Colorado Ute Tribes. To address this concern, the Secretary also could be given the discretion to down-size the reservoir even further so that only storage for Colorado and the Navajo Nation's depletion allowance is constructed. Since the trust fund concept set forth in the Administration Proposal and authorized in section 4 of H.R. 3112, was premised on the need to provide additional water or other benefits to the Ute Tribes due to the limited amount of water available in the down-sized reservoir, we would propose a commensurate readjustment of the size of the trust fund which was intended to purchase additional water.

Section 4 Miscellaneous

Assignment of Water Permit

H.R. 3112 directs the Secretary to assign the Department of the Interior's water rights under New Mexico Engineer Permit Number 2883 for the New Mexico portion of ALP to the

original project beneficiaries or the New Mexico Interstate Stream Commission. While H.R. 3112 specifies that the assignment shall be in accord with State law, it also should make clear that such assignment will be undertaken in compliance with all applicable federal environmental laws. While the Administration has no fundamental objection to this provision, particularly under the conditions specified in section 4 of the bill, we need to ensure that this provision not be interpreted to circumvent the application of any federal environmental laws.

Navajo Nation Municipal Pipeline

H.R. 3112 would authorize the Secretary to construct a pipeline to deliver the Navajo Nation's allocation of ALP project water to the community at Shiprock, New Mexico. Although this pipeline was not part of the original Administration Proposal, it is part of the modified proposal which is now the preferred alternative in the DSEIS. It also was added to the non-structural alternative in the draft SEIS. The Administration is pleased that H.R. 3112 considers the water needs of the Navajo people as they may be affected by the proposed project.

Tribal Resource Funds

The Administration Proposal, as noted earlier, included a water acquisition/development trust fund to compensate for the down-sized project providing the Colorado Ute Tribes with the amount of water originally contemplated in the 1986 settlement. Accordingly, if stored water supplies are shifted from the non-Indian entities back to the Ute Tribes as a result of a failure to reach agreement on cost-sharing, there should be some proportionate reduction in the \$40,000,000 authorized to be appropriated to the Tribal Resource Funds. This could be done by having the Secretary report the final storage allocation to the Ute Tribes after the proposed March 1, 2001 deadline for reaching a cost-share agreement. Congress, in its discretion,

could then reduce the authorization and actual appropriations accordingly. In no circumstances, however, should the trust fund be reduced below \$10,000,000. Maintaining some amount of the trust fund is warranted since the Tribes have indicated their intent to utilize some of this fund to deliver at least a portion of the settlement water supplies.

With respect to the timing for appropriations to the Tribal Resource Funds, we recommend a five year payout starting in the fiscal year after H.R. 3112 is enacted. Additionally, the Administration is concerned about Section 15(b) providing Tribes with interest income if the full amount of appropriations authorized for specific year is not provided by Congress. It is not appropriate to penalize taxpayers and the Federal Treasury if Congress does not appropriate funds according to a specific authorized schedule. Finally, as is typical in water rights settlements, the legislation should make clear that the funds authorized to be appropriated to the Tribal Resource Funds shall not be available for expenditure by the Ute Tribes until the requirements for Final Settlement have been met. In the event that no Final Settlement is secured within an appropriate time frame (e.g. ten years, taking into account construction schedules), all appropriated funds, together with all interest earned on such funds shall revert to the general fund of the Treasury.

Final Settlement

H.R. 3112 specifies that construction of the down-sized project and an appropriate allocation of project water, coupled with the appropriation of funds authorized in the bill, shall constitute final settlement of the Ute Tribes' water rights claims on the Animas and LaPlata Rivers in the State of Colorado. This provision should be changed to include as a prerequisite to final settlement, the issuance of an amended final decree by the District Court, Water Division Number 7, of the State of Colorado.

Authorization of Appropriations

To provide accountability and cost control over time, the authorization of appropriations in Section 16(b) should be amended upon completion of the Administrations's NEPA review and decision-making process to specify the exact funding level authorized for project construction.

Conclusion

H.R. 3112 represents an opportunity, perhaps the last one, to recover from the unfortunate circumstances which have stymied full implementation of the Colorado Ute Indian Water Rights Settlement. In particular, this is an opportunity for the federal government to fulfill its trust responsibility to the Tribes by honoring the commitments that were made to them back in 1988. The Tribes have made significant concessions in response to environmental concerns and it is now time for us to reciprocate.

Although we have a number of recommended changes to the bill and are still in the process of completing our final SEIS, we believe that the majority of our concerns will not be objectionable to the parties and will improve the chance for the final settlement to take hold. We are prepared to work closely with Congressman McInnis, the Subcommittee, the Tribes, and the other settlement proponents on this legislation.

Settlements such as this remain the best approach to resolving contentious water rights issues in the West. The Administration is prepared to work with the Congress to ensure that this one is not lost.

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**Statement
from the
San Juan Water Commission, New Mexico**

**to the
Subcommittee on Water and Power of the House Resources Committee
on
House Bill 3112**

May 11, 2000

The San Juan Water Commission urges your support for H.R. 3112. The Commission has long valued the leadership you and your subcommittee have shown regarding water resources essential to the health and well being of our western citizenry. You have recognized the cooperative, rather than combative, effort by the Tribes, States, and local water agencies to solve the competing needs for secure water supplies. This cooperation has enabled us to serve the best interests of the region and the nation while preserving the environment and allowing for economic and cultural stability.

In 1986, the Cities of Aztec, Bloomfield and Farmington, the San Juan County Rural Domestic Water Users, and San Juan County recognized the water needs of New Mexicans would be served by securing the storage in the Animas La Plata Project. Storage for water dedicated to the project from New Mexico's supply. These farsighted leaders organized the Commission to further this and other water interests of its members.

NEW MEXICO NEEDS AN ASSURED WATER SUPPLY

New Mexico, and San Juan County is a high desert region, and simply put, water is in short supply. However, San Juan County has a river that could provide adequate water supplies. The problem is, most of the water flows past in a period of three months. An assured supply for the regional needs is only accomplished by storing that spring runoff.

Commission member entities, serving some 25,000 families, are today using the water allocated to the Animas La-Plata Project (ALP.) This use is possible under the terms of our existing Repayment Contract. Almost all of the 14 member entities are becoming dependent on that water. The problem is that, without storage, when we have another drought, a water year like 1977 or 1996, that water would simply not be available. According to the U.S. Census Bureau, during the 1999 fiscal year, fifty-nine percent of New Mexico's growth was in San Juan County. Water demand usually increases faster than population, and with the growth in San Juan County continuing, climbing over 110,000 people, the resulting water demand will only heighten the shortage of another dry period. Clearly, the local economy is strong enough to provide opportunity of additional workers and their families, but planning must occur to meet their needs, particularly water needs, in this arid region. This year, if we experience a year similar to 1977, San Juan County could be short of real wet water as early as June through October.

The crisis created by water shortages is why we need the ALP storage facilities. Other sites, some in New Mexico, do exist to store water, but they would annually evaporate more water and cost more environmentally and economically to construct than the Ridges Basin (ALP) site and the cost difference is significant. While the ALP supply is our first response to the shortage crisis, the Commission recognizes there is a need for storage to secure our other existing supplies. The Commission entities may need 15,000 acre feet of storage, in addition to ALP, to insure against that future crisis. We must protect the water interests of the estimated 109,899 people that depend, in some part, on the San Juan Water Commission member entities for their water.

Most of New Mexico domestic water users are dependent on groundwater supplies, in San Juan County we are blessed by a renewable surface water supply on which we depend. In fact, numerous studies, most recently the Navajo/Gallup Pipeline proposal, have indicated that our groundwater supply is limited and of a poor quality. We are in a Region whose annual precipitation is less than 9 inches, that would be a wet week in Washington, D.C., and we must store water when the snow melts, for the times it does not snow or no summer rain comes.

