

Water Rights of the Ute Indian Tribe Uintah and Ouray Reservation



An Overview

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Ute Indian Water Rights Overview

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1. Introduction

This document has been prepared to give the reader an overview of the history of water rights of the Ute Indian Tribe of the Uintah and Ouray Reservation.

Chapters are in chronological order, however, many issues are related and therefore may overlap in subject matter.

Much of the content is based on my personal knowledge, acquired while working for nearly two decades for the Bureau of Indian Affairs in Fort Duchesne as the manager of the Uintah Indian Irrigation Project. Prior to working for BIA, I was employed by the Bureau of Reclamation for thirteen years, with much of that time spent working on the construction of Bonneville Unit facilities. For the last four years of my federal career, I worked as a program coordinator for the Office of the Secretary, Central Utah Project Completion Act Office.

I lived in the Uintah Basin for almost thirty years and was fortunate, while living and working on the Reservation, to interact with many fine individuals who passed on to me information and knowledge about the Ute culture and reservation water issues.

While preparing this overview I reviewed many documents and, where appropriate, I have referenced some of those in footnotes.

Indian water rights are complex and have a long history. Hopefully after reading this overview, you will have a better understanding of the Ute Tribe's water rights.

Lynn N Hansen

2. Establishment of the Uintah and Ouray Reservation

The Uintah and Ouray Reservation is located in northeastern Utah at the foot of the Uinta Mountains within a three-county area known as the Uintah Basin.

The Uinta Basin drew little interest during the initial phase of settlement of the Great Basin. Early in the 1860's, Mormon Church leader, Brigham Young, ordered a small expedition to the Uinta Basin to determine the suitability for locating settlements there. Upon the expedition's return, the *Deseret News* reported that the expedition had found little there and that the basin was a "vast contiguity of waste...valueless excepting for nomadic purposes, hunting grounds for Indians and to hold the world together."

Upon the recommendation of the Secretary of the Interior, on October 3, 1861, by executive order, President Abraham Lincoln set aside the Uintah Valley in the territory of Utah for the use and occupancy of Indian tribes, thereby establishing the Uintah Reservation.

The first agency on the reservation was established in 1865 at the head of Daniels Canyon with Albert Kinney as the Indian Agent. The area was isolated by heavy snowfall in the winter, and was not stocked adequately with supplies, thereby frustrating and discouraging Ute support. Thomas Carter was made agent the next year and moved the agency into the basin near present-day Hanna on the upper Duchesne.

Two years later the agency was moved to the junction of Rock Creek and the Duchesne River. In the fall of 1868, Agent Pardon Dodds moved the agency from this western side of the reservation to the center of the basin at White Rocks. White Rocks had been the location of Fort Robidoux and was the crossroads of several trails.¹

¹ The Strawberry Valley Reclamation Project and the Opening of the Uintah Indian Reservation, By Kathryn L. MacKay



On January 5, 1882, President Chester A. Arthur issued an executive order creating the Ouray Reservation on adjacent lands for the resettlement of the Colorado Uncompahgre Utes. The Ouray Agency was established at Ouray near the confluence of the Green and Duchesne Rivers.

In 1886, the Uintah and Ouray agencies were consolidated to serve the Uintah and Ouray Reservation and were located at Fort Duchesne, not long after the construction of a military post there. The Ouray Agency continued to be used as a sub-agency for about another decade until 1898.

Fort Duchesne was established by Major Frederick William Benteen on August, 20th 1886, on a site selected by General George Crook. General Crook soon took command of the new fort. Construction began in October 1886 and the six square mile military reservation "Fort Du Chesne" was officially designated by President Grover Cleveland on September 1, 1887. The fort continued to serve, with an average detachment of 250 men, until its closure in September 1912.² Remnants of the fort still exist.

² Chapter Five - The Northern Utes of Utah-*Utah's Native Americans*-Clifford Duncan
http://historytogo.utah.gov/people/ethnic_cultures/the_history_of_utahs_american_indians/chapter5.html

In 1897, Congress enacted the Dawes Act and began allotment of various reservations, and in 1904, approved 80-acre individual allotments for the Uintah and White River Utes of the Uintah Reservation. Individual Indians were given title to their allotments. Subsequently, lands on the Ouray Reservation were allotted to the Uncompahgre Utes.

By a series of proclamations issued by President Theodore Roosevelt, Uintah Reservation lands were withdrawn for incorporation in the Uintah Forest Reserve, set aside for reservoir purposes, and designated as town sites. Interior officials additionally designated reservation lands for various purposes relating to the Indians, exempting those lands from homestead entry. On August 28, 1905, a total of 1,004,285 un-allotted acres were opened to homestead entry.

Prior to being confined to a reservation, the various bands of the Ute Tribe led a nomadic lifestyle, and were adept at hunting and gathering. Being confined to a reservation and adjusting to a farmer/rancher lifestyle was difficult for the Utes. Within a relatively short period of time, many of the Indians sold their allotments to non-Indian homesteaders. This, combined with opening the un-allotted lands to homesteading, created a checker board of Indian/non-Indian ownership on much of the reservation. This checker board ownership exists today and adds to the complexity of administering water rights on the reservation.

Following the Indian Reorganization Act of 1934, the Ute Tribe of the Uintah and Ouray Reservation began repurchasing alienated reservation lands, and in 1948 the federal government returned some 726,000 acres to the Tribe in what is called the Hill Creek Extension.

Today the Uintah and Ouray Reservation consists of approximately 1.3 million acres of trust land. The Reservation is the second largest Indian Reservation in the United States and originally covered over four million acres.

The Uintah and Ouray Utes are comprised of three bands: the Uintah, the White River, and the Uncompahgre, with a tribal membership of about 3,150 members. The Tribal governing body consists of a six member Business Committee, two members from each band. The tribal headquarters are located at Fort Duchesne, approximately 130 miles southeast of Salt Lake City.

A multitude of streams flows through the Reservation. The Duchesne River and its tributaries: Strawberry, Rock Creek, Lake Fork River, Uinta River, and Whiterocks River are among the rivers which pass south from the Uinta Mountains through the western part of the Reservation to the Green River. All of the Uintah and Ouray Reservation lies within the drainage of the Colorado River Basin.

3. Uintah Indian Irrigation Project

On June 21, 1906, pursuant to the Indian Department Appropriation Project Act of 1906, (P.L 59-258 34 Stat 325, 375-76), the Uintah Indian Irrigation Project, was authorized by Congress. The 1906 Act authorized construction of irrigation facilities to irrigate the allotted lands of the Uncompahgre, Uintah, and White River Utes in Utah. The Act directed that operating costs be equitably apportioned upon the lands irrigated; and that the Project and Project Water Rights, until otherwise provided by law, be in the Secretary of the Interior in trust for the Indians. The Bureau of Indian Affairs administers the Project pursuant to federal laws and regulations.

In 1905 the United States Indian Irrigation Service, a predecessor to the Bureau of Indian Affairs, in anticipation of congress authorizing the irrigation project, submitted an application to the Utah State Engineer for water to irrigate the allotments to be served by the project. The State Engineer subsequently approved those applications. These allotted lands were later identified as Groups 1 and 2 lands in the Decker Report (See 1923 Federal Court Decree and Decker Report).

The United States Indian Irrigation Service, over a period of about fifteen years, constructed irrigation systems to serve approximately 78,950 acres of allotted lands. Project lands originally consisted exclusively of allotted lands owned by individual Indians. However, over time, a large portion of these lands have been acquired by either the Ute Tribe or in fee by non-Indians.

The Project consists of 23 individual canal systems and one off stream reservoir (Midview Reservoir) with 635 miles of canals, laterals, and sub-laterals.³ Midview Reservoir was not constructed as part of the Indian Irrigation Project, rather it was part of the Moon Lake Project and was transferred to BIA in 1967 pursuant to the Midview Exchange Agreement.

Each canal system has its own river diversion. Water for the project is supplied from three river drainages: the Strawberry/Duchesne, the Lake Fork/Yellowstone, and the Uintah/Whiterocks. Water rights vary by river system.

³ Operation and Maintenance Guidelines, Uintah Indian Irrigation Project, Uintah and Ouray Agency, U. S. Department of the Interior, Bureau of Indian Affairs, Western Region, January 2009

Duchesne River Lands

Project lands served by the Duchesne River are identified as Groups 2 & 3 lands totaling 19,728 acres, having a 4 acre foot per acre right. This source is the most reliable. Project lands served under the Duchesne River usually receive their full allocation of water. In the Duchesne River Land and Water Resource Review dated April 1962, the Duchesne River Area Study Committee states the following regarding Indian lands served by the Duchesne River:

“The studies show that the Indian lands now irrigated or recommended by the Committee for irrigation development concurrently with the initial phase of the Central Utah Project, do not need supplemental water because of a superior water right and an adequate direct flow supply.”

Also served by the Duchesne River are 10,000 acres of Midview Exchange lands (See Midview Exchange Agreement). Midview Exchange lands are Group 1 lands with a 3 acre foot per acre Lake Fork River water right but, by virtue of the Midview Exchange Agreement, are now supplied by the Duchesne River and receive 4 acre feet per acre.

Lake Fork River Lands

Project lands served by the Lake Fork River are identified as Group 1 lands totaling 25,070 acres having a 3 acre foot per acre right. This source is less reliable. Project lands served under the Lake Fork River receive their full allocation of water about 65% of the time⁴.

Water for these lands would have been supplemented by the Upalco Unit had it been constructed.

As discussed earlier, of the 25,070 Lake Fork River acres, 10,000 acres of Midview Exchange lands are now served by the Duchesne River. A more detailed description of the Midview Exchange Agreement is included in the Midview Exchange Agreement chapter.

⁴ Based on River Commissioner reports for the U. S. Lake Fork Canal years 1950 – 2012.

| U S Lake Fork Canal | | | | | | | |
|---------------------|--------------------|------|--------------------|------|--------------------|------|--------------------|
| Year | Acre Feet Per Acre | Year | Acre Feet Per Acre | Year | Acre Feet Per Acre | Year | Acre Feet Per Acre |
| 1950 | 2.86 | 1966 | 3.05 | 1982 | 3.35 | 1998 | 3.79 |
| 1951 | 2.96 | 1967 | 3.05 | 1983 | 3.91 | 1999 | 3.57 |
| 1952 | 2.73 | 1968 | 3.16 | 1984 | 4.05 | 2000 | 3.10 |
| 1953 | 2.67 | 1969 | 3.35 | 1985 | 3.22 | 2001 | 3.16 |
| 1954 | 2.92 | 1970 | 3.05 | 1986 | 3.53 | 2002 | 2.29 |
| 1955 | 2.81 | 1971 | 3.36 | 1987 | 3.42 | 2003 | 2.99 |
| 1956 | 2.91 | 1972 | 3.40 | 1988 | 2.70 | 2004 | 2.82 |
| 1957 | 2.82 | 1973 | 3.34 | 1989 | 2.62 | 2005 | 3.34 |
| 1958 | 2.79 | 1974 | 3.02 | 1990 | 3.38 | 2006 | 2.97 |
| 1959 | 2.97 | 1975 | 3.36 | 1991 | 3.07 | 2007 | 2.75 |
| 1960 | 2.79 | 1976 | 3.07 | 1992 | 3.03 | 2008 | 2.80 |
| 1961 | 2.55 | 1977 | 2.81 | 1993 | 3.19 | 2009 | 3.14 |
| 1962 | 3.11 | 1978 | 3.17 | 1994 | 3.13 | 2010 | 3.10 |
| 1963 | 3.02 | 1979 | 3.19 | 1995 | 3.07 | 2011 | 3.77 |
| 1964 | 3.13 | 1980 | 3.30 | 1996 | 3.19 | 2012 | 2.60 |
| 1965 | 3.21 | 1981 | 3.21 | 1997 | 3.39 | | |

Acre feet per acre diverted from the Lake Fork River into the U. S. Lake Fork Canal, (River Commissioner reports 1950 – 2012)

Uintah River Lands

Project lands served by the Uintah River are also identified as Group1 lands totaling 34,152 acres having a 3 acre foot per acre right. This source being the least reliable, Project lands served under the Uintah River receive their full allocation of water only about 58% of the time⁵. Water for these lands would have been supplemented by the Uintah Unit had it been constructed.

⁵ Based on River Commissioner reports for the Uintah Canal years 1950 – 2013.

| Uintah Canal | | | | | | | |
|--------------|--------------------|------|--------------------|------|--------------------|------|--------------------|
| Year | Acre Feet Per Acre | Year | Acre Feet Per Acre | Year | Acre Feet Per Acre | Year | Acre Feet Per Acre |
| 1950 | 3.48 | 1966 | 3.37 | 1982 | 3.49 | 1998 | 3.19 |
| 1951 | 2.86 | 1967 | 3.33 | 1983 | 3.56 | 1999 | 3.00 |
| 1952 | 2.96 | 1968 | 3.33 | 1984 | 3.86 | 2000 | 2.56 |
| 1953 | 2.92 | 1969 | 3.83 | 1985 | 3.54 | 2001 | 3.07 |
| 1954 | 3.13 | 1970 | 3.35 | 1986 | 3.62 | 2002 | 1.41 |
| 1955 | 2.75 | 1971 | 3.52 | 1987 | 3.66 | 2003 | 2.48 |
| 1956 | 3.34 | 1972 | 3.41 | 1988 | 1.90 | 2004 | 2.48 |
| 1957 | 3.22 | 1973 | 3.21 | 1989 | 2.05 | 2005 | 3.31 |
| 1958 | 3.25 | 1974 | 2.35 | 1990 | 2.95 | 2006 | 2.86 |
| 1959 | 2.95 | 1975 | 3.34 | 1991 | 3.52 | 2007 | 2.40 |
| 1960 | 2.52 | 1976 | 3.06 | 1992 | 2.28 | 2008 | 2.97 |
| 1961 | 2.61 | 1977 | 2.34 | 1993 | 3.30 | 2009 | 3.15 |
| 1962 | 3.36 | 1978 | 2.78 | 1994 | 2.71 | 2010 | 3.05 |
| 1963 | 3.17 | 1979 | 3.02 | 1995 | 3.39 | 2011 | 3.61 |
| 1964 | 4.11 | 1980 | 2.92 | 1996 | 2.85 | 2012 | 2.53 |
| 1965 | 3.40 | 1981 | 2.86 | 1997 | 3.36 | 2013 | 2.96 |

Acre feet per acre diverted from the Uintah River into the Uintah Canal, (River Commissioner reports 1950 – 2013)

Project lands are divided into three classes:

1. Class I lands are presently irrigable lands receiving water and are designated Presently Assessable (PA) and are subject to annual O&M charges.
2. Class II lands are currently not irrigated, not assessed annual O&M charges and are designated as Temporarily Non-Assessable (TNA) pursuant to the standards set out in 25 U. S. C. § 389a.
3. Class III lands are currently not irrigated, not assessed annual O&M charges and are designated as Permanently Non-Assessable (PNA) pursuant to the standards set out in 25 U. S. C. § 389b.

