

COLORADO UTE INDIAN WATER RIGHTS

FINAL SETTLEMENT AGREEMENT

December 10, 1986

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

✓ also signed Colorado State Agreement

✓ not sign Colorado Agreement

- cost-share signers, but not an Agreement:
- Colorado Water Resources & Power Development Authority
 - NM Interstate Stream Commission
 - Montezuma County
 - San Juan Water Commission

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COLORADO UTE INDIAN WATER RIGHTS

FINAL SETTLEMENT AGREEMENT

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

I. GENERAL PURPOSES

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

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

II. DEFINITIONS

For purposes of this Agreement:

1. The term "Agreement" shall mean the Colorado Ute Indian Water Rights Final Settlement Agreement.
2. The term "Animas-La Plata Project" means the Animas-La Plata Project, Colorado-New Mexico, a participating project under the Colorado River Storage Project Act, 70 Stat. 105, 43 U.S.C. 620, as amended by the Colorado River Basin Project Act, 82 Stat. 885.
3. The term "Dolores Project" means the Dolores Project, Colorado, a participating project under the Colorado River Storage Project Act, 70 Stat. 105, 43 U.S.C. 620, as amended by the

"Net acres"
Colorado River Basin Project Act, 82 Stat. 885.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. QUANTIFICATION AND DETERMINATION

A. UTE MOUNTAIN UTE INDIAN TRIBE

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

1. Dolores Project

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

e. The project reserved water right shall

always be consistent with:

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

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

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

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

g. Based upon the parties' expectation that

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

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

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

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

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

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

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

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

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

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

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

2. Animas-La Plata Project

*1868
priority date*

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

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

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

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

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

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

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

MMU

MJL -
6,000 AF

26,300 AF

900

+900 AF
900

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

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

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

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

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

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

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

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

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

annual agricultural irrigation allocation; or

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

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

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

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

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

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

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

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

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

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

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

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

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

not an admission of reserved WR

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

defer payment until used

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

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

i. If the Tribe does not take delivery of its Animas-La Plata Project allocations from the Ridges Basin Pumping Plant through the Long Hollow Tunnel and the Dry Side Canal, even though those facilities have been constructed with the capacities contemplated by the DPR, then the Tribe shall:

(a) continue to remain responsible for such portion of the OM&R costs of the Ridges Basin Pumping Plant, the Long Hollow Tunnel and the Dry Side Canal so as to ensure that all other project users bear no greater OM&R costs than would have otherwise been the case; and (b) ensure that deliveries to, and carriage losses of, all other project users are not adversely affected. On or before November 1, 1988, the Tribe may elect to have the United

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

3. Other Sources

The Tribe shall receive:

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

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

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

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

B. SOUTHERN UTE INDIAN TRIBE

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

1. Animas-La Plata Project

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

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

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

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

The project reserved water right shall not exceed the total of

the above allocations.

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

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

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

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

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

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

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

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

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

(ii) actual historic use or, if there

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

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

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

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

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

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

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

f. The final settlement of the Tribe's

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

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

not will be

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

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

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

NO precedential value

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

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

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

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

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

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

2. Pine River

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

3. Other Sources

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

All parcel numbers used in the following descriptions refer

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

a. Florida River

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

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

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

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

Parcel 1:

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

Parcel 2:

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

Parcel 3:

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

Parcel 15:

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

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

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

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