Construction of storage is not an option, it is a necessity. Will it be done with the least harm to the environment and least cost, the decision is yours.

HR 3112 ADDRESSES TRIBAL ISSUES

This amendment to the Colorado Ute Indian Water Rights Settlement Act of 1988, when completed, will settle the negotiated claims by the Colorado Ute Tribes on the Animas and La Plata Rivers. This is important to New Mexico, from the La Plata and Animas River irrigators who will be assured of their current water rights, to the entire state of New Mexico, which needs Animas River water to have any hope of fully developing its essential allocation of Colorado River water. The legislation further safeguards other New Mexico water, notably the San Juan-Chama water, which is dedicated to the Jicarilla Apache Tribe and the pueblos, and the towns and cities of the Rio Grande corridor.

Similarly, the Navajo Nation is benefited by final settlement of the Colorado Ute claims. In H.R. 3112, the urgent domestic needs for reliable clean water supplies for the Shiprock area are addressed. The needed increase in water supply is provided by the pipeline authorized by the legislation, replacing the water lost by the Nation due to the limits imposed by the Endangered Species Act compliance. The Navajo Nation Community of Shiprock needs, and will receive, a depletion of 2,340 AFY from the ALP New Mexico supply and an authorization to construct a pipeline to supply potable water. Thereby, securing the community's water supply and fulfilling the ALP water commitment to the Nation.

More important, we hope that the project will allow the Navajo Nation to continue, to conclusion, its joint effort with New Mexico to quantify and settle its water claims. From a practical viewpoint, all of us must honor and complete the Ute Indian Water Rights Settlement, if we expect to reach settlement of the Navajo claims. If the Congressionally approved Ute settlement cannot be fulfilled the Navajo Nation will lose its incentive to continue negotiations.

PROPOSED NEW MEXICO AMENDMENT

A technical correction is needed in the section dealing with Nontribal Water Capital Obligations, found in Section 3(a)(a)(5) of the proposed legislation. The Commission requests that the introductory phrase of the section be struck. This change would delete the current phrase. Which reads: "In lieu of a repayment contract." The next word, "under," should then be capitalized to begin the sentence, "Under section 9 of the Reclamation Project Act of 1939 ..." The remainder of the paragraph remains the same.

This technical correction is needed to clarify the intent of the parties that the nontribal parties may select this option to satisfy their capital obligations, but that existing repayment contracts do not need to be replaced in their entirety. The introductory phrase is not needed to allow parties the option of meeting their capital obligations through a payment in full, and thus it should be eliminated in the interest of streamlining the legislation as much as possible.

BRINGING AN END TO DECADES OF CONTROVERSY

In January 1990, the citizens of San Juan County spoke clearly supporting the ALP – they voted overwhelmingly in favor of our participation. The original ALP represented a common sense way to provide the water storage needed in the dry times in an economical and environmentally responsible way. This area is an arid region blessed with renewable water accessed only by

storage. However, times have changed and we must deal with the constraints imposed today. The Commission and other beneficiaries have sought solutions that settle the Colorado claims by the two Ute Tribes and secures reasonable benefits to all in the San Juan Basin. Both the original authorized ALP and the project contemplated in the Amendment, H.R. 3112 meet urgent New Mexico water supply needs.

When the ALP was originally conceived, irrigation dominated the Project not, municipal and industrial (M&I) use. In 1979, the Projects M&I portions of the project were expanded, recognizing the changing region. The San Juan Water Commission was not yet in existence. Seeing the importance of this water supply and the need to cooperatively address the water resource issues, community leaders formed the Commission in 1986. Now the Commission, in its mission to assure the M&I water supplies for its members, must pursue the missing resource - storage. Storage - critical to meet the daily wet water needs in the coming dry time. In addition to the construction of storage to meet a part of our wet water needs, other items in this legislation will assist New Mexico water users. The legislation directs the return of the interest held by the Secretary in State water permits; held for the New Mexico beneficial users by the Department of Interior. All interests are to be assigned, upon the request by New Mexico, to those who will beneficially use the water. This permit assignment will place the New Mexico entities on a footing similar to the Colorado parties. Today, New Mexicans are depending on the New Mexico ALP permits for their current use in compliance with our repayment contract, a relationship that must be recognized. Common sense leads reasonable people to recognize the return of the permit to New Mexico and more directly to the people who are dependent, as the right thing to do.

In the past, the contractual obligations of the Department of Interior Bureau of Reclamation (Bureau) have been ignored. The San Juan Water Commission has an existing Contract (No. 0-07-40-R1080) recognized by the New Mexico Supreme Court, outlining the Commission's and the Bureau's obligations. The Commission has positively moved to meet its obligations. Incorporated in the Contract is a clear commitment to pay a reasonable cost for benefits received from the project. Both parties recognize that the cost is as yet undetermined, but the Bureau must honor the limits incorporated in our existing contract. The Commission anticipates that the terms applicable to the redesigned project proposed will be honored.

Two years ago, an economic estimate by the New Mexico State University suggested Northwestern New Mexico has lost as much as \$740 million from the failure to develop the water incorporated in the ALP permit, due to delays. If that water had been developed our New Mexico water would have benefited the Nation, the State and ourselves.

The San Juan Water Commission is charged with securing stable water supplies for 110,000 New Mexicans. We have compromised and sacrificed in the best interests of our Region. The Commission has looked at and found no viable alternative water storage site, that will meet our and our neighbors needs more economically, and will comply with the enormous federal, state, and local requirements as well as Ridges Basin. We will be that much further ahead in avoiding a crisis if we start construction, now. 2000 may be a dry year, recently a scientist studying tree rings predicted we are in the early stages of a dry period similar to the 1950's. Even if the prediction is inaccurate, a shortage of water will cause a crisis in the arid Four Corners. If the storage is not available, where will the water for our New Mexico communities be found? Keep the federal promise, not only to the Tribes, but to all of us.

San Juan ->
ALP

John Whipple

From: scone
Sent: Sunday, May 07, 2000 9:23 AM
To: peter.defazio; greg.walden; george.miller; george.radonovich; rpombo; adam.smith; grace.napolitano; owen.pickett; donna.green; mac.thornberry; doolittle; ken.calvert; ask.helen; mike.simpson; stev.lanich
Cc: we; Bruce.Babbitt; David.Hayes; John.Leshy; EMartinez; CCalhoun; Mike.Connor; senator.domenici; ask.heather; seantor.bingaman; Tom.Tancredo; rep.schaffer; mark.udall; scott.msinnis; joel.hefley; degette; administrator; senator.allard; mark.udall; tom.udall; carolyn.j.howard; Anne.Kathryn.Claassen; sitka; sobrien; mhughes; swwild; Kevin.Gover; loretta.tuell; RGOLD; jwhipple; NMFOG; NMPIRG123; greg.lewis; sage; mayor; DMC; slefever; MarkI; tsoussan; herald
Subject: testimony to Water & Power on 5/11/00 HR3112 hearing

To: The Honorable John Doolittle, Chair
Subcommittee on Water and Power
House Resources Committee
1522 Longworth House Office Building
Washington, DC 20515
Attention:: Diana Giddeon

FROM: Steve Cone and Verna Forbes Willson
Post Office Box 2778
Farmington, NM 87499-2778

SUBJECT: HR3112, Written Testimony Regarding Reasons for its Rejection

SUMMARY: Those who drafted HR3112 are responsible for certain obvious errors of both commission and omission. They have clearly failed to take into consideration the provisions of New Mexico law pertaining to water quality standards applicable to municipal and industrial (M&I) usage. In addition, they have failed to include an important signatory party to the 1986 Colorado Ute Indian Water Rights Settlement Agreement (Agreement) in any of the covert negotiations which resulted in this attempt to modify that so-called "final" Agreement. Legitimate stakeholders have been excluded from this process, as well.