The Uintah Project, like many Indian irrigation projects operated by the BIA, has struggled over the years to adequately maintain project facilities. O&M assessments were often not sufficient to generate the necessary revenue to properly operate and maintain the project. In 1938 the Uintah Project produced a very comprehensive 200 page report entitled, “A Study of Economic Conditions on the Uintah Irrigation Project, Utah.” The report was submitted to the United States Department of the Interior, Office of Indian Affairs and included recommendations for the adjustment of irrigation assessments, with suggestions for project composition, rehabilitation and administration.

The report is a great snap shot of early struggles of the Uintah Project and led the Secretary of the Interior to support legislation to authorize and implement the report recommendations. The following is an excerpt from the 77th Congress Senate Committee of Indian Affairs:

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

SIR: The act of Congress approved June 22, 1936 (49 Stat. 1803), authorizes the Secretary of the Interior to cause an investigation to be made to determine whether the owners of non-Indian lands under Indian irrigation projects are unable to pay irrigation charges and if so the reasons therefor. When it is found that the landowners are unable to pay assessments the Secretary of the Interior is authorized to adjust or defer charges as the facts and conditions warrant, subject to approval by Congress as required by section 6 of the act. I enclose a copy of the report of an investigation made under the said act covering the Uintah Indian irrigation project, Utah. In accordance with recommendations contained in the report I have canceled \$283,170.73 of unpaid construction obligations, and \$28,875.37 of delinquent unpaid operation and maintenance assessment obligations carried on the books of the project, and have deferred until December 1, 1943, the collection of \$61,983.16 expended in drainage work. I also find that contracts should be authorized with landowners to provide for the payment of \$19,230.72 accrued operation and maintenance assessments over a period of years as provided in said act. I also enclose a memorandum of information summarizing the report and conditions on the project; and a draft of bill to approve my action taken as above stated and to authorize certain other administrative action in furtherance of a more complete economic rehabilitation of the project, which I recommend be enacted. This proposed legislation, except the proviso in subsection (a) of section 1, was recommended to the Seventy-sixth Congress and was passed by the Senate on June 22, 1940, in the form of S. 3952, but was not passed by the House of Representatives. The Bureau of the Budget has advised me that there would be no objection to the submission of this proposed legislation to the Congress for its consideration.

Very truly yours,
HAROLD L. ICKES,
Secretary of the Interior.

The report included sixteen recommendations, which had the proposed legislation become law, would have significantly altered the Uintah Indian Irrigation Project. Listed below are the sixteen recommendations:

It is respectfully recommended that:

1. Repayments to the United States for the construction of drains within the Uintah Drainage Project in the vicinity of Myton, Utah, financed with Public Works Administration funds, be deferred until December 1, 1943, provided, that if at that time the Secretary of the Interior shall determine that such drainage project is not functioning successfully to the extent that lands thereunder can be sufficiently reclaimed and returned to a satisfactory productive condition, that he be authorized to cancel such portion or all such drainage charges as may in his opinion be economically unjustified.
2. An appropriation of \$145,000, from monies not otherwise appropriated, be made available as needed to rehabilitate the Uintah Irrigation Project and, in addition, an appropriation of \$5,000 be made for legal and engineering investigations to determine whether storage facilities on the Whiterocks River are necessary and feasible. These appropriations to be not reimbursable.
3. Section 14 of the provisional contract between the United States of America and the Moon Lake Water Users Association be deleted or modified to the extent that provisions of said section will not prevent transfers of water rights from badly seeped and alkalied or otherwise non-productive Indian land served by the U. S. Dry Gulch (Riverdell) and U. S. Redcap canals to more desirable land recommended for acquisition.
4. All construction charges against lands owned by non-Indians be cancelled.
5. Delinquent operation and maintenance assessments in the amount of \$28,875.37 be cancelled, of which \$20,722.62 is recommended for legal reasons and \$8,152.75 for economic reasons.
6. Deferment contracts signed in 1937 by 46 white water users delinquent in payment of irrigation assessments be not approved and, where complete cancellation of delinquent charges is not

recommended, that new contracts be entered into by water users whose charges recommended for collection are too large for lump sum payment.

7. All white water users be required to make immediate and satisfactory settlement of delinquent irrigation charges as shown opposite their names in the column headed "Recommended for Collection" in Tables 57, 58, 59, 60, 61, 66, 67, 70, 75, 76, 82, 89, 90, 93, 96, 99, 104, 105, and 108, the water user to pay the full amount in cash prior to the beginning of the irrigation season next following date of approval of this report, if amount recommended for collection does not exceed amount of his operation and maintenance assessments for the 1938 irrigation season, and to make settlement by deferment contract where amount recommended for collection exceeds operation and maintenance assessments for the 1938 irrigation season, said contract to provide for payment in from two to ten equal annual installments, together with interest at three (3) per cent per annum on the remaining unpaid amount. Interest and penalties which have accrued on delinquent charges to June 30, 1937, be cancelled in instances where landowners make satisfactory settlement of the amounts recommended for collection.

8. Landowners be encouraged to transfer water rights from badly seeped and alkali lands to lands of good quality where it is adjudged to be mutually beneficial to the project and the water user; Provided, that applications for the transfer of project water rights be considered by the project engineer only where the applicant submits proof to the effect that he has title in fee simple to all of the lands involved.

9. Costs incurred in constructing, operating and maintaining the Yanawards and Strawberry Townsite canals, and costs incurred in making preliminary surveys for the Whiteriver Canal, be no longer carried on project records, since no assessments were ever made in the case of the two first-named canals, and no construction work was undertaken in the case of the Whiteriver Canal.

10. Existing rights of Indians occupying the so-called Rock Creek allotments be safeguarded, to the extent, if necessary, of transferring to them water rights from badly seeped and alkali or otherwise nonproductive Indian land elsewhere in the Duchesne Valley.

11. The amount of \$43,264.23 be appropriated to reimburse the Ute Tribe of the Uintah and Ouray Reservation for monies loaned individual Indians for subjugation of irrigable allotments during the period from May 15, 1917 to March 10, 1920, provided that the tribe in turn cancels the amount against individual Indians obligated under the agreements listed in Table 110, pages 168 to 175, inclusive.

12. The Ute Tribe of the Uintah and Ouray Reservation be reimbursed the amounts of \$292,523.47 for tribal funds used in constructing irrigation project works to serve 23,108.28 acres of white-owned land, plus \$159,726.39 for tribal funds used in constructing project works to 9,212.82 acres of Indian owned land that have become badly seeped and alkaliied, plus 30,542.95 for tribal funds used for project construction costs on white owned lands from 1919 to 1933, inclusive, a total of \$482,792.81, reimbursement to be made with the understanding that no per capita payments will be made and that the tribe will use monies thus obtained for the purchase of grazing or irrigable lands in the following areas:

- (a) Uintah River Valley, above the north boundary of the Fort Duchesne Military Reserve,
- (b) In and adjacent to the Duchesne River Valley above Utah,
- (c) In areas served by the U. S. Lake Fork and Payne canals,
- (d) The Clay Basin area and other areas that may be designated for acquisition with approval of the Secretary, and for construction or rehabilitation of irrigation works to serve newly acquired lands, where necessary.

13. The Gray Mountain, Pahcease, Myton Townsite, Dry Gulch (Riverdell) and Ouray School canals and structures appurtenant thereto be put in a good state of repair and the operation and maintenance thereof turned over to white water users. The Indian Service to pay its proportionate share of operation and maintenance charges on Indian lands retained within the area served by these canals until such time as Indian water rights can be transferred to lands recommended for acquisition farther up the Duchesne and Lake Fork Rivers, with the understanding that the Government will at some future date withdraw a part of or all of its support: Provided that, the white water users, in assuming the obligation of operating and maintaining these canals, will not be obligated for the payment of any delinquent charges existing against lands served thereby: And provided further, that white water users prepare and execute an acceptable agreement of acquittance stipulating that the Indian Service will never again be obligated to assume the operation and maintenance of any one or all of these five canals.

14. Operation and maintenance charges be no longer assessed against Class 5 or Class 6 lands served by the Jasper Pike, Lake Fork, Uintah, Number One, Farm Creek, Whiterocks, Tabby White, Deep Creek, Bench, Daniels, Harmes, Colorado Park, Big Six and Individual Indian canals: Provided that with suspension of irrigation assessments against Class 5 and Class 6 land water deliveries to such lands will be suspended also, with approval of the Secretary of the Interior.

15. Beginning with the irrigation season immediately following approval of this report and extending for a five year period, provided that an annual appropriation of \$1,000 is made to carry out provisions of a plan whereby land in white ownership served by the Redcap, Henry Jim and Leland canals shall be assessed operation and maintenance charges on a sliding scale basis depending on its classification as follows: Classes 1, 2 and 3 lands to be assessed the full rate. Class 4 land to be assessed 66 per cent of the full rate, Classes 5 and 6 lands not to be assessed and water deliveries to be discontinued, unless white owners desire to use water on Class 5 land in an attempt to reclaim it, in which case they should be permitted to do so at a charge of 10 cents an acre until such time as a committee composed of the Agency Superintendent, the Project Engineer and a disinterested individual decides that lands so classed are in such condition that they are capable of bearing the regular rate, but in no event should this so-called sliding scale plan of assessment extend for longer than five years unless land-owners involved shall elect to continue it at their own expense.

16. C. T. Beggs, W. Dennis and P. Nutter be refunded \$112.00, \$95.96 and \$474.63, respectively, for assessments erroneously charged and collected from them by the Uintah Irrigation Project, such refunds to be made by claim settlement from applicable Receipt Limitation Funds, the total of \$682.59 to be included as an item in the next ensuing budget.

1938 PLAN FOR REHABILITATION

It is believed that in addition to the debt adjustments heretofore discussed, the project irrigation system should be reconditioned and certain water rights transferred to better lands.

The plan developed in the economic report contemplates putting into effect some or all of the following features:

1. Improve the irrigation system by rehabilitating certain canals and structures at an estimated cost of \$150,000.
2. As soon as feasible, turn over to the non-Indian water users the Gray Mountain, Pahcease, Myton Townsite, Dry Gulch (Riverdell), and Ouray School Canals and appurtenant structures. To make that feasible, it is thought the landowners should form an irrigation district or districts and enter into an agreement whereby the Government would thereafter be relieved of all responsibility for these canals and structures. The proposal here would also call for the Indians, or the Government for them, to pay the proportionate share of the operation and maintenance costs for those canals on account of the Indian lands under the canals so long as the water rights were claimed for those lands, but with the understanding that these water rights would be transferred to other and more desirable lands as soon as possible. The Indian lands would not form a part of such irrigation district or districts, but any contract made with a district would provide for proper protection of the Indians' interest in the project works.

These canals and structures will not be rehabilitated until the landowners agree to take them over, since most of the area under these canals should be eliminated from the project. The project assets (the water rights) should be preserved by transferring those rights to more desirable lands. Water rights from Indian owned poor lands would be transferred to better lands in Indian ownership, and similar rights as to non-Indian lands would be transferred to more desirable non-Indian lands. If, however, the non-Indian landowners wish to continue the operation of these canals as they have indicated they do, then it is believed they should assume the sole responsibility for the operation and maintenance.

Although the proposed legislation was not enacted, certain recommendations from the report were pursued, such as transferring water to more productive land. Over time more than 250 transfers were approved by BIA.

For many years the Tribe and Project water users complained that BIA as a federal agency inherently could not operate the Project as efficiently as private irrigation companies due to cumbersome federal

regulations. The BIA's response was that in order to properly operate and maintain the Project it would need a significant raise in the O&M assessments, to which the Tribe was adamantly opposed.

On July 13, 1988 the Ute Tribe Business Committee, in response to the water user concerns, passed Resolution No. 88-124 which petitioned the United States Congress to act favorably on the Tribe's requests contained in a memorandum attached to the resolution entitled, *Obligations of the United States to the Uintah Indian Irrigation Project*. The eleven page memo made the argument that BIA's O&M budget was severely underfunded and that BIA was not able to properly operate and maintain the Project, and that a non-federal entity could operate the Project much more efficiently. Some excerpts from the memo are as follows:

"Throughout the history of the project, various reports and investigations have found inadequate funding for proper operation and maintenance. Funding has never been adequate to construct storage dams to provide river regulation. Operation and maintenance charges have been kept at artificially low levels because of the short growing season, limited crops that can be grown and a depressed economy in the Uinta Basin. The irrigation system has suffered. Assessments for operation and maintenance have been continued on a low level for years which has resulted in inadequate funds being available for cleaning operations and repair and replacement of project structures."

"It would be necessary to raise the rate of assessment per acre to \$19.86 in order to raise sufficient money to operate and maintain the project in a reasonable manner. This represents an additional 134%. Costs are based upon the assumption that the BIA will manage the project as it has in the past, using the same procedures and regulations."

"The Bureau of Indian Affairs has administered the project since the beginning. For over 50 years, at least, the costs of operating and maintaining the project by the Bureau of Indian Affairs have been held at an artificially high level because of the application of several federal statutes that were not intended to be applied to the operation and maintenance of irrigation projects."

"To the present time, the Bureau of Indian Affairs bureaucratically prohibits practices normally followed by water user organizations operating Bureau of Reclamation projects in such areas as hiring full-time and part-time employees, contracting, wages, overtime compensation and the like."

"We see a failure of the Secretary of the Interior to exercise his trust responsibility to the water users of the Uintah Indian Irrigation Project."

“We do not need a change in the trust obligations of the United States toward its Indian population or toward its beneficiaries of special projects, such as water user beneficiaries of an irrigation project. We do seek, however, to have the Secretary of the Interior more realistically look after his trust responsibilities.”

The memo specifically requested 14 items for Congress to consider and stated the following:

We request that:

- (a) The Congress authorize and appropriate sufficient funds to repair and renovate the water distribution system of the Uintah Indian Irrigation Project.
- (b) The Congress authorize and appropriate sufficient funds to provide the Uintah Indian Irrigation Project with storage facilities which will enable the Project to deliver adequate water to its water users throughout the irrigation season.
- (c) The Secretary of the Interior be authorized to classify and to reclassify assessability of Project lands.
- (d) The Secretary be authorized and directed to enter into a contract, grant or cooperative agreement with any organization representing the water users within the Project area so as to authorize such organization to operate and maintain and construct where appropriate Uintah Irrigation Project facilities using the same general practices in hiring, contracting and basic operating procedures as used by water organizations who operate and maintain irrigation projects constructed by the Bureau of Reclamation.
- (e) The Secretary retain his trust responsibilities to the Project.
- (f) Water users who do not pay water assessments lose the right to receive water for the assessed land for the upcoming irrigation season unless other arrangements are made with the Secretary.