SPECIFICS:

1. Section 1 (b) (6) of the Agreement asserts that substitute benefits provided to the Colorado Tribes under HR3112 have equivalence to those the Tribes would have received under the 1988 Colorado Ute Indian Water Rights Settlement Act.

HR3112 FAILS TO ESTABLISH A LEGAL BASIS FOR SUCH AN ALLEGED "EQUIVALENCY".

2. HR3112 makes no provision for water delivery facilities to serve any of its proposed beneficiaries. In Section 3, paragraph (a) (1) (A) speaks only of constructing, operating and maintaining a reservoir, pumping plant, inlet conduit and appurtenant facilities to divert and store Animas River water, but paragraph (a) (1) (B) says, "...deliver through the use of the project components referred to in subparagraph A, the following municipal and industrial water allocations..."

THAT DELIVERY IS PATENTLY IMPOSSIBLE BECAUSE NO SUCH PROJECT COMPONENTS ARE SPECIFIED IN REFERENCED SUBPARAGRAPH (A).

3. Also in Section 3: paragraph (a) (4) states that "construction costs of the facilities described in paragraph (1) (A) required to deliver each

tribe's municipal and industrial water allocation under clauses (i), (ii) and (iii) of paragraph (1)(B) shall not be reimbursable to the United States."

FEDERAL RECLAMATION LAW, AS CURRENTLY WRITTEN, REQUIRES REIMBURSEMENT FROM ALL M&I PROJECT BENEFICIARIES. HR3112 IS DESIGNED TO EXEMPT ONLY CERTAIN TRIBES FROM THAT LEGAL OBLIGATION. SUCH SELECTIVE EXEMPTION WOULD REQUIRE REVISION OF FEDERAL LAW.

4. Again in Section 3: paragraph (a)(5) effectively revokes each of the various existing repayment contracts between the Secretary of the Interior and, severally, the San Juan Water Commission, LaPlata Conservancy District, Animas-La Plata Conservancy District and the State of Colorado.

CONGRESS DOES NOT HAVE JURISDICTION TO LEGISLATE SUCH REVOCATIONS OF THOSE CONTRACTS, AND, IN THE PROCESS, TO IGNORE LEGAL REQUIREMENTS FOR PUBLIC PARTICIPATION IN SUCH CONTRACTING.

5. Again in Section 3: paragraph (a)(1)(B) provides for delivery of water to be used for "a municipal and industrial water supply..."

IF HR3112 IS INTENDED TO MIRROR THE CURRENTLY PREFERRED ANIMAS-LA PLATA PROJECT (A-LP) REFINED ALTERNATIVE 4 AND DELIVER ONLY M&I WATER, IT WILL VERY LIKELY VIOLATE NEW MEXICO STATE LAW REGARDING WATER QUALITY STANDARDS. THIS BECAUSE FLOWS LOWER THAN ORIGINALLY PROPOSED IN EARLIER A-LP DESIGNS WOULD PREDICTABLY RESULT IN A STREAM BED COATED WITH SEDIMENTS WHICH WOULD DAMAGE OR IMPAIR THE NORMAL GROWTH, FUNCTION AND/OR REPRODUCTION OF AQUATIC LIFE AND/OR SIGNIFICANTLY ALTER THE PHYSICAL OR CHEMICAL PROPERTIES OF THE RIVER BOTTOM.

6. Again in Section 3: paragraph (a)(2) states that the Secretary of the Interior must comply with all applicable Federal statutes related to protection of the environment before implementing the proposed settlement.

RUSHING HR3112 TO THE FLOOR OF CONGRESS BEFORE A RECORD OF DECISION HAS BEEN RENDERED ON THE CURRENT A-LP SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT (SEIS) IS DIAMETRICALLY OPPOSED TO THE PROVISIONS OF HR3112. (SEE HR3112 SECTION 1(b)(7).)

7. Nowhere in HR3112 is any identification made as to which of the ten alternative A-LP proposals, if any, described in the current Draft Supplemental Environmental Impact Statement (DSEIS) is the one which would guide the construction, operation and maintenance to be authorized by HR3112. Seven of the nine action alternatives contain the structural components listed in Section 3 (a)(1)(A), although no two are identical.

IF HR3112 IS TO IMPLEMENT THE CONSTRUCTION OF A PROJECT, IT MUST DEFINE THAT PROJECT. AS IT STANDS, NOTHING IS CLEAR IN HR3112 EXCEPT THAT A RESERVOIR IS TO BE BUILT, THAT IT WILL HAVE A PUMPING PLANT, THAT THERE WILL BE AN INTAKE FACILITY ON THE ANIMAS RIVER, AND THAT IT WILL STORE WATER BUT WILL INCLUDE NO MEANS TO DELIVER THAT WATER TO THE INDICATED RECIPIENTS.

8. HR3112 will result in a loss of water to non-Tribal water rights holders. The entire local impact will be felt by junior water users. However, there is also the real possibility that downstream users -- California, for example -- will be harmed when the 120,000 acre-feet of water is impounded in Ridges Basin Reservoir. (That is the amount specified in the latest DSEIS' preferred Alternative 4, which Senator Campbell cites as a model for his companion Bill S2508.)

HR3112 FAILS TO IDENTIFY STAKEHOLDERS WHO WILL BE AFFECTED, INCLUDE THEM IN THE NEGOTIATING PROCESS, AND DEVELOP AN ALTERNATIVE SOLUTION TO PROTECT THEIR DECREED WATER RIGHTS AND HISTORIC BENEFICIAL USES.

9. HR3112 proposes to modify the 1986 Agreement but fails to recognize one important signatory to that agreement. The United States Justice Department has not participated in these efforts as required by Section 7, paragraph H of the Agreement, which says, "This agreement may only be modified with the joint consent of the parties."

FAILURE TO OBTAIN THE JUSTICE DEPARTMENT'S CONSENT CONSTITUTES A VIOLATION OF PUBLIC LAW.

CONCLUSION: HR3112 is an inadequate instrument in that it fails to accomplish its stated purpose. The Bill involves violations of both Federal and New Mexico State law. It blatantly ignores the Justice Department's required consent to modifications of the Agreement. Consequently, HR3112 is seriously flawed and should not receive this Committee's support or approval.

The above comprises our written testimony regarding HR3112, and is respectfully submitted for inclusion in the formal hearing record of the Subcommittee on Water and Power of the House Resources Committee.

Signed: Steve Cone, Farmington, NM Verna Forbes Willson, Farmington, NM

copies to members: Subcommittee on Water & Power, Resources Committee

John Doolittle
George Miller
Peter DeFazio
Grace Napolitano
Adam Smith
Owen Pickett
Donna Christensen
Mac Thornberry
Greg Walden
Ken Calvert
Richard Pombo
Helen Chenoweth-Hage
George Radonovich
Michael Simpson

copies to:

Janet Reno, Attorney General, Department of Justice
Carol Browner, Environmental Protection Agency
George T. Frampton, Acting Chair, Council on Environmental Quality
Kelsey A. Begaye, President of The Navajo Nation
Loretta Tuell, Director of the Office of the American Indian Trust
Mary Settle, U.S. EPA Office of Environmental Justice
Kevin Gover, Assistant Secretary, Bureau of Indian Affairs
Bruce Babbitt, Secretary of the Department of the Interior
John Leshy, Interior Solicitor
Eluid Martinez, Director, Bureau of Reclamation
Senator Pete Domenici
Senator Jeff Bingaman
Representative Tom Udall
Representative Heather Wilson
Senator Ben Nighthorse Campbell
Senator Wayne Allard
Representative Diana DeGette
Representative Mark Udall
Representative Scott McInnis
Representative Bob Schaffer
Representative Joel Hefley
Representative Thomas Tancredo

Ken Salazar, Colorado Attorney General
Tom Turney, State Engineer, New Mexico
Earthjustice Legal Defense Fund
Taxpayers for the Animas River
Friends of the Earth
Taxpayers for Common Sense
Citizens' Progressive Alliance
Four Corners Action Coalition
The Forest Guardians
The Sierra Club
New Mexico Public Interest Research Group
The Navajo Times
The Gallup Independent
The Albuquerque Journal
Counter Punch Magazine
Roll Call Magazine
Larry Di Giovanni
Farmington Daily Times
Durango Herald
Rocky Mountain News
Denver Post
Westword


contact: (505) 326-2417
scone@infoway.lib.nm.us
granvfw@hotmail.com
further information at <http://www.angelfir.com/al/alpcentral>



GARY E. JOHNSON
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT
Office of the Secretary
Harold Runnels Building
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502
Telephone (505) 827-2855
Fax (505) 827-2836

Plot - FY1
San Juan - 3 file
ALP



PETER MAGGIORE
SECRETARY

PAUL R. RITZMA
DEPUTY SECRETARY

May 5, 2000

Richard P. Cheney, Chairman
New Mexico Interstate Stream Commission
909 West Apache
Farmington, New Mexico 87401

Re: NMED Comments on the Animas-La Plata DSEIS

Dear Mr. Cheney:

Thank you for your April 28, 2000 letter responding to the New Mexico Environment Department's comments on the U.S. Bureau of Reclamation's (BoR) Draft Supplemental Environmental Impact Study (DSEIS) for the Animas-La Plata Project (ALPP). I attempted to call you Friday afternoon, shortly after receiving a faxed copy of the letter, but was unable to reach you. I have attempted to incorporate herein NMED's response to your April 28 letter, in addition to providing you the information you requested during our telephone conversation on April 24, 2000. I am hopeful that this information will help to further clarify NMED's position, and will address some of the concerns that you have expressed to me verbally and in writing.

NMED's Review of the DSEIS

In the course of a given year, NMED provides comments on dozens of National Environmental Protection Act (NEPA) related documents. Typically, NMED considers a wide-range of issues in performing its review, but the review is focused on areas where NMED has regulatory authority. At a minimum, NMED's review involves identification of:

- (1) Whether all requirements of New Mexico laws and regulations administered by NMED are likely to be achieved and identification of possible areas of conflict;
- (2) Any deficiencies or inaccuracies in the information provided which may prevent an adequate environmental assessment of the project; and
- (3) Additional information which may be helpful to better understand the environmental impact of the project.

It is important to note that NMED does not itself conduct independent technical studies to verify or refute data that are utilized in a draft Environmental Impact Study. Such studies are the responsibility of the project proponents. NMED views its role as a reviewer of the information presented in light of the criteria listed previously, and it offers its comments based solely on the information provided in the reviewed document. It is then up to the

Richard P. Cheney, Chairman, ISC

May 5, 2000

Page 2 of 4

project proponent (in this case the lead agency is BoR) to gauge the merit of the comments provided by NMED (or of any other commenter including the ISC) and determine how best to respond, if at all. If a response is determined to be appropriate, it may include additional data that were not presented in the original document, it may recommend that additional studies be performed, or it may simply present an argument as to the appropriateness of NMED's comments.

With respect to NMED's review of the ALPP DSEIS, NMED sent its first comment letter to Pat Schumacher of BoR on March 3, 2000. As I have discussed with you, that letter was sent out without my knowledge or review, and I regret that having occurred. On April 14, the NMED sent a second letter that clarified some points of the first communication. I have most recently established a Department policy whereby all formal NMED correspondence to federal agencies regarding environmental assessments or environmental impact statements will be prepared under my signature.

The primary concern expressed in both letters was the potential for an increase in stream bottom deposits as a consequence of the proposed action. Stream bottom deposits are regulated through narrative surface water quality standards adopted by the New Mexico Water Quality Control Commission under the New Mexico Water Quality Act. Each river segment of interest for the proposed action, with the exception of the La Plata, is found on the New Mexico 303(d) list as being impaired by stream bottom deposits.

The NMED's evaluation of the potential environmental impact of the proposed action concentrated on determining whether any increase in the identified pollutants would result from and be reasonably attributable to the proposed action, and whether such increases could potentially violate the New Mexico Water Quality Act. An increase in stream bottom deposits appeared to be a possible risk because of previous observations made in numerous systems which establish a relationship between sediment transport and discharge.

During our April 24 conversation, I incorrectly indicated that the Department had performed its own, independent calculations of potential impacts attributable to the proposed action. I apologize for that error. Upon further investigation I learned that NMED staff utilized the calculations and relationships summarized in Leopold, *et al.* (1964) in drawing its conclusions.

As presented in Leopold, *et al.* (1964), relationships between stream discharge and sediment transport are often linear (with a logarithmic transform to reduce skewness and improve normality), statistically significant, and strong (with high correlation coefficients). A good example is the relationship between suspended sediment transport (expressed as tons per day) and discharge (expressed as cubic feet per second) characterized for the Rio Grande at Bernalillo, New Mexico (Leopold, *et al.*, 1964, pp. 220-222). The NMED reasoned that under reduced flows, less sediment would be transported out of the affected stream reaches, while sediment loading from the adjacent watersheds would remain about the same. The NMED further reasoned that such reduced sediment transport would result

Richard P. Cheney, Chairman, ISC

May 5, 2000

Page 3 of 4

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Your April 28 letter also indicates the Interstate Stream Commission's concern as being much broader than just the ALPP. For example, you state that NMED's identified concern "...appears to assert that any amount of streamflow depletion on any river would cause a decrease in flow energy of sufficient magnitude as to significantly increase river sedimentation and significantly alter the quality or properties of the stream bottom or impair aquatic life." I appreciate and welcome your broad concern for this issue; however, I respectfully disagree with your characterization. A careful reading of NMED's comment letters fails to reveal to me such a broad generalization as you characterize. Rather, the letters are stating that a proven relationship exists between stream flow and sediment transport dynamics, and that this relationship needs to be taken into account and explored in the EIS process.

I also respectfully disagree with the correlation you have attempted to draw between the Animas-La Plata and San Juan-Chama projects. Future proposed diversions from the Rio Grande may involve quite different site-specific conditions (e.g., I believe the Rio Grande is sediment-depleted in the Albuquerque area). In any case, NMED will look at the merits of any proposed action on a case-by-case basis using sound scientific practices.

Summary

Surface water quality standards in New Mexico are a fact, and compliance with those standards is a requirement. Moreover, it is NMED's opinion that the State of New Mexico Standards for Interstate and Intrastate Surface Waters are intended to protect surface waters of the State from the impact of stream bottom deposits. The potential impacts that the proposed action may have on the affected streams could result in a violation of these standards. However, NMED does not believe that such a violation is a necessary result of the project, or that this potential impact would preclude the project from going forward. It may be that BoR has additional information concerning these issues which could be used to answer the NMED's concerns. Alternatively, various mitigation measures, implemented through ongoing operation and maintenance practices

Richard P. Cheney, Chairman, ISC

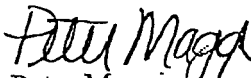
May 5, 2000

Page 4 of 4

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I welcome the opportunity to work with you to find viable ways to ensure the success of water development projects, while ensuring compliance with applicable water quality regulations. As a first step towards improved communication, I would be pleased to arrange for NMED to make a presentation to the ISC concerning how we are implementing the TMDL process, including our interpretation of the narrative stream bottom deposits water quality standard. Please let me know if you would like to have NMED make such a presentation to the ISC, or if I may provide any additional information.