- (g) The Secretary be authorized to lease available water for project lands designated as non-assessable and which have water rights considered appurtenant thereto.
- (h) Project landowners be authorized to lease water for lands designated as assessable when approved by the Secretary.
- (i) Any landowner who does not want to make irrigation assessment payments be authorized to forfeit, in writing, any appurtenant water rights, which thereupon be considered as owned by the United States as trustee for the Ute Indian Tribe.
- (j) The Secretary be authorized to transfer Project water rights from Project land to other land that can be served by the Project, and to allow exchanges, upon written request of each applicable owner.
- (k) The Secretary be authorized to lease all Project water not being called for by landowners or authorized water users.
- (l) The Secretary be authorized to use funds received from assessments, carriage agreements, leases and all other additional sources, for Project operation and maintenance and construction where appropriate and to deposit such funds in an account in the United States Treasury and to withdraw the same for such purposes without further authorization or appropriation of the Congress.
- (m) The Project Engineer be authorized to change the places of delivery to sub-lateral headings.
- (n) All costs associated with the federal employees required to administer the Project be non-reimbursable and paid for by the Secretary as part of his trust responsibilities by adding such costs to the base funding of the Uintah and Ouray Agency.

When Congress enacted Public Law 102-575, The Reclamation Projects Authorization and Adjustment Act of 1992, Section 203(f) of the Act addressed many of the concerns the Tribe had

articulated in Resolution 88-124. Titles II through VI of the Act is known as the “Central Utah Project Completion Act” (CUPCA). Section 203(f) while included in CUPCA, was not part of the Ute Settlement which is Title V, (Title V will be discussed in detail later in this document).

Section 203(f) did not address all the issues raised in the petition attached to Resolution 88-124, rather it focused on the issue of contracting the Irrigation Project to a water user organization specifically addressing items d, e, l, and m listed in the petition. Section 203 (f) is as follows:

(f) UINTAH INDIAN IRRIGATION PROJECT.

- (1) Notwithstanding any other provision of law, the Secretary is authorized and directed to enter into a contract or cooperative agreement with, or make a grant to the Uintah Indian Irrigation Project Operation and Maintenance Company, or any other organization representing the water users within the Uintah Indian Irrigation Project area, to enable such organization to –
 - (a) Administer the Uintah Indian Irrigation Project, or part thereof, and
 - (b) Operate, maintain, rehabilitate, and construct all or some of the irrigation project facilities using the same administrative authority and management procedures as used by water user organizations formed under State laws who administer, operate, and maintain irrigation projects.
- (2) Title to Uintah Indian Irrigation Project rights-of-way and facilities shall remain in the United States. The Secretary shall retain any trust responsibilities to the Uintah Indian Irrigation Project.
- (3) Notwithstanding any other provision of law, the Secretary shall use funds received from assessments, carriage agreements, leases, and all other additional sources related to the Uintah Indian Irrigation Project exclusively for Uintah Indian Irrigation Project administration, operation, maintenance, rehabilitation, and construction where appropriate. Upon receipt, the Secretary shall deposit such funds in an account in the Treasury of the

United States. Amounts in the account not currently needed shall earn interest at the rate determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding obligations of the United States with remaining periods to maturity comparable to the period for which such funds are not currently needed. Amounts in the account shall be available without further authorization or appropriation by Congress. Such amounts shall be treated as private funds to be held in trust for landowners of the irrigation project and shall not be treated as public or appropriated funds.

- (4) All noncontract costs, direct and indirect, required to administer the Uintah Indian Irrigation Project shall be non-reimbursable and paid for by the Secretary as part of his trust responsibilities, beginning on the date of enactment of this Act. Such costs shall include (but not be limited to) the noncontract cost positions of project manager or engineer and two support staff. Such costs shall be added to the funding of the Uintah and Ouray Agency of the Bureau of Indian Affairs as a line item.
- (5) The Secretary is authorized to sell, lease, or otherwise make available the use of irrigation project equipment to a water user organization which is under obligation to the Secretary to administer, operate, and maintain the Uintah Indian Irrigation Project or part thereof.
- (6) The Secretary is authorized to lease or otherwise make available the use of irrigation project facilities to a water user organization which is under obligation to the Secretary to administer, operate, and maintain the Uintah Indian Irrigation Project or part thereof.

Items listed on the petition in items c, f, j, and m; regarding administration of Project lands and water rights are within Secretarial authority under regulations contained 25 Code of Federal Regulations (CFR) part 171.

On February the 28, 1988, the Business Committee passed Resolution No. 88-19, which expressed the Tribe's concerns that commitments made to the Tribe under the 1965 Deferral Agreement had not yet been provided. Resolutions 88-19 and 88-124 overlapped somewhat in that both contained requests for funds to repair and renovate the Uintah Indian Irrigation Project and the construction of storage

facilities that would provide water for Project lands. Elements of Resolution No. 88-19 would become the starting template of what eventually became the Ute Settlement contained in Title V of CUPCA.

Upon the enactment of CUPCA, the Secretary of the Interior established the Central Utah Completion Act Office (CUPCA Office). The CUPCA Office was given the responsibility of overseeing and implementing CUPCA including Section 203(f).

On January 29, 1997, the Uintah Indian Irrigation Project Operation and Maintenance Company (Company) was organized pursuant to Articles of Incorporation approved by Ute Tribe Resolution No. 97-005. The Company was formed specifically to operate and maintain the Uintah Indian Irrigation Project as outlined in Section 203(f).

On October 1, 2000, the Company entered into Agreement No. GTH000013 with the Bureau of Indian Affairs to assume the operation and maintenance of the Project. The Company, in accordance with the Agreement started operating and maintaining the Project in 2001.

4. Winters Doctrine

When discussing Indian water rights, you will often hear the term “Winters Rights” or “Winters Doctrine”. It is essential to understand the Winters Doctrine concept because it has very important implications regarding Indian Water Rights.

In 1908, the Supreme Court of the United States first articulated what is now referred to as the “Winters Doctrine”, also referred to as "Federal Reserved Water Rights". The name is derived from the 1908 Supreme Court case *Winters v. United States*, 207 U.S. 564 (1908).

The Winters case arose from a dispute concerning the use of the waters of the Milk River on the Fort Belnap Indian Reservation in Montana. In 1888 the Indian tribes agreed to cede territory to the United States that which was part of the lands reserved by them in an earlier treaty and to be confined to a smaller reservation.

The federal government induced settlers to take up homesteads on the ceded lands.⁶ The homesteaders began using water from the Milk River for irrigation, perfecting their water rights under Montana law. Later the Indians also began diverting water for irrigation of reservation lands downstream from the homesteaders. The homesteader’s upstream diversion prevented the Indians from getting sufficient water for their lands. The United States then brought suit against the settlers on behalf of the tribes.

The homesteaders claimed to have appropriated the water after the Reservation was created, but prior to any actual diversion or use of the water by the Indians. According to the law of prior appropriation, which governs the use of water by non-Indians in most western states, including Montana, such a claim if true would mean that the homesteaders would have a superior right to the water.

The Supreme Court held that when an Indian Reservation⁷ is established by either a treaty, statute, or executive order, implied reservation of water rights are included in said treaty, statute, or executive order. Although the settlers had established rights under state law and had begun using water before the Indians, the Indians held a prior water right. It is also said that Winters Rights are not lost by an Indian reservation's lack of use of the water.

⁶ Water Law in a Nutshell, fourth edition by David H Getches

⁷ The Winters decision also applies to other types of federal reservations, such as national parks, or wildlife refuges.

The doctrine was reaffirmed in 1963 in *Arizona v. California*, 373 U. S. 576, 600 (1963), and in 1976 in *Cappaert v. United States*, 426 U. S. 128 (1976). Cappaert articulates the Doctrine as follows:

“This Court has long held that when the federal government withdraws its land from the public domain and reserves it for a federal purpose the Government, by implication, reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation. In so doing the United States acquires a reserved right in unappropriated water which vest on the date of the reservation and is superior to the rights of future appropriators...”

While the Supreme Court held that Indian Reservations do have reserved water rights equal to the amount of water needed on the reservation to sufficiently irrigate all of the irrigable reservation acreage, there was always the question of how to decide what amount of water was needed to sufficiently irrigate land on the Indian reservations. The Supreme Court case *Arizona v. California* 460 U.S. 605 (1983) helped to solve the quantification issue by identifying the proper standard for measuring the water rights intended for the reservations to be "practicably irrigable acreage."

Based on the Winters Doctrine, the Ute Tribe's water is claimed with an 1861 or 1882 priority, which is the highest priority in the Uintah Basin.

McCarren Amendment:

The United States holds legal title to Winters rights as trustee for the tribes. It may not, however, be sued without its consent. This consent was given in 1952 when Congress passed the McCarren Amendment, 43 U.S.C. §666. This law authorizes state courts to adjudicate all federally secured rights to water, including Indian Winters Rights.

The Supreme Court further ruled in 1983 that the McCarren Amendment allows state courts to adjudicate Indian water rights even in light of disclaimers of jurisdiction over Indian property in state enabling acts and state constitutions, *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545 (1983).

5. 1923 Federal Court Decrees

Upon the Uintah and Ouray Reservation being opened for homesteading in 1905, non-Indians homesteaders began to farm and irrigate crops. They also organized irrigation companies and subsequently began building canals and ditches. With the homesteaders competing with the Indians for water, disputes were inevitable, and in about 1916 the U. S. Government, attempting to settle these disputes, filed suit in the Federal District Court on behalf of the Indians.

On March 16, 1923, Judge Tillman D. Johnson issued two Federal Court Decrees in Equity; one (Docket No. 4418) regarding the Lake Fork and Yellowstone Rivers, and the other (Docket No. 4427) regarding the Uintah and Whiterocks Rivers. The lands associated with these decrees were certificated rights approved by the State Engineer with a 1905 priority and were later included in the Decker Report as Group 1 lands. (See Decker Report chapter) Both decrees were essentially the same and each contained eleven stipulations enumerated by the court, summarized as follows:

1. The United States as trustee for the Indians of the Uintah and Ouray Reservation has the first and exclusive right under a priority that antedates the 3rd day of October 1861, at all times to divert water from the named rivers and tributaries.
 - a. The Lake Fork Decree identifies six ditches serving a total of 25,071.60 acres, established a maximum diversion amount of 75,214.80 acre feet (3 acre feet per acre), and set the maximum diversion at 358.16 cubic feet per second (1 cfs per 70 acres).
 - b. The Uintah Decree identifies twenty two ditches serving a total of 34,700.09 acres, established a maximum diversion amount of 104,100.27 acre feet (3 acre feet per acre), and set the maximum diversion at 498.88 cubic feet per second (1 cfs per 70 acres, plus 3.20 cfs for domestic uses at Ft. Duchesne, Randlett, & Whiterocks School).

A table was included listing each ditch and showing the amount of acreage served by each particular ditch including the maximum diversion amounts and diversion rates per ditch.

Uintah & Whiterocks Rivers

| Name of ditch or canal | Acres irrigated under each ditch | Water permitted to divert each season in <u>Acre Feet</u> | Water permitted to divert in <u>Second Feet</u> |
|------------------------|-------------------------------------|---|--|
| Uintah Canal) | 9,374.62 | 28,123.86 | 133.90 |
| Canal No. 1) | | | |
| Harmes | 827.88 | 2,483.64 | 11.83 |
| Bench | 6,836.85 | 20,510.55 | 97.67 |
| Bench | Town of Fort Duchesne | | 0.85 |
| Henry Jim | 1,612.4 | 4837.2 | 23.03 |
| Henry Jim | Town of Randlett | | 1.50 |
| Fort Duchesne | 533.61 | 1,600.83 | 7.62 |
| Wissiuip | 325.70 | 977.10 | 4.65 |
| A (Martha Washington) | 73.47 | 220.41 | 1.05 |
| B (Meadows) | 180.20 | 540.60 | 2.57 |
| C (Princess Pat) | 82.70 | 248.10 | 1.18 |
| D (New) | 185.80 | 557.40 | 2.66 |
| Whiterocks | 4,454.47 | 13,363.41 | 63.63 |
| Farm Creek | 1,550.35 | 4,651.05 | 22.15 |
| School Dltch No. 1 | 365.88 | 1,097.64 | 5.23 |
| School Dltch No. 2 | 12.60 | 37.80 | 0.18 |
| Sprlngs | 80.00 | 240.00 | 1.14 |
| Deep Creek | 6,895.52 | 20,686.56 | 98.51 |
| Colorado Park | 425.14 | 1,275.42 | 6.07 |
| Big Six | 244.70 | 734.10 | 3.50 |
| Daniels | 151.00 | 453.00 | 2.15 |
| Duncan | 115.90 | 347.70 | 1.66 |
| *Farm Creek Proper | 135.84 | 407.52 | 1.94 |
| Tabby White | 235.46 | 706.38 | 3.36 |
| Whiterocks School) | | | 0.85 |
| Pipe Line) | | | |
| Totals | 34,700.09 | 104,100.27 | 498.88 |

* For unknown reasons, Farm Creek Proper acreage is included in group 5 rather than group 1 in the Decker Report. The 2009 compact has language to deal with this issue.

Lake Fork & Yellowstone Rivers

| Name of ditch or canal | Acres irrigated under each ditch | Water permitted to divert each season in <u>Acre Feet</u> | Water permitted to divert in <u>Second Feet</u> |
|------------------------|-------------------------------------|---|--|
| Lakefork Extension | 1,230.76 | 3,692.28 | 17.58 |
| Lake Fork | 9,701.43 | 29,104.29 | 138.59 |
| Payne Lateral | 493.20 | 1,479.60 | 7.05 |
| Red Cap | 8,751.74 | 26,255.22 | 125.02 |
| Dry Gulch | 4,871.57 | 14,614.71 | 69.59 |
| Uteland | 22.90 | 68.70 | 0.33 |
| Totals | 25,071.60 | 75,214.80 | 358.17 |

2. The water permitted to be diverted by said ditches and canals for irrigation shall be diverted only during the irrigation season of each year, and said season shall not begin before March 1st or end later than November 1st but water may be diverted for domestic, culinary and stock-watering purposes, throughout the entire year.

3. The number of acre feet of water permitted to be diverted as listed in paragraph one is the amount that may be diverted by each of the canals listed and in no case shall such amounts be exceeded. The second feet shown for each canal listed in paragraph one shall be the maximum of water said canal may divert at any time.

4. No water shall be diverted by said canals for irrigation purposes except that which is needed for economical and beneficial use in the irrigation of crops. No water shall be diverted for other purposes except as provided in paragraph two and only in such quantities as needed for economical use. Said diversions for domestic, culinary and stock-watering uses shall be permitted as needed throughout the year.

5. The defendants herein all divert water from the named rivers (Lake Fork or Uintah), or from one or more of its tributaries, or from supporting waters of said streams through the ditches which they respectively claim to own.

6. The said defendants and all persons diverting or using water through their ditches are hereby perpetually enjoined from in any way hindering, preventing or interfering with the diversions or uses of the waters of said river herein decreed to the plaintiffs or their assigns.
7. For the protection of the water users herein decreed, a water commissioner shall be appointed from time to time. Assistants shall be given him as necessary and his compensation shall be fixed and allowed and arrangements for payment by those who benefit shall be made. Said Water Commissioner shall be further directed as to his duties, all by separate orders from this Court.
8. In order to protect the prior rights of the plaintiffs herein decreed, and to do so on the best way suited to conserve the rights and interests of the defendants, the Water Commissioner shall not only see that the priorities of the plaintiffs are satisfied, but shall also distribute the waters of the streams among the various defendants according to their priorities and rights. The rights and priorities are determined by the State, except that they are all junior to the plaintiffs and they have the same limitations as the plaintiffs as listed in paragraph one: the irrigation season is from March 1st to November 1st, they are limited to a total of 3 acre feet per acre, their maximum diversion rate shall not exceed 1 cfs per 70 acres, and that no water be diverted for irrigation except that which is needed for economical and beneficial use in the irrigation of crops. Water may be diverted for domestic, culinary and stock-watering uses during the entire year. No water shall be diverted for any purpose in excess of that actually needed for such purpose.
9. Both of the respective decrees determined the rights of the plaintiffs to divert water from the Lake Fork or the Uintah Rivers and their tributaries as against the defendants, but they did not determine the rights of the plaintiffs or the defendants regarding the waters of the Duchesne River.