Sincerely,



Peter Maggioro

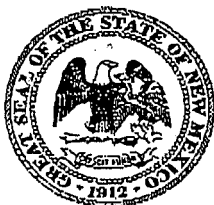
Secretary

References

Leopold, L.B., M.G. Wolman, and J.P. Miller. 1964. *Fluvial Processes in Geomorphology*. M.H. Freeman and Company, San Francisco. 522 pp.

New Mexico Water Quality Control Commission. 2000. *State of New Mexico Standards for Interstate and Intrastate Surface Waters*. Filed with State Records Center January 24, 2000 as New Mexico Administrative Code (NMAC) Chapter 6.1, Effective February 23, 2000.

San Juan - 3
ALP



GARY E. JOHNSON
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT
Office of the Secretary

Harold Runnels Building
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502
Telephone (505) 827-2855
Fax (505) 827-2836



PETER MAGGIORE
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PAUL R. RITZMA
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May 5, 2000

Richard P. Cheney, Chairman
New Mexico Interstate Stream Commission
909 West Apache
Farmington, New Mexico 87401

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Richard P. Cheney, Chairman, ISC

May 5, 2000

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Secretary

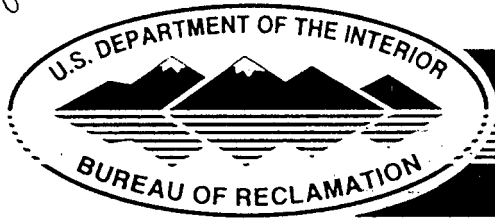
References

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New Mexico Water Quality Control Commission. 2000. *State of New Mexico Standards for Interstate and Intrastate Surface Waters*. Filed with State Records Center January 24, 2000 as New Mexico Administrative Code (NMAC) Chapter 6.1, Effective February 23, 2000.

0734

*San Juan
Navajo Res.
SSW*



UPPER COLORADO REGION

NEWS RELEASE

Colorado Area Office
Grand Junction, Colorado
Ed Warner (970) 248-0654
For Release: April 25, 2000

NAVAJO RESERVOIR RELEASES

The Bureau of Reclamation has announced that beginning Thursday, May 25, releases from Navajo Reservoir into the San Juan River, will be gradually increased from 500 to 5,000 cubic feet per second (cfs). Releases are expected to reach the 5,000 cfs level Thursday, June 1. Navajo Reservoir needs to be lowered approximately 13 feet by July for maintenance and repair work on the two 72-inch hollow jet valves at Navajo Dam. The Fish and Wildlife Service has recommended that a 5,000 cfs spring release is the best way to lower the reservoir and to protect and enhance endangered fish habitat. Based on the April 15 reservoir inflow forecast, the schedule is as follows:

May 22 to May 24	500 cfs
May 25	1,500 cfs
May 26 through May 29	2,000 cfs
May 30	3,000 cfs
May 31	4,000 cfs
June 1 through June 7	5,000 cfs
June 8	4,000 cfs
June 9 through June 11	3,000 cfs
June 12 through June 13	2,000 cfs
June 14	1,500 cfs
June 15 through September 30	500 cfs

Note: Weather conditions could necessitate changes to this schedule.

- ◆ Flows will be adjusted after June 15 to maintain a minimum release of 500 cfs from Navajo Reservoir.
- ◆ Daily release changes will be made in increments of not more than 200 cfs in any 2-hour period. Release changes will be made between the hours of 7:00 a.m. and 3:30 p.m., Monday through Friday.

If you have any questions, contact Ed Warner at (970) 248-0654 or Ruth Swickard (970) 385-6523.

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San Juan - 3
ALP

II

106TH CONGRESS
2D SESSION

S. 2508

To amend the Colorado Ute Indian Water Rights Settlement Act of 1988 to provide for a final settlement of the claims of the Colorado Ute Indian Tribes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 4, 2000

Mr. CAMPBELL (for himself and Mr. ALLARD) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To amend the Colorado Ute Indian Water Rights Settlement Act of 1988 to provide for a final settlement of the claims of the Colorado Ute Indian Tribes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS; DEFINITIONS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Colorado Ute Settlement Act Amendments of 2000”.

6 (b) **FINDINGS.**—Congress makes the following find-
7 ings:

1 (1) In order to provide for a full and final set-
2 tlement of the claims of the Colorado Ute Indian
3 Tribes on the Animas and La Plata Rivers, the
4 Tribes, the State of Colorado, and certain of the
5 non-Indian parties to the Agreement have proposed
6 certain modifications to the Colorado Ute Indian
7 Water Rights Settlement Act of 1988 (Public Law
8 100-585; 102 Stat. 2973).

9 (2) The claims of the Colorado Ute Indian
10 Tribes on all rivers in Colorado other than the
11 Animas and La Plata Rivers have been settled in ac-
12 cordance with the provisions of the Colorado Ute In-
13 dian Water Rights Settlement Act of 1988 (Public
14 Law 100-585; 102 Stat. 2973).

15 (3) The Indian and non-Indian communities of
16 southwest Colorado and northwest New Mexico will
17 be benefited by a settlement of the tribal claims on
18 the Animas and La Plata Rivers that provides the
19 Tribes with a firm water supply without taking
20 water away from existing uses.

21 (4) The Agreement contemplated a specific
22 timetable for the delivery of irrigation and municipal
23 and industrial water and other benefits to the Tribes
24 from the Animas-La Plata Project, which timetable
25 has not been met. The provision of irrigation water

1 can not presently be satisfied under the current im-
2 plementation of the Federal Water Pollution Control
3 Act (33 U.S.C. 1251 et seq.) and the Endangered
4 Species Act of 1973 (16 U.S.C. 1531 et seq.).

5 (5) In order to meet the requirements of the
6 Endangered Species Act of 1973 (16 U.S.C. 1531 et
7 seq.), and in particular the various biological opin-
8 ions issued by the Fish and Wildlife Service, the
9 amendments made by this Act are needed to provide
10 for a significant reduction in the facilities and water
11 supply contemplated under the Agreement.

12 (6) The substitute benefits provided to the
13 Tribes under the amendments made by this Act, in-
14 cluding the waiver of capital costs and the provisions
15 of funds for natural resource enhancement, result in
16 a settlement that provides the Tribes with benefits
17 that are equivalent to those that the Tribes would
18 have received under the Colorado Ute Indian Water
19 Rights Settlement Act of 1988 (Public Law 100-
20 585; 102 Stat. 2973).

21 (7) The requirement that the Secretary of the
22 Interior comply with the National Environmental
23 Policy Act of 1969 (42 U.S.C. 4321 et seq.) and
24 other national environmental laws before imple-
25 menting the proposed settlement will ensure that the

1 satisfaction of the tribal water rights is accomplished
2 in an environmentally responsible fashion.

3 (8) Federal courts have considered the nature
4 and the extent of Congressional participation when
5 reviewing Federal compliance with the requirements
6 of the National Environmental Policy Act of 1969
7 (42 U.S.C. 4321 et seq.).

8 (9) In considering the full range of alternatives
9 for satisfying the water rights claims of the South-
10 ern Ute Indian Tribe and Ute Mountain Ute Indian
11 Tribe, Congress has held numerous legislative hear-
12 ings and deliberations, and reviewed the considerable
13 record including the following documents:

14 (A) The Final EIS No. INT-FES-80-18,
15 dated July 1, 1980.

16 (B) The Draft Supplement to the FES No.
17 INT-DES-92-41, dated October 13, 1992.

18 (C) The Final Supplemental to the FES
19 No. 96-23, dated April 26, 1996;

20 (D) The Draft Supplemental EIS, dated
21 January 14, 2000.

22 (c) DEFINITIONS.—In this Act:

23 (1) AGREEMENT.—The term “Agreement” has
24 the meaning given that term in section 3(1) of the

1 Colorado Ute Indian Water Rights Settlement Act of
2 1988 (Public Law 100-585; 102 Stat. 2973).

3 (2) ANIMAS-LA PLATA PROJECT.—The term
4 “Animas-La Plata Project” has the meaning given
5 that term in section 3(2) of the Colorado Ute Indian
6 Water Rights Settlement Act of 1988 (Public Law
7 100-585; 102 Stat. 2973).

8 (3) DOLORES PROJECT.—The term “Dolores
9 Project” has the meaning given that term in section
10 3(3) of the Colorado Ute Indian Water Rights Set-
11 tlement Act of 1988 (Public Law 100-585; 102
12 Stat. 2974).

13 (4) TRIBE; TRIBES.—The term “tribe” or
14 “tribes” has the meaning given that term in section
15 3(6) of the Colorado Ute Indian Water Rights Set-
16 tlement Act of 1988 (Public Law 100-585; 102
17 Stat. 2974).

18 **SEC. 2. AMENDMENTS TO SECTION 6 OF THE COLORADO**
19 **UTE INDIAN WATER RIGHTS SETTLEMENT**
20 **ACT OF 1988.**

21 Subsection (a) of section 6 of the Colorado Ute In-
22 dian Water Rights Settlement Act of 1988 (Public Law
23 100-585; 102 Stat. 2975) is amended to read as follows:

24 “(a) RESERVOIR; MUNICIPAL AND INDUSTRIAL
25 WATER.—

1 “(1) FACILITIES.—

2 “(A) IN GENERAL.—After the date of en-
3 actment of this subsection, but prior to January
4 1, 2005, the Secretary, in order to settle the
5 outstanding claims of the Tribes on the Animás
6 and La Plata Rivers, acting through the Bu-
7 reau of Reclamation, is specifically authorized
8 to—

9 “(i) complete construction of, and op-
10 erate and maintain, a reservoir, a pumping
11 plant, a reservoir inlet conduit, and appur-
12 tenant facilities with sufficient capacity to
13 divert and store water from the Animás
14 River to provide for an average annual de-
15 pletion of 57,100 acre-feet of water to be
16 used for a municipal and industrial water
17 supply, which facilities shall—

18 “(I) be designed and operated in
19 accordance with the hydrologic regime
20 necessary for the recovery of the en-
21 dangered fish of the San Juan River
22 as determined by the San Juan River
23 Recovery Implementation Program;

24 “(II) include an inactive pool of
25 an appropriate size to be determined

1 by the Secretary following the comple-
2 tion of required environmental compli-
3 ance activities; and

4 “(III) include those recreation fa-
5 cilities determined to be appropriate
6 by agreement between the State of
7 Colorado and the Secretary that shall
8 address the payment of any of the
9 costs of such facilities by the State of
10 Colorado in addition to the costs de-
11 scribed in paragraph (3); and

12 “(ii) deliver, through the use of the
13 project components referred to in clause
14 (i), municipal and industrial water
15 allocations—

16 “(I) with an average annual de-
17 pletion not to exceed 16,525 acre-feet
18 of water, to the Southern Ute Indian
19 Tribe for its present and future needs;

20 “(II) with an average annual de-
21 pletion not to exceed 16,525 acre-feet
22 of water, to the Ute Mountain Ute In-
23 dian Tribe for its present and future
24 needs;

1 “(B) APPLICABILITY OF OTHER FEDERAL
2 LAW.—The responsibilities of the Secretary de-
3 scribed in subparagraph (A) are subject to the
4 requirements of Federal laws related to the pro-
5 tection of the environment and otherwise appli-
6 cable to the construction of the proposed facili-
7 ties, including the National Environmental Pol-
8 icy Act of 1969 (42 U.S.C. 4321 et seq.), the
9 Clean Water Act (42 U.S.C. 7401 et seq.), and
10 the Endangered Species Act of 1973 (16 U.S.C.
11 1531 et seq.). Nothing in this Act shall be con-
12 strued to predetermine or otherwise affect the
13 outcome of any analysis conducted by the Sec-
14 retary or any other Federal official under appli-
15 cable laws.

16 “(C) LIMITATION.—

17 “(i) IN GENERAL.—If constructed, the
18 facilities described in subparagraph (A)
19 shall not be used in conjunction with any
20 other facility authorized as part of the
21 Animas-La Plata Project without express
22 authorization from Congress.

23 “(ii) CONTINGENCY IN APPLICA-
24 TION.—If the facilities described in sub-

1 paragraph (A) are not constructed and op-
2 erated, clause (i) shall not take effect.

3 “(2) TRIBAL CONSTRUCTION COSTS.—Construc-
4 tion costs allocable to the facilities that are required
5 to deliver the municipal and industrial water alloca-
6 tions described in subclauses (I), (II) and (III) of
7 paragraph (1)(A)(ii) shall be nonreimbursable to the
8 United States.

9 “(3) NONTRIBAL WATER CAPITAL OBLIGA-
10 TIONS.—Under the provisions of section 9 of the Act
11 of August 4, 1939 (43 U.S.C. 485h), the nontribal
12 municipal and industrial water capital repayment
13 obligations for the facilities described in paragraph
14 (1)(A)(i) may be satisfied upon the payment in full
15 of the nontribal water capital obligations prior to the
16 initiation of construction. The amount of the obliga-
17 tions described in the preceding sentence shall be de-
18 termined by agreement between the Secretary of the
19 Interior and the entity responsible for such repay-
20 ment as to the appropriate reimbursable share of the
21 construction costs allocated to that entity's munic-
22 ipal water supply. Such agreement shall take into
23 account the fact that the construction of facilities to
24 provide irrigation water supplies from the Animas-
25 La Plata Project is not authorized under paragraph

1 (1)(A)(i) and no costs associated with the design or
2 development of such facilities, including costs associ-
3 ated with environmental compliance, shall be allo-
4 cable to the municipal and industrial users of the fa-
5 cilities authorized under such paragraph.

6 “(4) TRIBAL WATER ALLOCATIONS.—

7 “(A) IN GENERAL.—With respect to mu-
8 nicipal and industrial water allocated to a Tribe
9 from the Animas-La Plata Project or the Dolo-
10 res Project, until that water is first used by a
11 Tribe or used pursuant to a water use contract
12 with the Tribe, the Secretary shall pay the an-
13 nual operation, maintenance, and replacement
14 costs allocable to that municipal and industrial
15 water allocation of the Tribe.

16 “(B) TREATMENT OF COSTS.—A Tribe
17 shall not be required to reimburse the Secretary
18 for the payment of any cost referred to in sub-
19 paragraph (A).

20 “(5) REPAYMENT OF PRO RATA SHARE.—Upon
21 a Tribe’s first use of an increment of a municipal
22 and industrial water allocation described in para-
23 graph (4), or the Tribe’s first use of such water pur-
24 suant to the terms of a water use contract—

1 “(A) repayment of that increment’s pro
2 rata share of those allocable construction costs
3 for the Dolores Project shall be made by the
4 Tribe; and

5 “(B) the Tribe shall bear a pro rata share
6 of the allocable annual operation, maintenance,
7 and replacement costs of the increment as re-
8 ferred to in paragraph (4).”.