10. Jurisdiction of this cause is retained to enable this Court, for good cause and as occasion may require, to administer this decree through a water commissioner or otherwise to alter any administrative provisions hereof.

11. That each party hereto bear its own costs incurred herein.

The Court appointed a Water Commissioner and otherwise administered the decrees until February 17, 1931, at which time the Court declined to continue appointing a water commissioner and administering the decrees, thus vacating paragraphs seven and ten of each decree.

The non-Indian water users of the various irrigation companies served by the Lake Fork and Uintah Rivers organized to form the Associated Water Users of the Uinta and Lake Fork Rivers. The purpose of the Associated Water Users was to form an organization of non-Indian water users to act as a united group in defending themselves regarding water right issues on the Lake Fork and Uintah Rivers. A similar organization was formed by water users on the Duchesne and Strawberry Rivers.

Between 1931 and 1998 the streams were administered by water commissioners appointed by the water users, with the Associated Water Users representing the non-Indians and BIA representing the Indians. On March 18, 1940, the United States and the Associated Water Users of the Uintah and Lake Fork Rivers entered into an agreement that outlined the method of appointing a water commissioner to distribute waters on the Lake Fork and Uintah Rivers pursuant to the 1923 Decree. A similar agreement dated April 22, 1940 was executed between the United States and the Associated Water Users of the Duchesne and Strawberry Rivers.

The Strawberry/Duchesne Rivers were not covered under the 1923 Federal Decree, but in 1936, the water users and BIA mutually agreed to have the Uintah/Lake Fork and the Strawberry/Duchesne Rivers administered by the same water commissioner.

Both the Uintah/Lake Fork and the Strawberry/Duchesne agreements were renewed annually until 1956 at which time another agreement was executed for the Uintah/Lake Fork Rivers. Both the Uintah/Lake Fork and the Strawberry/Duchesne associations continued to appoint one water

commissioner for both systems until 1957. The 1956 agreement remained in force on the Uintah/Lake Fork system until 1998.

In 1957, shortly after the State filed for a General Stream Adjudication on the Duchesne River, the State Engineer began appointing a water commissioner for the Strawberry/Duchesne Rivers. This practice continues today along with the State Engineer petitioning the State District Court for an interim distribution order annually as well. Although the General Stream Adjudication for the Duchesne River and its tributaries was filed in 1956, the adjudication is yet to be completed.

The practice of the water users hiring a water commissioner for the Uintah/Lake Fork Rivers worked as long as the water users recognized and accepted the water commissioner's authority. Occasionally however, disputes would arise between various water users and the water commissioner. Since the water commissioner was no longer appointed by the Federal Court, his ability to enforce the distribution of water was limited in instances where water users refused to cooperate and follow his distribution orders.

In 1997, in an attempt to avoid the ever increasing instances of water users questioning the water commissioner's authority, the Associated Waters Users of the Lake Fork and Uintah Rivers acquired the services of attorney Gayle McKeachnie. Mr. McKeachnie helped develop guidelines and assist in the process of having water commissioners on the Lake Fork and Uintah Rivers appointed by the State District Court. Mr. McKeachnie coordinated the effort and solicited input from the water users, the State Engineer, the BIA, and the Tribe.

In April of 1998, with input from the various groups, Mr. McKeachnie drafted a petition to the court which outlined the procedures used to set up two committees which would in turn, recommend river commissioners to the court on an annual basis. The BIA, with advice from William McConkie from the Office of the Solicitor, did participate in the discussion and made recommendations, but was not a party to the petition. The Tribe chose not to participate in the process but did comment on the proposed petition. In a letter to William McConkie, the Tribe's attorney Tod Smith, stated the following:

"The Tribe understands the need of the secondary water users to have an enforceable system of distribution on the Uinta and Lake Fork systems. But, to the extent the Tribe agrees not to object to an

interim form of distribution of secondary water use, it is not consenting, and must not be construed to have consented, to any form of state administration of tribal or federal reserved water rights or to the jurisdiction of the state court over the Tribe or its trust assets. Moreover, because the United States has never been served and made a party to the General Stream Adjudication, it is not subject to the state court's jurisdiction. Having said that, and not yet having had an opportunity to discuss this matter with the Tribal Business Committee, I do not believe that the Tribe would object to the proposed appoint of interim water commissioners or the adoption of interim distribution schedules as set forth in the Draft Interim Order. To the extent the proposed order seeks to go further, the Tribe would object."⁸

A final petition was prepared, signed by representatives from the Associated Water Users, the Whiterocks Irrigation Company, and the Ouray Park Irrigation Company and submitted to the Eighth Judicial District Court.⁹

The petition contained a background, discussed the petitioner's reasons for the petition and asked the court for the following:

A. That the Court, after input from the Utah State Engineer, exercise its authority under the aforesaid statutes and issue interim distribution orders and appoint commissioners for the purpose of distributing the water in accordance with the Court's interim orders, and,

B. That said River Commissioners be appointed by the Court annually, from recommendations received from the two committees established as described below, and,

C. That initially Shane Hamlin be appointed as River Commissioner of the Whiterocks and Uinta Rivers and that William Christensen be appointed as the River Commissioner of the Lake Fork and Yellowstone Rivers beginning as early as this matter can be considered, for the year of 1998, and successor commissioners be appointed annually thereafter, and,

D. That two (2) committees be established to aid this Court and to support the River Commissioners, as directed by this Court, and,

⁸ Letter from Tod J. Smith of Whiting & Smith law firm, to William McConkie, Office of the Solicitor, Department of the Interior, dated April 29, 1998.

⁹ In the Eighth Judicial District Court of Duchesne County, State of Utah, Petition to Appoint River Commissioners, Docket No. 3070. Prepared by Gayle F. McKeachnie, Clark A. McClellan, attorneys for the petitioners. Dated April 23, 1998.

E. That the first of those committees be a three (3) member committee to aid the Court and to support the River Commissioner of the Lake Fork and Yellowstone Rivers to consist of one representative of the Uintah Indian Irrigation project, appointed by the Superintendent of the Uintah and Ouray Indian Agency, and two representatives of the Lake Fork and Yellowstone Rivers both to be appointed by the Associated Water Users Association, a non-profit organization existing and operating in the Uintah Basin, and,

F. That the second of those committees be a three (3) member committee to aid the Court and to support and direct the commissioner of the Uinta and Whiterocks Rivers and consist of (1) one representative of the Uintah Indian Irrigation project appointed by the Superintendent of the Uintah and Ouray Agency, (2) one representative of the water users of the Uinta River and (3) one representative of the water users of the Whiterocks River. The representative of the Uinta River to be appointed by the Associated Water Users Association, a non-profit organization existing and operating in the Uintah Basin, and the representative of the Whiterocks Water Users to be appointed by the water users of the Whiterocks River and the Ouray Park Irrigation Company, and,

G. That after their appointment the River Commissioners be ordered to distribute the waters of the streams and reservoirs involved in accordance with the 1923 Federal Court Decrees and this Court's interim orders, and,

H. That River Commissioners, so appointed, be directed to deliver and distribute the waters of such non-Federal water rights, in their respective rivers, in accordance with schedule "A" attached hereto, and given authority to prevent the unauthorized use of water or unauthorized adjusting or tampering with diversion head gates or other facilities.

I. That the waters for Federal and non-Federal water rights be distributed in accordance with the 1923 Federal Court decrees, and,

J. That the River Commissioners, so appointed, be required to work with the respective committees to prepare annual budgets to be submitted to the Court not later than February 15th

of each year. Said annual budgets are to contain assessments made, monies received, and a report of expenditures. Said budgets are to be approved by the Court, unless objection thereto is filed by water user organizations or water users, and,

K. That the Court be authorized to approve these budgets and order the assessment and collection of assessed amounts from the non-Federal water user organizations or water users, and request assessment and collection from the Bureau of Indian Affairs on the Uintah Indian Irrigation Project in accordance with the approved budgets and schedule of assessments, and,

L. That this Court authorize the committees, after consultation with the office of the State Engineer, to make recommendations to the Court for future interim orders as to the distribution of waters, and assessments, and to perform all necessary acts in support of these orders.

M. Provided that any party or entity who is a water user in the subject rivers, or otherwise affected by actions of the River Commissioners, should have the right to petition and appear before this Court to voice his or her concerns (about the assessment amounts, the manner in which the water is distributed and any other claims relating to the distribution of water).

N. Provided that if a violation occurs concerning the unauthorized use of water, or any other part of this petition, the River Commissioners be directed to recommend to this Court a solution to the problem including any penalty to be assessed to the unauthorized user or violator of any interim order.

O. Order that appropriate notice be given and a time set to hear any objections to this petition.

A hearing was held on May 18, 1998, at which time Judge John Anderson issued an Interim order based upon the petition.¹⁰ A similar order has been issued by the court annually since 1998.

¹⁰ In the Eighth Judicial District Court of Duchesne County, State of Utah, Interim Distribution Order, Docket No. 3070. Signed by Judge John Anderson, dated May 18, 1998.

Since 1931 there have been three river commissioners appointed by the water users for the Lake Fork and Uintah Rivers. B. O. Colton served from 1931 – 1961, Louie Galloway served from 1962 – 1976, and Bill Christensen served from 1977 – 1998.

In 1998 the state court started appointing two river commissioners, one on the Lake Fork River, and one on the Uintah River. From 1998 - 2006 the court appointed Bill Christensen as the Lake Fork River Commissioner and Leland Carter from 2007 to present. The court has appointed Shane Hamlin as the Uintah River Commissioner from 1998 to present.

The ratification of the anticipated Ute Water Compact would address the issue of river administration on the reservation including the Lake Fork and Uintah Rivers. The 1980, the 1990, and the revised 2009 compacts recognized and affirmed the State's administrative authority over the distribution of water on the rivers flowing through the reservation. Once a compact is ratified, the State would likely appoint river commissioners for each system.

6. Decker Report

In the late 1950's the Ute Tribe procured the services of an engineer named E. L. Decker. Mr. Decker was tasked with assessing the reservation lands to identify lands that are susceptible to irrigation. In 1960, the Tribe submitted to the Utah State Engineer a report entitled Report on Water Right Claims, Uintah and Ouray Indian Reservation, Utah. This report was prepared by Mr. Decker and is commonly referred to as the Decker Report. The report was dated December 12, 1960, and was revised on May 1, 1961, October 11, 1961, and June 5, 1962.

The following is an excerpt from an undated document titled: Special Report on Central Utah Project by E. L. Decker Engineer, Consultant for the Ute Indian Tribe

“During the early spring of 1958, I was contacted by the then Agency Superintendent, Mr. Darell Fleming as to my availability for employment by the Ute Indian Tribe, to supervise the re-designation of the Uintah Irrigation Project for assessment of irrigation costs. I indicated to Mr. Fleming that I would be available. Following a conference in the Area Office in Phoenix, Arizona, I entered upon duty at Fort Duchesne. Plans and organization for the work was completed and field surveys started during the early fall. The re-designation work had barely gotten under way when the Ute Tribe was informed by Mr. Fred Haverland, the then Area Director, that a request by the State Engineer of Utah, to include all lands of the Ute Indian Tribe in an overall adjudication of water rights in the Uintah Basin, had been approved by the Commissioner of Indian Affairs. The purpose of the adjudication to determine the quantity of water that would be available for transmission to the Bonneville Basin, resulting from the construction of the Central Utah Project which had been authorized by the Congress of the United States. The Ute Tribe having approved the adjudication, informed me that it was their desire to retain my services as their Engineer Consultant in all matters of adjudication of their water rights, the work to go forward jointly with the re-designation of the Uintah Irrigation Project. I informed the Tribe that while I was basically opposed to the adjudication of an Indian Reservation water right, however, since the decision to adjudicate had already been made, I would accept their offer and represent them to the best of my ability.”

Mr. Decker was well respected by the Tribe and was appointed to represent the Tribe as a member of the Duchesne River Area Study Committee.¹¹ The Duchesne River Area Study Committee was

¹¹ Duchesne River Area Study Committee, Duchesne River Land and Water Resources Review, Bonneville Unit, Central Utah Project, Initial Phase, April-1962

organized April 4, 1961, to collect basic data pertaining to the Duchesne River water supply, water rights, and water needs and to prepare water operation studies based thereon. The committee was made up of representatives appointed by each of the agencies or groups having interest or responsibility in the water right problem, and was composed of the following members:

Bureau of Indian Affairs

James W. Chamberlin, Supervisory General Engineer, Phoenix Area Office, Phoenix, Arizona
Frederic H. Varnum, General Engineer, Uintah and Ouray Agency, Fort Duchesne, Utah

Ute Indian Tribe

R. O. Curry, Tribal Director of Resources, Fort Duchesne, Utah
Elbert L. Decker, Civil Engineer, Fort Duchesne, Utah

Upper Colorado River Commission

Paul A. Rechard, Chairman, Hydraulic Engineer, Salt Lake City, Utah

Utah Water and Power Board

Daniel F. Lawrence, Assistant Director, Salt Lake City, Utah

Bureau of Reclamation

Palmer B. DeLong, Regional Project Development Engineer, Salt Lake City, Utah
John J. Hedderman, Project Manager, Provo, Utah

Non-Indian Land Owners-Duchesne River Area

Leo Haueter, Myton, Utah

The Decker Report was prepared to identify both the Tribe's present irrigated acreage and also those lands that are susceptible to irrigation, for which a water right was claimed pursuant to the Winters Doctrine. The Report divided the lands into seven different groups for identification purposes. The seven groups are defined as follows:

Group (1): Lands included within the Uintah Indian Irrigation Project, served from the Lake Fork and Uintah Rivers, the water right to which has been certificated by the State of Utah and decreed by a Federal Court, consisting of 59,222 acres.

Group (2): Lands included in the Uintah Indian Irrigation Project, served from the Duchesne River, the water right to which has been certificated by the State of Utah, consisting of 18,613 acres.

Group (3): Lands that are, or can be served from the Duchesne River, through facilities of the Uintah Indian Irrigation Project, the water right for which have not been certificated by the State of Utah, but are claimed under the Winters Doctrine. Consisting of 1,115 acres.

Group (4): Lands which have been found to be productive and practicably irrigable from privately constructed ditch systems on the Duchesne River, or its tributaries above the Pahcease Canal, and are claimed under the Winters Doctrine. Consisting of 1,480 acres.

Group (5): Lands which have been found productive and practicably feasible to irrigate and are proposed to be included in the ultimate phase of the Central Utah Project, a water right to which attaches by the principal of law annunciated in the Winters case (Winters vs United States, 2C7 U. S., 564-1908,) generally referred to as the "Winters Doctrine." Group 5 lands listed by streams from which served are Duchesne River 3,875.00 acres, Rock Creek 11,637.00 acres, Yellowstone River 8,380.00 acres, Uintah River 3,983.00 acres and Whiterocks River 1,513.00 acres for a total of 29,118.00 acres.

Group (6): Lands lying east of the Green River served from the White River for which applications to appropriate water were once filed with the State of Utah, and are claimed under the Winters Doctrine. Consisting of 5,544 acres.

Group (7): Lands lying east of the Green River which have been found to be productive and practicably irrigable from privately constructed ditch systems now in operation or to be constructed along the Green River, White River, Willow Creek, Bitter Creek, Sweet Water Creek, and Hill Creek. These lands are claimed under the Winters Doctrine, and consist of 14,109 acres.

The Decker Report plays an important role in the discussion of Ute Tribe water rights. The acreages listed as groups one through seven in the Report, totaling 129,201, were used as a basis for the proposed 1980, 1990, and the revised 2009 water compacts. Groups 1 through 5 are also recognized in the 1965 Deferral Agreement.

As discussed later in this document, the water allocated under the 1980 Compact was derived from the Decker Report and then reduced by 7% to reflect roads, yards, fences, rights-of-way, and other non-productive lands. The 7% reduction carries through on all subsequent proposed compacts.

The following table summarizes water rights identified and claimed under the Decker Report:

**Summary of Water Right Claims by Stream
Uintah and Ouray Reservation, Utah**

| Stream | Group 1 | Group 2 | Group 3 | Group 4 | Group 5 | Group 6 | Group 7 | Total Acres |
|---------------|---------------|---------------|--------------|--------------|---------------|--------------|---------------|----------------|
| Duchesne | | 18,613 | 1,115 | 1,480 | 3,875 | | | 25,083 |
| Rock Creek | | | | | 11,367 | | | 11,367 |
| Lakefork | 24,577 | | | | | | | 24,577 |
| Yellowstone | 493 | | | | 8,380 | | | 8,873 |
| Uintah | 19,701 | | | | 3,983 | | | 23,684 |
| Whiterocks | 14,451 | | | | 1,513 | | | 15,964 |
| White River | | | | | | 5,544 | 8,268 | 13,812 |
| Bitter Creek | | | | | | | 267 | 267 |
| Sweet Water | | | | | | | 92 | 92 |
| Willow Creek | | | | | | | 954 | 954 |
| Hill Creek | | | | | | | 154 | 154 |
| Green River | | | | | | | 4,374 | 4,374 |
| Totals | 59,222 | 18,613 | 1,115 | 1,480 | 29,118 | 5,544 | 14,109 | 129,201 |

7. 1965 Deferral Agreement

On September 20, 1965, the Ute Tribe, the Central Utah Water Conservancy District (District) and the United States entered in an agreement commonly referred to as the Deferral Agreement. In the Deferral Agreement, the Ute Tribe at the request of the United States, deferred the use of its water on 15,242 acres of Group 5 lands.

Since its execution in 1965, the Deferral Agreement is referred to in nearly all discussion regarding settlement of the Tribe's water rights. The Deferral Agreement could be considered the cornerstone of the Bonneville Unit, of the Central Utah Project. Without this agreement, the Bonneville Unit most likely would not have proceeded. The Deferral Agreement is also the basis for Title V – Ute Indian Rights Settlement.

The importance of the Deferral Agreement is twofold:

1st - The United States and the District recognized the necessity for the Tribe to defer the use of water on 15,242 acres of Indian lands in order for the Secretary of the Interior to certify to the Congress that an unchallenged water right existed so that construction could proceed on the Bonneville Unit of the Central Utah Project.

2nd - Certain and definite covenants in consideration thereof were made to the Tribe, binding upon the United States and the District.

The following is the agreed upon covenants in the Deferral Agreement:

1. Construction of the Bonneville Unit of the Central Utah Project, initial phase, as authorized by the Congress of the United States, and as planned by the Bureau of Reclamation, may proceed without objection, interference or claim adverse to the water requirements for such unit.

2. That use of water on 21,208 acres of Indian water right land in the Uintah Basin portion of the Bonneville Unit, with the priority date of October 3, 1861, described as groups (2), (3), and (4) is recognized and confirmed.
3. That use of water for the 15,242 acres of Indian owned land, described as Group (5) be deferred at this time upon the condition that said lands be included in the ultimate phase of the Central Utah Project.
4. That deferment of the development of said Group (5) lands for irrigation purposes is granted by said Ute Indian Tribe conditioned upon the full and complete recognition of the water rights of said tribe, with a priority date of 1861 in Groups (1), (2), (3), (4) and (5) described in the book of claims filed with the state Engineer, State of Utah, by the Ute Indian Tribe, without resort to litigation.
5. That said deferment shall neither constitute an abandonment by said tribe, nor be construed as consent to any further deferment of the right to the use of water for the 15,242 acres referred to in paragraph 3 above. If the ultimate phase of the Central Utah Project is not completed sufficiently to supply said Indian water rights by the 1st day of January 2005, equitable adjustment will be made in accordance with said reserved and perfected water rights of the tribe to permit the immediate Indian use of the water so reserved. It is agreed that the first day of January, 2005, shall be mutually considered as the maximum date of deferment and that all phases of the Central Utah Project will in good faith be diligently pursued to satisfy all Indian water rights at the earliest possible date. Under no circumstances shall the fixing of such maximum deferment date be construed as an agreement or license to interpose the satisfaction of inferior water rights delaying the satisfaction of said deferred Indian rights, except where the orderly development and construction of the Central Utah Project directly requires such deferment of said Indian rights to be supplied from the ultimate phase of said Central Utah Project.

6. No Indian water rights, referred to herein, shall restrict the owner thereof to agricultural uses but such rights may be used for purposes other than agricultural, including but not limited to industrial, municipal and recreational uses.
7. That the use of water from the Duchesne River and its tributaries in the Bonneville Unit area, unless otherwise agreed in writing, shall be subject (1) to a river headgate diversion allowance of 4 acre-feet per acre annually and (2) shall be delivered generally in accordance with an ideal demand curve for irrigation purposes, except for the purposes described in paragraph 5.
8. That the point of diversion from the Duchesne River of the Wissiup, Leland and Ouray School canals be moved upstream by the Uintah Indian Irrigation Project to the point of diversion of the Duchesne Feeder Canal.
9. That facilities will be provided under the Colorado River Storage Act to mitigate for losses to fish, wildlife and recreation upon the lands of the Ute Indian Tribe of the Uintah and Ouray Reservation or of its members caused by the construction and/or operation of the Central Utah project. This provision shall not be construed as any limitation upon the acceptance or use of any benefits as may become available under enhancement provisions of said act.
10. That development of the Uintah Unit of the ultimate phase of the Central Utah Project to provide storage of the runoff waters of the Uintah River and its tributaries, be programed for early authorization and construction.
11. That Bottle Hollow Reservoir be investigated at an early date with a view of including the same as a storage facility of the Uintah Unit.
12. That the exchange of Duchesne River water under the existing Duchesne Feeder Canal and Midview Reservoir for Lake Fork River water in order to free Lake Fork River water for use upstream on lands in the Moon Lake Project shall not impair the 1861 priority of the Ute

Indian Tribe or its members either in flow or storage right, and such exchange shall not be construed as an exchange of water rights.

13. Nothing herein contained shall be construed as preventing the construction and use of facilities by the Ute Indian Tribe, the Uintah Indian Irrigation Project, or the United States for storage and use of water upon all Uintah Indian Irrigation Project lands not supplied from facilities constructed under the Central Utah Project.

14. This agreement is subject to the approval of the Secretary of the Interior or his duly authorized representative.

It is obvious that the Deferral Agreement is a significant piece of the complex Ute water right puzzle, and it continues to be intertwined in almost every discussion regarding the Tribe's water rights.

Initial and Ultimate Phases of CUP:

Because of its size and complexity, to facilitate planning and construction, Reclamation divided the Central Utah Project into six units to be built in two phases. The Initial Phase, which was authorized by the 1956 Colorado River Storage Project Act, was divided into four units: Jensen, Vernal, Upalco, and Bonneville. The Ultimate Phase included the Uintah and Ute Indian Units.

In 1965 when the Deferral Agreement was executed, the initial phase of CUP had already been authorized by Congress, but the ultimate phase was still awaiting Congressional authorization. In 1968 Congress amended the Colorado River Basin Project Act, to include the Uintah Unit in the initial phase, conditionally authorizing construction of the Uintah Unit, and feasibility investigations for the Ute Indian Unit. Additional authorizations occurred in 1972, and 1988.

The proposed Upalco Unit would have provided an average water supply of 21,800 acre-feet annually, 19,800 for irrigation and 2,000 for M&I use. The principal feature of the Upalco Unit would have been the Taskeech Dam, located on the Lake Fork River approximately six miles downstream from Moon Lake Reservoir. In addition to capturing water from Lake Fork River, the Taskeech Dam would also

intercept surplus flows of the Yellowstone River and convey it to the reservoir through the Taskeech Feeder Canal.

Most of the irrigation water developed by the proposed Upalco Unit, about 17,500 acre-feet, would have been used to supply supplement irrigation water for about 34,110 acres of non-Indian land. Only about 2,300 acre-feet would be used to supplement the supply to about 8,500 acres of Indian trust lands.¹²

The Uintah Unit anticipated the construction of two reservoirs, one on the Uintah River and one on the Whiterocks River. It would have provided an average annual project water supply of 47,800 acre-feet, with 46,800 for irrigation and 1,000 for M&I use. The proposed Uintah Unit would have developed a water supply of 30,700 acre-feet of water annually for irrigation of 28,420 acres of Indian lands within the Uintah and Ouray Indian Reservation. Of this total, about 25,000 acre-feet would be used for full service irrigation of 7,818 acres, and 5,700 acre-feet would be used for supplemental irrigation on 20,602 acres.¹³

The Deferral Agreement proposed the Bottle Hollow Reservoir be investigated at an early date with a view of including the same as a storage facility of the Uintah Unit. However, the Bottle Hollow Reservoir including the Bottle Hollow Complex, was constructed in the early 1970's as a mitigation feature, and is therefore not part of the Uintah Unit.

The Proposed Ute Indian Unit was an ambitious plan that contemplated diverting water from the Flaming Gorge Reservoir on the Green River and developing a collection system on various drainages for conveyance and distribution to the Uintah Basin and beyond. The Ute Indian Unit, when completed, was to constitute the "backbone" of an overall State water plan. By direct diversions and water exchange, it would have a significant impact on water supplies in most of Utah. Basically, the unit would provide for water resource development in the Uintah Basin and for exportation of additional water to the Bonneville Basin. The Ute Indian Unit, beyond a feasibility study, was never

¹² Upalco Unit, Central Utah Project, Definite Plan Report, March 1980, Chapter VI, Page 79

¹³ Uintah Unit, Central Utah Project, Definite Plan Report, August 1978, Chapter VI, Page 81

authorized for construction. In May of 1980, the Water and Power Resources Service (Bureau of Reclamation) issued a Concluding Report on the Ute Indian Unit.

The report stated:

“A concluding report rather than a feasibility report has been written because many of the key factors which influence development of Utah’s remaining share of Colorado River water are in a state of flux thereby inhibiting formulation of a viable plan at the present time.”¹⁴

No feasibility study was completed and no further appropriations were authorized regarding the Ute Indian Unit.

Reclamation put a lot of effort into the investigation and planning of the Bonneville, Upalco and Uintah units. Unfortunately, progress was slow and congressional funding was limited and sporadic.

Environmental requirements were created by the passage of the National Environmental Policy Act of 1969 (NEPA) and the Endangered Species Act of 1973. These acts had a huge impact on Reclamation’s construction program, they required federal agencies to assess the impacts to the environment and to endangered species of any proposed project before construction could begin.

High inflation during the 1970’s and 80’s, and the new environmental requirements, which could also affect project water supply, dramatically increased construction costs, therefore necessitating reformulation of project plans. As project costs skyrocketed, it seemed with each reformulation, certain project features were either scaled down or eliminated. Much to the disappointment of the Ute Tribe and the Uintah Basin water users, this ultimately led to the demise of the Ute Indian Unit and put the Uintah and Upalco Units in jeopardy. It also resulted in a scaled down Bonneville Unit.

As discussed earlier, the Deferral Agreement allowed the Bonneville Unit to proceed. As stated in covenant number 5 of the agreement; “If the ultimate phase of the Central Utah Project is not completed sufficiently to supply said Indian water rights by the 1st day of January 2005, equitable adjustment will be made in accordance with said reserved and perfected water rights of the tribe to permit the immediate Indian use of the water so reserved.” Simply stated, if the CUP projects

¹⁴ Ute Indian Unit, Central Utah Project, Concluding Report, May 1980

contemplated in the agreement that would benefit the Tribe are not completed by 2005, then equitable compensation is due the Tribe.

With the seemingly endless delays and little progress being made on the Bonneville Unit by Reclamation, the Central Utah Water Conservancy District lobbied Congress to designate them as the entity responsible for the completion of CUP. That, and the glaring reminder of the clock ticking towards the January 2005 maximum date of deferment by the Tribe, prompted Congress to enact Public Law 102-575, Reclamation Projects Authorization and Adjustment Act of 1992. Titles II through VI of this act are known as the Central Utah Completion Act (CUPCA).

Title V – Ute Indian Rights Settlement, is contained in CUPCA and was enacted by Congress as a comprehensive settlement to deal with the issues of un-quantified federal reserved water rights of the Ute Indian Tribe and other unresolved tribal claims arising out the 1965 Deferral Agreement.

The Ute Indian Unit had been eliminated and the long anticipated Uintah and Upalco Units still had not been completed prior to CUPCA, and as such, Title V compensated the Tribe for non-realized benefits contemplated in the Deferral Agreement.

Title II of CUPCA, however, had the effect of revitalizing the Uintah and Upalco Units. Section 201(c) (*Termination of Authorization of Appropriations*) referred to the various appropriation authorizations of the Upalco and Uintah Units and said those authorizations shall terminate five years after the date of the 1992 enactment unless:

- (1) the Secretary executes a cost-sharing agreement with the District for construction of such project, and
- (2) the Secretary has requested, or the Congress has appropriated, construction funds for such project.

This language essentially established a five year time frame to complete the two requirements outlined in 201(c), or authorization for those units would automatically terminate. It did, however, leave the door open for a final attempt to construct the Uintah and Upalco Units.

With a new sense of urgency, a significant effort was undertaken by the Department of the Interior (Department) and the Central Utah Water Conservancy District (District) to fulfill the provisions in Section 201(c) of CUPCA; provisions separate and apart from those in Title V. Although any obligation to provide storage for the Tribe was satisfied by Title V, the Department made it very clear that if constructed, the Uintah and Upalco Units would provide benefits to the Tribe along with the Uintah Basin water users. Section 502(a) provided an annual payment to the Tribe for compensation in lieu of water from the proposed Uintah and Upalco Units, so this would be an added benefit to the Tribe over and above the Title V settlement.