9 **SEC. 3. COMPLIANCE WITH THE NATIONAL ENVIRON-**
10 **MENTAL POLICY ACT OF 1969.**

11 Section 6 of the Colorado Ute Indian Water Rights
12 Settlement Act of 1988 (Public Law 100-585; 102 Stat.
13 2975) is amended by adding at the end the following:

14 “(i) **COMPLIANCE WITH THE NATIONAL ENVIRON-**
15 **MENTAL POLICY ACT OF 1969.—**

16 “(1) **AUTHORITY.—**Nothing in this Act shall be
17 construed to alter, amend, or modify the authority
18 or discretion of the Secretary or any other Federal
19 official under the National Environmental Policy Act
20 of 1969 (42 U.S.C. 4321 et seq.) or any other Fed-
21 eral law.

22 “(2) **DETERMINATION OF CONGRESS.—**Subject
23 to paragraph (3), in any defense to a challenge of
24 the Final Environmental Impact Statement prepared
25 pursuant to the Notice of Intent to Prepare a Draft

1 Environmental Impact Statement, as published in
2 the Federal Register on January 4, 1999 (64 Fed
3 Reg 176-179), or the compliance with the National
4 Environmental Policy Act of 1969 (42 U.S.C. 4321
5 et seq.) or the Federal Water Pollution Control Act
6 (33 U.S.C. 1251 et seq.), and in addition to the
7 Record of Decision and any other documents or ma-
8 terials submitted in defense of its decision, the
9 United States may assert in its defense that Con-
10 gress, based upon the deliberations and review de-
11 scribed in paragraph (9) of section 1(b) of the Colo-
12 rado Ute Settlement Act Amendments of 2000, has
13 determined that the alternative described in such
14 Final Statement meets the Federal government's
15 water supply obligations to the Ute tribes under this
16 Act in a manner that provides the most benefits to,
17 and has the least impact on, the quality of the
18 human environment.

19 “(3) APPLICATION OF PROVISION.—This sub-
20 section shall only apply if Alternative #4, as pre-
21 sented in the Draft Supplemental Environmental
22 Impact Statement dated January 14, 2000, or an al-
23 ternative substantially similar to Alternative #4, is
24 selected by the Secretary.

1 “(4) NO EFFECT OF MODIFICATION OF FACILI-
2 TIES.—The application of this section shall not be
3 affected by a modification of the facilities described
4 in subsection (a)(1)(A)(i) to address the provisions
5 in the San Juan River Recovery Implementation
6 Program.”.

7 **SEC. 4. COMPLIANCE WITH THE ENDANGERED SPECIES**
8 **ACT OF 1973.**

9 Section 6 of the Colorado Ute Indian Water Rights
10 Settlement Act of 1988 (Public Law 100-585; 102 Stat.
11 2975), as amended by section 3, is amended by adding
12 at the end the following:

13 “(j) COMPLIANCE WITH THE ENDANGERED SPECIES
14 ACT OF 1973.—

15 “(1) AUTHORITY.—Nothing in this section shall
16 be construed to alter, amend, or modify the author-
17 ity or discretion of the Secretary or any other Fed-
18 eral official under the Endangered Species Act of
19 1973 (16 U.S.C. 1531 et seq.) or any other Federal
20 law.

21 “(2) DETERMINATION OF CONGRESS.—Subject
22 to paragraph (3), in any defense to a challenge of
23 the Biological Opinion resulting from the Bureau of
24 Reclamation Biological Assessment, January 14,
25 2000, or the compliance with the Endangered Spe-

1 cies Act of 1973 (16 U.S.C. 1531 et seq.), and in
2 addition to the Record of Decision and any other
3 documents or materials submitted in defense of its
4 decision, the United States may assert in its defense
5 that Congress, based on the deliberations and review
6 described in paragraph (9) of section 1(b) of the
7 Colorado Ute Settlement Act Amendments of 2000,
8 has determined that constructing and operating the
9 facilities described in subsection (a)(1)(A)(i) meets
10 the Federal government's water supply obligation to
11 the Ute tribes under that Act without violating the
12 Endangered Species Act of 1973 (16 U.S.C. 1531 et
13 seq.).

14 “(3) APPLICATION OF PROVISION.—This sub-
15 section shall only apply if the Biological Opinion re-
16 ferred to in paragraph (2) or any reasonable and
17 prudent alternative suggested by the Secretary pur-
18 suant to section 7 of the Endangered Species Act of
19 1973 (16 U.S.C. 1536) authorizes an average an-
20 nual depletion of at least 57,100 acre-feet of water.

21 “(4) NO EFFECT OF MODIFICATION OF FACILI-
22 TIES.—The application of this subsection shall not
23 be affected by a modification of the facilities de-
24 scribed in subsection (a)(1)(A)(i) to address the pro-

1 visions in the San Juan River Recovery Implementa-
2 tion Program.”.

3 **SEC. 5. MISCELLANEOUS.**

4 The Colorado Ute Indian Water Rights Settlement
5 Act of 1988 (Public Law 100-585; 102 Stat. 2973) is
6 amended by adding at the end the following:

7 **“SEC. 15. NEW MEXICO AND NAVAJO NATION WATER**
8 **MATTERS.**

9 “(a) **ASSIGNMENT OF WATER PERMIT.**—Upon the
10 request of the State Engineer of the State of New Mexico,
11 the Secretary shall, in a manner consistent with applicable
12 State law, assign, without consideration, to the New Mex-
13 ico Animas-La Plata Project beneficiaries or the New
14 Mexico Interstate Stream Commission any portion of the
15 Department of the Interior’s interest in New Mexico Engi-
16 neer Permit Number 2883, dated May 1, 1956, in order
17 to fulfill the New Mexico purposes of the Animas-La Plata
18 Project, so long as the permit assignment does not affect
19 the application of the Endangered Species Act of 1973
20 (16 U.S.C. 1531 et seq.) to the use of the water involved.

21 “(b) **NAVAJO NATION MUNICIPAL PIPELINE.**—The
22 Secretary may construct a water line to augment the exist-
23 ing system that conveys the municipal water supplies, in
24 an amount not less than 4,680 acre-feet per year, of the
25 Navajo Nation to the Navajo Indian Reservation at

1 Shiprock, New Mexico. The Secretary shall comply with
 2 all applicable environmental laws with respect to such
 3 water line. Construction costs allocated to the Navajo Na-
 4 tion for such water line shall be nonreimbursable to the
 5 United States.

6 "(c) PROTECTION OF NAVAJO WATER CLAIMS.—
 7 Nothing in this Act shall be construed to quantify or oth-
 8 erwise adversely affect the water rights and the claims of
 9 entitlement to water of the Navajo Nation.

10 "SEC. 16. TRIBAL RESOURCE FUNDS.

11 "(a) ESTABLISHMENT.—

12 "(1) AUTHORIZATION OF APPROPRIATIONS.—

13 There is authorized to be appropriated to carry out
 14 this section, \$20,000,000 for fiscal year 2001 and
 15 \$20,000,000 for fiscal year 2002. Not later than 60
 16 days after amounts are appropriated and available
 17 to the Secretary for a fiscal year under this para-
 18 graph, the Secretary shall make a payment to each
 19 of the Tribal Resource Funds established under
 20 paragraph (2). Each such payment shall be equal to
 21 50 percent of the amount appropriated for the fiscal
 22 year involved.

23 "(2) FUNDS.—The Secretary shall establish

24 a—

1 “(A) Southern Ute Tribal Resource Fund;
2 and

3 “(B) Ute Mountain Ute Tribal Resource
4 Fund.