The District and the Department were diligent in performing the tasks outlined in Section 201(c) of the legislation and were able to meet the requirements to prevent the loss of appropriation authorizations.

The District and the Department included the State, other federal agencies, the basin water users, and the Tribe, in a planning process that would hopefully lead to the construction of the Uintah and Upalco Units. As part of this process, the Uintah Basin Replacement Project as authorized in Section 203 of CUPCA was reconfigured to include the Uintah and Upalco Units.

Through a multi-year effort of coordinating, planning, and negotiating, it appeared in 1999 that the Uintah and Upalco Units would finally become a reality and would provide much anticipated storage to the Tribe and the Uintah Basin water users. The reconfigured Uintah and Upalco Units, although scaled down from the original proposals, would have provided the Tribe with 27,070 acre-feet of water for use on Tribal lands.¹⁵ The Tribal benefit being about 44% of the total water developed by the two units.

Much to the disappointment of all the participants on the planning team, the Tribe ultimately decided to reject the additional benefits and not participate in the Uintah Unit Replacement Project. On April 29, 1999, the Tribe sent a letter to the Department of the Interior stating:

¹⁵ Draft Environmental Impact Statements, Upalco Unit - December 1996, Uintah Unit - February 1997.

"After extensive debate and consideration of the interests of the Tribe as a whole, the Business committee has decided that the Tribe will not proceed with the Uintah Unit Replacement Project."

Because of the Tribe's decision not to participate, the Uintah and Upalco Units were subsequently de-authorized and the Uintah Basin Replacement Project was completed in accordance with Section 203 without including the Uintah and Upalco Units.

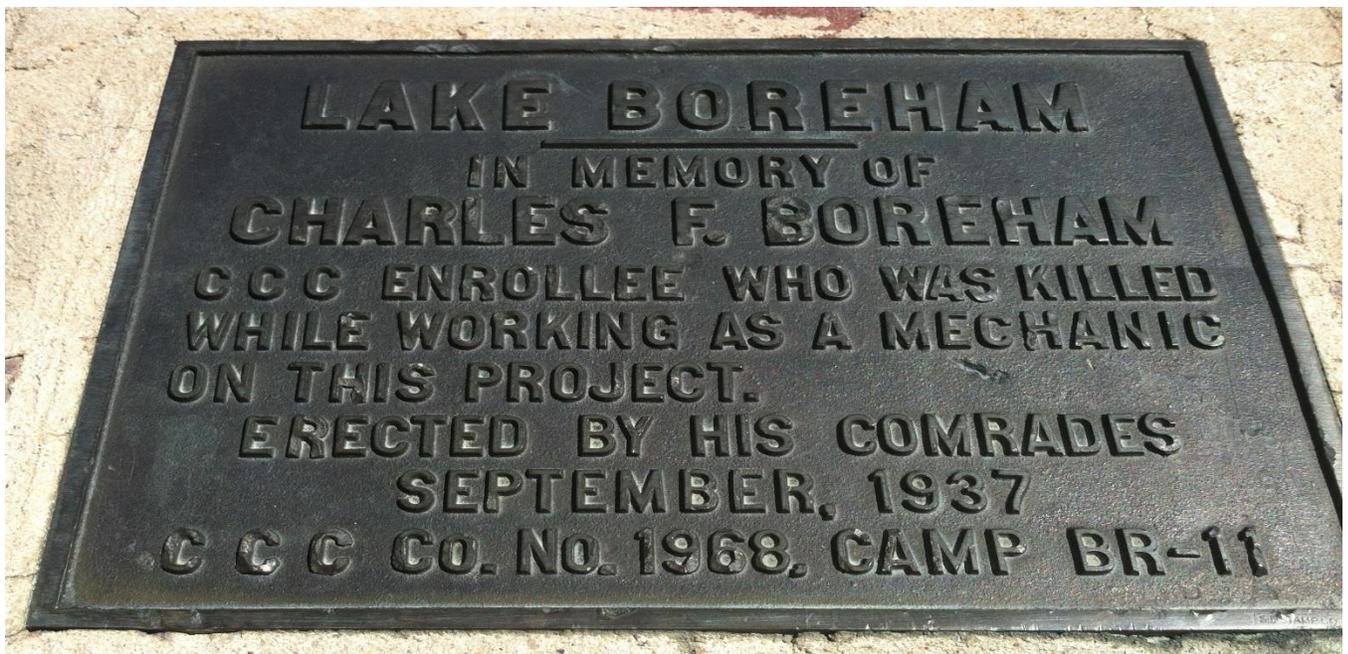
8. Midview Exchange Agreement

The Midview Dam, and associated facilities: the Duchesne Diversion Dam, the Duchesne Feeder Canal, the Midview Lateral and the Lake Fork Siphon, were constructed by the Bureau of Reclamation in the late 1930's as part of the Moon Lake Project. Since it was part of the Moon Lake Project, the Moon Lake Water Users were obligated for repayment.

Its primary purpose was to facilitate an exchange of water between Indian lands served by the lower Lake Fork River and Moon Lake water user lands higher in the Lake Fork Drainage. In order for such an exchange to take place, it would need the approval of the Ute Tribe and United States.

Construction took place between 1935 and 1941, and the facilities have been operational since 1938. The construction of these projects was accomplished using the Civilian Conservation Corps (CCC), a public work relief program, which operated from 1933 to 1942 in the United States for unemployed, unmarried men from relief families, ages 18–25, and was part of the “New Deal” of President Franklin D. Roosevelt.

Midview Reservoir also known as Lake Boreham was named after Charles F. Boreham, a CCC worker, who was killed while working as a mechanic during the construction of Midview Dam.



The exchange is accomplished by using the Midview facilities to deliver water from the Duchesne River to Indian lands previously served from the Lake Fork River through the Redcap and U.S. Dry Gulch canals. Lake Fork River water previously used on the Indian lands is then available for use by Moon Lake Water Users higher in the Lake Fork drainage.



Midview Dam & Reservoir

The benefits to the Tribe derived from the Midview Exchange are quite significant:

- The Uintah Indian Irrigation Project now has a 5,800 acre foot reservoir, with an additional 11,600 acre feet of Bonneville Unit Storage from Starvation Reservoir. Prior to Midview, no storage existed on the Indian Irrigation Project.
- Water available on 10,000 exchange acres¹⁶ is increased from an unreliable and inconsistent 3 acre foot per acre diversion right from the Lake Fork River, with no storage, to a very reliable and consistent 4 acre foot per acre diversion from the Duchesne River, with storage.
- The Tribe also benefits from the fishing and recreation associated with Midview Reservoir.

¹⁶ In the 1980, 1990, and revised 2009 Compacts the 10,000 Midview Exchange acres are reduced by 7% to 9,300 acres.

The benefits to Moon Lake are also significant:

- The demand for Indian water righted acreage on the Lake Fork River, with an 1861 priority, is reduced from 25,070 to 15,070 acres, decreasing the diversion requirement for water on Indians lands on the Lake Fork River by up to 30,000 acre feet per year¹⁷.
- The Moon Lake water users are now allowed to divert Lake Fork River water, with an 1861 priority, to irrigate the equivalent of at least 7,500 acres¹⁸. This amounts to 22,500 acre feet per year of Lake Fork River water with an 1861 priority, which could be available to Moon Lake under the exchange.

Although the Midview Exchange facilities were completed and operational by 1938, no formal exchange agreement was signed until 1967. The exchange of water rights as anticipated did begin as soon as the facilities were operational. However, Moon Lake Water User Association was responsible for operation and maintenance of the Midview facilities until the agreement was formalized in 1967.

On July 5, 1967 by Resolution No. 67-155, the Ute Tribe accepted and authorized the approval of the long anticipated exchange agreement. On November 16, 1967, the United States, the Ute Indian Tribe, and Moon Lake Water Users Association entered into Contract No. 14-06-400-4822, known as the Midview Exchange Agreement.

Upon the execution of the 1967 Agreement, the Bureau of Indian Affairs began operating and maintaining the Midview Dam and related facilities as part of the Uintah Indian Irrigation Project. The facilities have since been transferred from the Bureau of Reclamation to the Bureau of Indian Affairs. The fishing and recreation on the reservoir is regulated and managed by the Ute Tribe.

Both the 1980 and 1990 and the revised 2009 Compacts state that the Compacts are not intended to relieve the responsibility of the parties involved in the Midview Exchange Agreement.

¹⁷ With the 7% reduction in place, the diversion demand would be decreased by 27,900 acre feet per year.

¹⁸ The 7,500 acres could increase if more than that amount of Indian land is irrigated under the exchange, as of now it is at the minimum acreage of 7,500.

9. 1980 Compact

In the late 1970's a negotiation team was established to negotiate a Ute Water Compact. Extensive negotiations were held among the United States, Ute Tribe, and State of Utah, ultimately resulting in the 1980 Ute Water Compact. The Utah State Legislature ratified, confirmed and approved the Compact in the 1980 General Session.¹⁹

For a number of years the Tribe did not act on the 1980 Compact but on February 10, 1988, the Tribal Business Committee adopted Resolution No. 88-19 affirming all the essential elements of the 1980 Compact and also laid out monetary requirements of a settlement. On March 22, 1988, the Ute Tribe held a referendum vote on the resolution which included acceptance of the 1980 Compact. The referendum vote passed with 78 percent in favor.

On July 13, 1988 the Tribal Business Committee passed Ordinance No. 88-03 approving the 1980 Compact. That same day Utah Congressman Howard Nielson filed a bill that he titled the Ute Indian Water Settlement Act. Later in 1988 Congressmen Wayne Owens introduced a separate bill, H. R. 5307, titled the Ute Indian Water Rights Settlement of 1988.²⁰ The language in the bills differed on the amount of monetary compensation, but both bills provided for Congressional ratification of the 1980 Compact. Although a hearing was held on H.R. 5307, ultimately neither bill became law.

The text of the 1980 compact is relatively simple and straight forward consisting of just 6 pages and is accompanied by a 73 page document titled "The Tabulation of Ute Indian water Rights".

The water associated with irrigable lands allocated under the 1980 Compact was derived from a total of 129,201 acres claimed in the Decker Report and then reduced by 7% to 120,157. The reduction reflects roads, yards, fences, rights-of-way, and other non-productive lands. The 7% reduction carries through on all subsequent proposed compacts. The compact identifies a depletion amount of 248,943

¹⁹ **73-21-1. Approval of Ute Indian Water Compact.**

The within compact, the Ute Indian Water Compact, providing for the execution by the State of Utah, the Ute Indian Tribe of the Uintah and Ouray Reservations, Utah, and the United States of America, through their various representatives, is hereby authorized, confirmed, and approved for the State of Utah. Enacted by Chapter 74, 1980 General Session.

²⁰ Ute Indian Water Rights Settlement, Hearing, Before the Committee on Interior and Insular Affairs, House of Representatives, One Hundredth Congress, Second Session, on H.R. 5307, UTE INDIAN WATER SETTLEMENT ACT OF 1988, Hearing Held in Washington, DC, October 4, 1988.

acre-feet, with a related gross diversion requirement of 471,035 acre-feet, from all sources. In addition, it gives the Tribe 10,000 acre-feet of water for municipal and industrial purposes, from the Green River.

A total of 19,809 acres of Group 5 water rights were transferred to the Green River leaving 7,271 acres in place. In 1980 it was still anticipated that the Uintah and Upalco Units would be built and serve the remaining in-place Group 5 lands.

The text of the 1980 Compact and Tables 1, 2, & 3 of the tabulations are as follows:

UTE INDIAN WATER COMPACT

The State of Utah, the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, and the United States of America, acting through their respective representatives agree to a Ute Indian Water Compact as follows:

ARTICLE I Purpose of Compact

The purpose of this Compact is to remove the causes of present and future controversy over the quantification, distribution, and use of all waters claimed by or through the Ute Indian Tribe.

ARTICLE II Legal Basis for Compact

This Compact is made in accordance with the Constitution and Laws of the United States, the State of Utah, and the Ute Indian Tribe.

ARTICLE III Water

There is hereby apportioned, confirmed, and recognized from the waters apportioned to the state of Utah from the Colorado River System to the United States of America in perpetuity, in trust, for the Ute Indian Tribe and others, the depletion of water in the amount of 248,943 acre-feet per annum, and the related gross diversion requirement of 471,035 acre-feet per annum, from all sources in accordance with and as more fully set out in the "Tabulation of Ute Indian water Rights" on file with the Utah State Engineer. The priority date of October 3, 1861, is recognized for land groups 1 through 5, except

for water supplied from storage in the Central Utah Project, and the priority date of January 5, 1882, is recognized for land groups 6 and 7, unless indicated otherwise in the Tabulation. Tables 1, 2, and 3 of the Tabulation list the total irrigable acreage, maximum allowable depletions and diversion requirements, respectively, for each of the land groups by stream. No water rights held in trust can be transferred from the lands listed in said groups without approval of the Secretary of the Interior. All water delivered to Groups 1 and 5 lands from storage under the Central Utah Project shall be assigned the priority date of the Water and Power Resources Service filing to accomplish the equitable allocation of water to all subscribers of the Project.

In addition to the water allocated under the previous paragraph, there is hereby apportioned, confirmed, and recognized to the United States of America in perpetuity, in trust, for the Ute Indian Tribe the depletion of 10,000 acre-feet of water annually having a priority date of October 3, 1861, for municipal and industrial purposes, which shall be diverted from the Green River. To the extent that the Tribe or its members use reserved water for domestic, municipal, industrial, or related uses, the quantity so used shall be included within said 10,000 acre-feet unless a transfer of water from lands listed in the Tabulation is properly made.

No water allocated pursuant to this compact shall be subject to loss or forfeiture under the laws of the state of Utah or otherwise. Further, the water allocated herein shall not be restricted to any particular use, but may be used for any purpose selected by the Tribe in accordance with the procedures provided for in this agreement.

The quantities of water apportioned hereby include all water rights of every nature and description derived from the reserved water rights doctrine, from all sources of water, both surface and underground, and includes all types and kinds of uses, whether municipal, industrial, recreational, in-stream uses, sale, lease, or any other use whatsoever, and encompasses all claims asserted by or through the Ute Indian Tribe, and all persons and entities other than the Tribe whose claims or rights are derived, directly or indirectly, from the reserved water rights of the Tribe. Thus, any water rights adjudicated or otherwise established in the future on behalf of any person or entity and based upon a claim, directly or indirectly, through any reserved water rights of the Tribe shall be included within

and as a part of the water quantified by this Compact. Any state water rights acquired, by the Tribe for land to which a reserved right is recognized herein shall be forfeited.

Included within the practicably irrigable acreages recognized are (1) tribal lands and individual Indian allotments; (2) Uintah Indian Irrigation Project lands, which include tribal lands, allotments, and some private lands which were originally allotted lands; and (3) some few lands distributed to former tribal members terminated in accordance with the Ute Partition Act approved August 27, 1954 (P.L. 83-671, 68 Stat 868, 25 U.S.C. Section 667-667aa). Nothing in this compact shall enlarge or diminish the scope of or otherwise affect either the United States' trust responsibility or the Ute Indian Tribe's responsibility to those persons who have been designated as mixed-bloods under the Act of August 27, 1954 (68 Stat. 868). The total acreage under irrigation or susceptible to sustained production of agricultural crops by means of irrigation is recognized as 129,201 acres, reduced by 7% to 120,157 acres to reflect roads, yards, fences, rights-of-way, and other non-productive lands. All lands in the Uintah Indian Irrigation Project are designated assessable or non-assessable. The Secretary of the Interior is authorized to change the designation from one to the other.

Nothing contained herein shall be construed to preclude the United States as Trustee for the Ute Indian Tribe, the Ute Indian Tribe, or any of its members from filing application with the Utah State Engineer for the appropriation of additional water under the laws of the State of Utah.

The diversion and depletion requirements for the water rights apportioned under this compact are set forth in Tables 1, 2, and 3 of the Tabulation, consisting of acreage, diversion, and depletion schedules. The delivery schedule set forth in Tables 4, 5, 6, and 7 of the Tabulation shall determine the distribution of the water allocated hereunder. The Utah State Engineer in a manner consistent with the agreements and covenants contained herein, shall have general administrative supervision of all surface and ground waters apportioned to the United States in trust for the Ute Indian Tribe and others, including measurement, apportionment, and distribution thereof, to the points of diversion from the main sources. The United States and the Tribe shall have general administrative supervision of all water apportioned to the United States, including measurement, apportionment, and distribution thereof, within the canal distribution systems from the various points of river diversion.

The United States on behalf of the Tribe, or the Tribe shall comply with the provisions of section 73-3-3, Utah code Annotated 1953, with regard to any change in the point of diversion, place, or nature of use; except that neither the United States nor the Tribe need make application to the State Engineer for change of place of use when the new place of use is within the same canal system.

The parties agree to use their best efforts in the expeditious planning and development of water projects for all Group 5 lands, or substitute lands, including the Uintah and Upalco units, the Leland Bench Project, or other similar projects of the Central Utah Project.

This Article is not intended to relieve the responsibility of the parties involved in the Midview Exchange Agreement and the Agreement dated the 20th day of September, 1965, among the United States of America, the Ute Indian Tribe of the Uintah and Ouray Reservation, and the Central Utah Water Conservancy District. The provisions of said Agreement of September 20, 1965, shall remain binding upon the parties thereto and continue in full force and effect.

ARTICLE IV Enforcement

For purposes of compelling compliance with the terms of this Compact, each party waives the defense of sovereign immunity as to actions brought by any other party, including any defense under the Eleventh Amendment to the United States Constitution. The United States District Court for the District of Utah is hereby granted jurisdiction to adjudicate any claim made by a party to this compact that any other party, or its officials, are acting to impair or violate any right or privilege in this Compact.

ARTICLE V Ratification and Amendment

Each party acknowledges that in order for this compact to constitute a final and permanent settlement of tribal reserved water rights, this compact must be ratified by the United States, the State of Utah, and the Ute Indian Tribe through referendum of the Tribe's membership. The parties shall use their best efforts to have the ratifications undertaken as expeditiously as possible. The parties hereto agree that the terms of this compact have the force and effect of law and agree to adopt all statutes,

regulations and ordinances that are, or may be, necessary to harmonize existing statutes, regulations and ordinances with this compact, and agree that this compact may be included within any general stream adjudication. The Secretary of the Interior is authorized to implement this compact by appropriate regulations.

The following tables are included in the 73 page tabulation and summarize the water rights addressed in the 1980 Compact:

Table 1
1980 Compact

Total Irrigable Acreage by River System

| Stream | Group 1 | Group 2 | Group 3 | Group 4 | Group 5 | | Group 6 | Group 7 | Townsites | Total Acres |
|---------------|---------------|---------------|--------------|--------------|-----------------------|-----------------------|--------------|---------------|------------|----------------|
| | | | | | In Place ₁ | Transfer ₂ | | | | |
| Duchesne | | 16,713 | 1,037 | 1,376 | | 3,604 | | | 597 | 23,327 |
| Rock Creek | | | | | | 10,571 | | | | 10,571 |
| Lake Fork | 22,878 | | | | | | | | | 22,878 |
| Yellowstone | 438 | | | | 4,394 | 3,399 | | | | 8,231 |
| Uintah | 18,721 | | | | 2,276 | 828 | | | | 21,825 |
| Whiterocks | 13,040 | | | | 601 | 1,407 | | | | 15,048 |
| White River | | | | | | | 5,470 | 7,363 | | 12,833 |
| Bitter Creek | | | | | | | | 267 | | 267 |
| Sweet Water | | | | | | | | 92 | | 92 |
| Willow Creek | | | | | | | | 713 | | 713 |
| Hill Creek | | | | | | | | 154 | | 154 |
| Green River | | | | | | | | 4,218 | | 4,218 |
| Totals | 55,077 | 16,713 | 1,037 | 1,376 | 7,271 | 19,809 | 5,470 | 12,807 | 597 | 120,157 |

₁ Lands to be developed in place and supplied under the Uintah Unit of the Central Utah Project

₂ Lands proposed to be transferred to Leland Bench and supplied from the Green River

Table 2
1980 Compact

Total Depletion by River System

| Stream | Land Classification | | | | | | | | | Totals |
|--------------|--------------------------|--------------------------|------------------------|------------------------|------------------------|--------------------------|-------------------------|-------------------------|----------------------|--------------------|
| | Group 1 | Group 2 | Group 3 | Group 4 | Group 5 | | Group 6 | Group 7 | Townsites | |
| | | | | | In Place ₁ | Transfer ₂ | | | | |
| Duchesne | | 16,713 2.00 33,426 | 1,037 2.00 2,074 | 1,376 2.00 2,752 | | | | | 597 2.00 1,194 | 19,723 39,446 |
| Lake Fork | 22,878 2.00 45,756 | | | | | | | | | 22,878 45,756 |
| Yellowstone | 438 1.50 657 | | | | 4,394 1.50 6,591 | | | | | 4,832 7,248 |
| Uintah | 18,721 2.05 38,378 | | | | 2,276 2.05 4,666 | | | | | 20,997 43,044 |
| Whiterocks | 13,040 1.88 24,515 | | | | 601 1.88 1,130 | | | | | 13,641 25,645 |
| White River | | | | | | | 5,470 2.40 13,128 | 7,363 2.40 17,671 | | 12,833 30,799 |
| Bitter Creek | | | | | | | | 267 1.70 454 | | 267 454 |
| Sweet Water | | | | | | | | 92 1.70 156 | | 92 156 |
| Willow Creek | | | | | | | | 713 1.70 1,212 | | 713 1,212 |
| Hill Creek | | | | | | | | 154 1.70 262 | | 154 262 |
| Green River | | | | | | 19,809 2.30 45,561 | | 4,218 2.22 9,364 | | 24,027 54,925 |
| Totals | 55,077 109,306 | 16,713 33,426 | 1,037 2,074 | 1,376 2,752 | 7,271 12,387 | 19,809 45,561 | 5,470 13,128 | 12,807 29,119 | 597 1,194 | 120,157 248,947 |

| |
|--|
| Irrigable Acres Depletion - Acre-feet per acre Depletion - Acre-feet |
|--|

LEGEND:

Comments:

- ₁ Lands to be developed in place and supplied under the Uintah Unit of the Central Utah Project
- ₂ Lands proposed to be transferred to Leland Bench and supplied from the Green River

Note: In addition to the above depletion amounts based on the Tribe's irrigable acreage the Tribe is allocated the depletion of 10,000 acre-feet annually for municipal and industrial purposes.

Table 3
1980 Compact

Total Diversion Requirement by River System

| Stream | Land Classification | | | | | | | | | Totals |
|--------------|---------------------------------------|--------------------------|------------------------|------------------------|-------------------------|--------------------------|-------------------------|-------------------------|----------------------|-----------------------|
| | Group 1 | Group 2 | Group 3 | Group 4 | Group 5 | | Group 6 | Group 7 | Townsites | |
| | | | | | In Place ₃ | Transfer ₄ | | | | |
| Duchesne | 9,300 ₁ 4.00 37,200 | 16,713 4.00 66,852 | 1,037 4.00 4,148 | 1,376 4.00 5,504 | | | | | 597 4.00 2,388 | 29,023 116,092 |
| Lake Fork | 13,578 ₂ 3.40 46,165 | | | | | | | | | 13,578 46,165 |
| Yellowstone | 438 ₂ 3.40 1489 | | | | 4,394 3.40 14,940 | | | | | 4,832 16,429 |
| Uintah | 18,721 ₂ 3.40 63,651 | | | | 2,276 3.40 7,738 | | | | | 20,997 71,389 |
| Whiterocks | 13,040 ₂ 3.40 44,336 | | | | 601 3.40 2,043 | | | | | 13,641 46,379 |
| White River | | | | | | | 5,470 4.80 26,256 | 7,363 4.80 35,342 | | 12,833 61,598 |
| Bitter Creek | | | | | | | | 267 4.00 1,068 | | 267 1,068 |
| Sweet Water | | | | | | | | 92 4.00 368 | | 92 368 |
| Willow Creek | | | | | | | | 713 4.00 2,852 | | 713 2,852 |
| Hill Creek | | | | | | | | 154 4.00 616 | | 154 616 |
| Green River | | | | | | 19,809 4.50 89,141 | | 4,218 4.50 18,981 | | 24,027 108,122 |
| Totals | 55,077 192,841 | 16,713 66,852 | 1,037 4,148 | 1,376 5,504 | 7,271 24,721 | 19,809 89,141 | 5,470 26,256 | 12,807 59,227 | 597 2,388 | 120,157 471,078 |

LEGEND:

| |
|--------------------------------|
| Irrigable Acres |
| Depletion - Acre-feet per acre |
| Depletion - Acre-feet |

₁ Midview Exchange Lands

₂ The 3.40 acre-feet per acre diversion requirement is supplied by 3.00 acre-feet per acre from direct flow and 0.40 acre-feet from proposed Water and Power Resources Service storage projects.

₃ Lands to be developed in place and supplied under the Uintah Unit of the Central Utah Project.

₄ Lands proposed to be transferred to Leland Bench and supplied from the Green River.

10. 1990 Compact

As discussed in the previous chapter, Congressman Nielson's and Owens' 1988 bills, which would have secured Congressional ratification of the 1980 Compact, failed to advance in Congress. Soon after that the Tribe hired Daniel H. Israel as their water attorney, and a revised version of the Compact was negotiated with the State of Utah. This version became known as The Revised Ute Indian Compact of 1990 (1990 Compact). At the same time, settlement language was crafted by the Tribe which eventually became Title V of CUPCA. The United States was not invited to participate in drafting the 1990 Compact or the proposed settlement language.

The 1990 Compact was ratified by Congress in Section 503 of CUPCA.

The Revised Ute Indian Compact of 1990, dated October 1, 1990, reserving waters to the Ute Indian Tribe and establishing the uses and management of such Tribal waters, is hereby ratified and approved, subject to re-ratification by the State and the Tribe. The Secretary is authorized to take all actions necessary to implement the Compact.

The text of the 1990 compact increased from 6 to 10 pages and the Tabulation document decreased from 73 to 60 pages. (The tables in the Tabulation were reformatted to take up less pages)

The primary changes between the 1980 and 1990 Compact are listed below including a table comparing the 1980 and 1990 compacts:

(1) Because by now there was no assumption that CUP storage would be built, the following language contained in paragraph 1 of the 1980 Compact was not included in the 1990 Compact:

“Water delivered to Groups 1 & 5 from CUP storage shall be assigned the priority date of the Water and Power Resources filing date”

(2) Again, because no assumption that CUP storage would be built, the following paragraph 9 of Article III of the 1980 Compact was also not included:

“The Parties agree to use their best efforts in the expeditious planning and development of water projects for all Group 5 lands, or substitute lands, including the Uintah and Upalco units, the Leland Bench Project, or other similar projects of the Central Utah Project.”

(3) Water for the remaining in-place Group 5 lands was transferred to the Green River on a depletion basis which resulted in a change in the diversion amount from 471,035 acre-feet to 470,594. The total water depletion of 248,943 acre-feet did not change.

(4) The State of Utah agreed to allow the Tribe to use or market water downstream in the Lower Basin. But only in the event that non-Indian state water users are also allowed to do so.

Comparison between the 1980 and 1990 Compacts

1980 COMPACT

1990 COMPACT

Article I

Purpose of Compact:

| | |
|-----------------------|-----------------------|
| Purposes are the same | Purposes are the same |
|-----------------------|-----------------------|

Article II

Legal Basis for Compact:

| | |
|-------------------------|-------------------------|
| Legal basis is the same | Legal basis is the same |
|-------------------------|-------------------------|

Article III

Water:

Paragraph 1:

| | |
|---|-----------------------------|
| 248,943 acre-feet depletion | 248,943 acre-feet depletion |
| 471,035 acre-feet diversion | 470,594 acre-feet diversion |
| In accordance with and as fully set out in the Tabulation | Same |

| | |
|---|------|
| Priority date is October 3, 1861 for Groups 1-5 (except for water stored under CUP), and January 5, 1882 for groups 6 and 7 unless indicated otherwise in the Tabulation. | Same |
|---|------|

| | |
|--|------|
| No water rights held in trust can be transferred without approval of the Secretary of the Interior | Same |
|--|------|

| | |
|--|---|
| Water delivered to groups 1 & 5 from CUP storage shall be assigned the priority date of the Water and Power Resources filing date (1964) | No language because no assumption that CUP storage will be built. |
|--|---|

Paragraph 2:

| | |
|--|---|
| Not in 1980 Compact | Tribe takes in lieu of other sources 57,948 acre-feet depletion from the Green River allocable to the Group 5 lands. If this water is sold, Utah would receive 20% of the net income. |
| Additional 10,000 acre-foot depletion annually from the Green River, for municipal and industrial use. | Same language is in <u>paragraph 3</u> of 1990 Compact |

Paragraph 3:

| | |
|--|--|
| No water allocated pursuant to this Compact shall be subject to loss or forfeiture. | Same language is in <u>paragraph 4</u> of 1990 Compact |
| Water not restricted to any particular use, may be used for any purpose selected by the Tribe. | |

Paragraph 4:

| | |
|---|--|
| Quantified water right includes all types of water, all uses of water, and all claims for water by the Tribe or persons claiming through the Tribe. | Same language is in <u>paragraph 5</u> of 1990 Compact |
| Any state water rights acquired by the Tribe on lands for which a reserved right is recognized herein shall be forfeited. | |

Paragraph 5:

| | |
|---|--|
| Included within the Practicably Irrigable Acreages (PIA) recognized are (1) tribal lands and individual Indian allotments; (2) Uintah Indian Irrigation Project (UIIP) lands, which include tribal lands, allotments; and (3) some few lands owned by mixed bloods. | Same language is in <u>paragraph 6</u> of 1990 Compact |
| 7% reduction from 129,202 to 120,157 for roads, yards, fences etc. | |
| UIIP lands are either assessable or non-assessable | |