5 A separate account shall be maintained for each
6 such Fund.

7 “(b) ADJUSTMENT.—To the extent that the amount
8 appropriated under subsection (a)(1) in any fiscal year is
9 less than the amount authorized for such fiscal year under
10 such subsection, the Secretary shall, subject to the avail-
11 ability of appropriations, pay to each of the Tribal Reserve
12 Funds an adjustment amount equal to the interest income,
13 as determined by the Secretary in his or her sole discre-
14 tion, that would have been earned on the amount author-
15 ized but not appropriated under such subsection had that
16 amount been placed in the Fund as required under such
17 subsection.

18 “(c) TRIBAL DEVELOPMENT.—

19 “(1) INVESTMENT.—The Secretary shall, in the
20 absence of an approved tribal investment plan pro-
21 vided for under paragraph (2), invest the amount in
22 each Tribal Resource Fund in accordance with the
23 Act entitled, ‘An Act to authorize the deposit and in-
24 vestment of Indian funds’ approved June 24, 1938
25 (25 U.S.C. 162a). The Secretary shall disburse, at

1 the request of a Tribe, the principal and income in
 2 its Resource Fund, or any part thereof, in accord-
 3 -ance with a resource acquisition and enhancement
 4 plan approved under paragraph (3):

5 "(2) INVESTMENT PLAN:—

6 "(A) IN GENERAL.—In lieu of the invest-
 7 -ment provided for in paragraph (1), a Tribe
 8 may submit a tribal investment plan applicable
 9 to all or part of the Tribe's Tribal Resource
 10 Fund.

11 "(B) APPROVAL.—Not later than 60 days
 12 after the date on which an investment plan is
 13 submitted under subparagraph (A), the Sec-
 14 -retary shall approve such investment plan if the
 15 Secretary finds that the plan is reasonable and
 16 sound. If the Secretary does not approve such
 17 investment plan, the Secretary shall set forth in
 18 writing and with particularity the reasons for
 19 such disapproval. If such investment plan is ap-
 20 -proved by the Secretary, the Tribal Resource
 21 Fund involved shall be disbursed to the Tribe to
 22 be invested by the Tribe in accordance with the
 23 approved investment plan.

24 "(C) COMPLIANCE.—The Secretary may
 25 take such steps as the Secretary determines to

1 be necessary to monitor the compliance of a
2 Tribe with an investment plan approved under
3 subparagraph (B). The United States shall not
4 be responsible for the review, approval, or audit
5 of any individual investment under the plan.
6 The United States shall not be directly or indi-
7 rectly liable with respect to any such invest-
8 ment, including any act or omission of the
9 Tribe in managing or investing such funds.

10 “(D) ECONOMIC DEVELOPMENT PLAN.—

11 The principal and income derived from tribal
12 investments under an investment plan approved
13 under subparagraph (B) shall be subject to the
14 provisions of this section and shall be expended
15 only in accordance with an economic develop-
16 ment plan approved under paragraph (3).

17 “(3) ECONOMIC DEVELOPMENT PLAN.—

18 “(A) IN GENERAL.—Each Tribe shall sub-
19 mit to the Secretary a resource acquisition and
20 enhancement plan for all or any portion of its
21 Tribal Resource Fund.

22 “(B) APPROVAL.—Not later than 60 days
23 after the date on which a plan is submitted
24 under subparagraph (A), the Secretary shall ap-
25 prove such investment plan if the Secretary

1 finds that the plan is reasonably related to the
2 protection, acquisition, enhancement, or devel-
3 opment of natural resources for the benefit of
4 the Tribe and its members. If the Secretary
5 does not approve such plan, the Secretary shall,
6 at the time of such determination, set forth in
7 writing and with particularity the reasons for
8 such disapproval.

9 “(C) MODIFICATION.—Subject to the ap-
10 proval of the Secretary, each Tribe may modify
11 a plan approved under subparagraph (B).

12 “(D) LIABILITY.—The United States shall
13 not be directly or indirectly liable for any claim
14 or cause of action arising from the approval of
15 a plan under this paragraph, or from the use
16 and expenditure by the Tribe of the principal or
17 interest of the Funds.

18 “(d) LIMITATION ON PER CAPITA DISTRIBUTIONS.—
19 No part of the principal contained in the Tribal Resource
20 Fund, or of the income accruing to such funds, or the rev-
21 enue from any water use contract, shall be distributed to
22 any member of either Tribe on a per capita basis.

23 “(e) LIMITATION ON SETTING ASIDE FINAL CON-
24 SENT DECREE.—Neither the Tribes nor the United States
25 shall have the right to set aside the final consent decree

1 solely because the requirements of subsection (c) are not
2 complied with or implemented.

3 **"SEC. 17. COLORADO UTE SETTLEMENT FUND."**

4 “(a) ESTABLISHMENT OF FUND.—There is hereby
5 established within the Treasury of the United States a
6 fund to be known as the ‘Colorado Ute Settlement Fund.’

7 “(b) AUTHORIZATION OF APPROPRIATIONS.—There
8 is authorized to be appropriated to the Colorado Ute Set-
9 tlement Fund such funds as are necessary to complete the
10 construction of the facilities described in section
11 6(a)(1)(A) within 6 years of the date of enactment of this
12 section. Such funds are authorized to be appropriated for
13 each of the first 5 fiscal years beginning with the first
14 full fiscal year following the date of enactment of this sec-
15 tion.

16 “(c) INTEREST.—Amounts appropriated under sub-
17 section (b) shall accrue interest, to be paid on the dates
18 that are 1, 2, 3, 4, and 5 years after the date of enactment
19 of this section, at a rate to be determined by the Secretary
20 of the Treasury taking into consideration the average mar-
21 ket yield on outstanding Federal obligations of comparable
22 maturity, except that no such interest shall be paid during
23 any period where a binding final court order prevents con-
24 struction of the facilities described in section 6(a)(1)(A).

1 **"SEC. 18. FINAL SETTLEMENT.**

2 “(a) IN GENERAL.—The construction of the facilities
3 described in section 6(a)(1)(A), the allocation of the water
4 supply from those facilities to the Tribes as described in
5 that section, and the provision of funds to the Tribes in
6 accordance with sections 16 and 17 shall constitute final
7 settlement of the tribal claims to water rights on the
8 Animas and La Plata Rivers in the State of Colorado.

9 “(b) STATUTORY CONSTRUCTION.—Nothing in this
10 section shall be construed to affect the right of the Tribes
11 to water rights on the streams and rivers described in the
12 Agreement, other than the Animas and La Plata Rivers,
13 to receive the amounts of water dedicated to tribal use
14 under the Agreement, or to acquire water rights under the
15 laws of the State of Colorado.

16 “(c) ACTION BY THE ATTORNEY GENERAL.—The At-
17 torney General shall file with the District Court, Water
18 Division Number 7, of the State of Colorado, such instru-
19 ments as may be necessary to request the court to amend
20 the final consent decree to provide for the amendments
21 made to this Act under the Colorado Ute Indian Water
22 Rights Settlement Act Amendments of 2000.

23 **"SEC. 19. STATUTORY CONSTRUCTION; TREATMENT OF**
24 **CERTAIN FUNDS.**

25 “(a) IN GENERAL.—Nothing in the amendments
26 made by the Colorado Ute Settlement Act Amendments

1 of 2000 shall be construed to affect the applicability of
2 any provision of this Act.

3 “(b) TREATMENT OF UNCOMMITTED PORTION OF
4 COST-SHARING OBLIGATION.—The uncommitted portion
5 of the cost-sharing obligation of the State of Colorado re-
6 ferred to in section 6(a)(3) shall be made available, upon
7 the request of the State of Colorado, to the State of Colo-
8 rado after the date on which payment is made of the
9 amount specified in that section.”