Paragraph 6:

| | |
|--|--|
| Nothing contained herein shall be construed to preclude the United States as Trustee for the Ute Indian Tribe, the Ute Indian Tribe, or any of its members from filing application with the Utah State Engineer for the appropriation of additional water under the laws of the State of Utah. | Same language is in <u>paragraph 7</u> of 1990 Compact |
|--|--|

Paragraph 7:

| | |
|--|---|
| The Tables in the Tabulation set forth the acreages, diversion and depletion, and the delivery schedules. | Same language is in <u>paragraph 8</u> of 1990 Compact, except one sentence referencing Utah Code Annotated § 73-3-3. |
| The Utah State Engineer; shall have general administrative supervision of all surface and ground waters, including measurement, apportionment, and distribution thereof, to the points of diversion from the main sources. | |
| The United States and the Tribe shall have general administrative supervision of all water, within the canal distribution systems from the various points of river diversion. | |

Paragraph 8:

| | |
|---|---|
| <p>The United States on behalf of the Tribe, or the Tribe shall comply with the provisions of section 73-3-3, Utah code Annotated 1953, with regard to any change in the point of diversion, place, or nature of use; except that neither the united states nor the Tribe need make application to the state Engineer for change of place of use when the new place of use is within the same canal system.</p> | <p>Same language is in <u>paragraph 9</u> of 1990 Compact</p> |
|---|---|

Paragraph 9:

| | |
|--|---|
| <p>The Parties agree to use their best efforts in the expeditious planning and development of water projects for all group 5 lands, or substitute lands, including the Uintah and Upalco units, the Leland Bench Project, or other similar projects of the Central Utah Project.</p> | <p>No similar language in 1990 Compact.</p> |
|--|---|

Paragraph 10:

| | |
|--|---|
| <p>Article does not relieve responsibility of parties under the Midview Exchange Agreement or the 1965 Deferral Agreement.</p> | <p>Same language is in <u>paragraph 14</u> of 1990 Compact with respect to Midview Exchange as in paragraph 10 of 1980 Compact. No mention of the Deferral agreement.</p> |
| <p>Deferral Agreement remains binding and in full force and effect.</p> | <p>No similar language with respect to Deferral Agreement in the 1990 Compact. However; Section 507 (b) of CUPCA states " upon receipt of the section 504, 505, and 506 moneys, any and all claims relating to its water rights covered under the agreement of September 20, 1965, including claims by the Tribe that it retains the right to develop lands as set forth in the Ute Indian Compact and deferred in such agreement."</p> |

Paragraphs 10 - 13:

| | |
|--|---|
| <p>Article III of the 1980 compact has only 10 paragraphs, and has no language addressing the use of, or leasing water off the reservation</p> | <p>Relate to the Tribe's right to use or lease its water off the reservation and limitations on Tribe's ability to market its water.</p> |
| | <p style="text-align: center;">Paragraph 10:</p> <p>Specifically allows for lease of tribal water off reservation.</p> |
| | <p style="text-align: center;">Paragraph 11:</p> <p>Water becomes a state water right while used off-reservation.</p> |
| | <p>Subject to state, federal, interstate compact and international treaties applicable to the Colorado River.</p> |
| | <p style="text-align: center;">Paragraph 12:</p> <p>Allows the Tribe to use or lease water to the Lower Basin, <u>only if</u> non-Indian state water users are also allowed to do so.</p> |
| | <p>Provided however, that in no event shall such transfer of Indian water rights take place without the filing and approval of the appropriate applications with the State of Utah.</p> |

| | |
|--|--|
| | Paragraph 13: |
| | Compact is not authority for sale or lease of tribal water outside state of Utah. |
| | Paragraph 14: |
| | Article does not relieve responsibility of parties under the Midview Exchange Agreement. |

Article IV

Enforcement:

| | |
|---|--|
| Waiver of sovereign immunity for actions under Compact. | Same |
| United States District Court for District of Utah granted jurisdiction. | Same |
| | The federal court jurisdiction provided for herein shall not be diminished by reason of a related state court proceeding. |
| | Language added requiring State to use best efforts to see that Tribe's reserved rights are protected from impairment. |
| | State, its officers, and employees are not subject to claims for monetary damages in its efforts to protect tribal water rights. |

Article V

Ratification and Amendment:

| | |
|---|--|
| Each party acknowledges that in order for this compact to constitute a final and permanent settlement of tribal reserved water rights, this compact must be ratified by the United States, the State of Utah, and the Ute Indian Tribe through referendum of the Tribe's membership. | Paragraph 1: Same language as in Article V of 1980 Compact |
| The parties shall use their best efforts to have the ratifications undertaken as expeditiously as possible. | |
| The parties hereto agree that the terms of this compact have the force and effect of law and agree to adopt all statutes, regulations and ordinances that are, or may be, necessary to harmonize existing statutes, regulations and ordinances with this compact, and agree that this compact may be included within any general stream adjudication. | |
| The Secretary of the Interior is authorized to implement this compact. | |

Paragraph 2:

| | |
|--|--|
| No 2nd paragraph in Article V of 1980 Compact. | Additional language added, that recognizes that the Compact is a voluntary settlement and has no effect on other Indian water right cases. |
|--|--|

Tables 1, 2, & 3 of the 1990 Tabulations, as seen below, are included in the 60 page tabulation and summarize the water rights addressed in the 1990 Compact. Note they reflect that the remainder of Group 5 lands were transferred to the Green River. This correlates with the language in Article III, paragraph 2, the Tribe takes in lieu of other sources 57,948 acre-feet depletion from the Green River allocable to the Group 5 lands.

Table 1
1990 Compact

Total Irrigable Acreage by River System

| Stream | Land Classification | | | | | | | | Totals |
|--------------|---------------------|---------|---------|---------|---------|---------|---------|-----------|---------|
| | Group 1 | Group 2 | Group 3 | Group 4 | Group 5 | Group 6 | Group 7 | Townsites | |
| Duchesne | | 16,713 | 1,037 | 1,376 | 3,604 | | | 597 | 23,327 |
| Rock Creek | | | | | 10,571 | | | | 10,571 |
| Lakefork | 22,878 | | | | | | | | 22,878 |
| Yellowstone | 438 | | | | 7,794 | | | | 8,232 |
| Uintah | 18,721 | | | | 3,704 | | | | 22,425 |
| Whiterocks | 13,040 | | | | 1,407 | | | | 14,447 |
| White River | | | | | | 5,470 | 7,363 | | 12,833 |
| Bitter Creek | | | | | | | 267 | | 267 |
| Sweet Water | | | | | | | 92 | | 92 |
| Willow Creek | | | | | | | 713 | | 713 |
| Hill Creek | | | | | | | 154 | | 154 |
| Green River | | | | | | | 4,218 | | 4,218 |
| Totals | 55,077 | 16,713 | 1,037 | 1,376 | 27,080 | 5,470 | 12,807 | 597 | 120,157 |

COMMENTS:

Group 5 - All lands transferred to and supplied water from the Green River.

Table 2
1990 Compact

Total Depletion by River System

| Stream | Land Classification | | | | | | | | Totals |
|--------------|--------------------------|--------------------------|----------------|----------------|----------------------------|--------------------------|-------------------------|------------------------|----------------------|
| | Group 1 | Group 2 | Group 3 | Group 4 | Group 5 | | Group 6 | Group 7 | |
| | | | | | Depletion | Ac. Per Ac. | | | |
| Duchesne | | 17,310 2.00 34,620 | 1,037 2.00 | 1,376 2.00 | | (14,175) | | | 19,723 39,446 |
| Lake Fork | 22,878 2.00 45,756 | | | | | | | | 22,878 45,756 |
| Yellowstone | 438 1.50 657 | | | | (4,394) 1.50 (6,591) | (3,400) | | | 438 657 |
| Uintah | 18,721 2.05 38,378 | | | | (2,276) 2.05 (4,666) | (1,428) | | | 18,721 38,378 |
| Whiterocks | 13,040 1.88 24,515 | | | | (601) 1.88 (1,130) | (806) | | | 13,040 24,515 |
| White River | | | | | | | 5,470 2.40 13,127 | 7,363 2.40 | 12,833 30,796 |
| Bitter Creek | | | | | | | | 267 1.70 454 | 267 454 |
| Sweet Water | | | | | | | | 92 1.70 156 | 92 156 |
| Willow Creek | | | | | | | | 713 1.70 1,212 | 713 1,212 |
| Hill Creek | | | | | | | | 154 1.70 262 | 154 262 |
| Green River | | | | | 5,386 2.30 12,387 | 19,809 2.30 45,561 | | 4,218 2.22 9,363 | 29,413 67,311 |
| Totals | 55,077 109,306 | 17,310 34,620 | 1,037 2,074 | 1,376 2,752 | 5,386 12,387 | 19,809 45,561 | 5,470 13,127 | 12,807 29,116 | 118,272 248,943 |

LEGEND:

| |
|--------------------------------|
| Irrigable Acres |
| Depletion - Acre-feet per acre |
| Depletion - Acre-feet |

Group 2 - Includes townsites land consisting of 597 acres.

Group 5, Depletion - Lands transferred to the Green River based on depletion. In such a transfer the irrigable acreage is reduced by 1885 acres.

Ac. Per Ac. - Lands transferred to the Green River on an acre for acre transfer.

Figures in parenthesis under Group 5, Depletion and Ac per Ac columns are not included in totals. These figures are listed to show where the acreage is transferred from and how the depletion was calculated.

TABLE 3
1990 Compact

Total Diversion Requirement by River System

| Stream | Land Classification | | | | | | | | Totals |
|--------------|--------------------------|--------------------------|------------------------|------------------------|-------------------------|--------------------------|-------------------------|-------------------------|-----------------------|
| | Group 1 | Group 2 | Group 3 | Group 4 | Group 5 | | Group 6 | Group 7 | |
| | | | | | Depletion | Ac. Per Ac. | | | |
| Duchesne | 9,300 4.00 37,200 | 17,310 4.00 69,240 | 1,037 4.00 4,148 | 1,376 4.00 5,504 | | | | | 29,023 116,092 |
| Lake Fork | 13,578 3.40 46,165 | | | | | | | | 13,578 46,165 |
| Yellowstone | 438 3.40 1489 | | | | | | | | 438 1,489 |
| Uintah | 18,721 3.40 63,651 | | | | | | | | 18,721 63,651 |
| Whiterocks | 13,040 3.40 44,336 | | | | | | | | 13,040 44,336 |
| White River | | | | | | | 5,470 4.80 26,256 | 7,363 4.80 35,342 | 12,833 61,598 |
| Bitter Creek | | | | | | | | 267 4.00 1,068 | 267 1,068 |
| Sweet Water | | | | | | | | 92 4.00 368 | 92 368 |
| Willow Creek | | | | | | | | 713 4.00 2,852 | 713 2,852 |
| Hill Creek | | | | | | | | 154 4.00 616 | 154 616 |
| Green River | | | | | 5,386 4.50 24,237 | 19,809 4.50 89,141 | | 4,218 4.50 18,981 | 29,413 132,359 |
| Totals | 55,077 192,841 | 17,310 69,240 | 1,037 4,148 | 1,376 5,504 | 5,386 24,237 | 19,809 89,141 | 5,470 26,256 | 12,807 59,227 | 118,272 470,594 |

LEGEND:

| |
|--|
| Irrigable Acres |
| Diversion Requirement - Acre-feet per acre |
| Diversion Requirement - Acre-feet |

Group 1 - The 9,300 acres supplied from the Duchesne River are those lands covered by the Midview Exchange. The diversion requirement for those lands supplied from the Lake Fork, Yellowstone, Uinta and Whiterocks rivers is comprised of 3.0 acre-feet per acre from direct flow and 0.40 acre-feet per acre from storage. If storage facilities are constructed to develop and supply the 0.4 acre-feet per acre it shall assume the priority date of the Bureau of Reclamation filings.

Group 2 - Includes townsites land consisting of 597 acres.

11. 2009 Revised Compact

Following passage of CUPCA in 1992, the Tribal leadership concluded that they were not entirely satisfied with the 1990 Compact. The 1990 Compact had been ratified by Congress in CUPCA, but was subject to re-ratification by the Tribe and the State of Utah.

Starting in the mid 1990's, the Tribe and the State met occasionally to discuss revisions to the 1990 Compact, but for more than ten years no real progress was made in negotiating revisions that would address the Tribe's concerns. After multiple Tribal Administration changes, in about 2005, the Business Committee gave their water attorney (Tod Smith) instructions to be more aggressive in negotiating with the State. The goal was to negotiate a revised compact that could be put to a referendum vote to the Tribal membership.

Since the 1990 Compact was ratified by Congress in Section 503 of Public Law 102-575, it is unclear if minor revisions would require additional congressional action. The State of Utah, however, stated that they would not take any action to ratify the 1990 or any revisions thereof until it was first ratified by the Tribe.

The Federal Implementation Team was not directly involved in the negotiations between the Tribe and the State, but was kept informed as the negotiations progressed. (See additional discussion regarding Federal Implementation Team recommendations on page 83 of this document).

In 2009 the State and Tribe reached agreement over modifications to the 1990 Compact. The Tribe hired Stetson Engineers to analyze the revised compact and to assist their legal counsel in developing an informational presentation. Beginning about mid-2009, informational meetings were held in Fort Duchesne and at various communities throughout the reservation. The meetings were conducted by Tod Smith the Tribes' water attorney, and Joe Ely from Stetson Engineers. Presentations on the 2009 Compact were made to the Tribal Membership which included a time for questions and answers.

On September 22, 2009, the Tribe held a referendum vote on the Revised Compact. The referendum was not valid due to the lack of voter turn-out, however, of the members that did vote, 75% were in

favor of the Revised 2009 Compact. Had approximately 100 more members voted, the referendum would have passed with a majority in favor.

The following is a summary of the revisions that were made by the Tribe, and the State to the 1990 Compact, herein referred to as the Revised 2009 Compact.

General Revisions:

At first glance the changes between the 1990 and the revised 2009 compacts look to be significant, however, upon a close comparison the new document does not change the overall concept of the 1990 version that much. It does go into further explanation to clarify the intent of the 1990 Compact and addresses administration issues in more detail. With the exception of Article X, most of the revisions seem to favor the Tribe.

The text of the 2009 Compact increased from 10 to 36 pages. The Tabulation²¹ document did not change, but, based on certain revisions in the compact text, the tabulations would need to be updated to match the revisions.

Definitions were added (Art. III), and the compact was divided into 23 separate articles. The 1990 version of the compact did not have definitions and was divided in three articles: purpose, legal basis, and the rest of the compact. Generally the 2009 version attempts to address each issue in the same sequence as the 1990 version but with articles and headings identifying the subject being addressed. This makes the compact a more readable and user friendly document.²²

There is one new requirement added to the 2009 compact; because of ongoing right-of-way issues on some non-Indian canals on the Reservation, the state insisted on adding Article X. This is a new article on grandfathering rights-of-way for existing non-Indian canals, ditches and pipelines.

²¹ In negotiating the 2009 Compact, the parties did not change the 1990 Tabulations, however it was understood that the tables would need to be revised to match any changes made in the 2009 document text.

²² Most of the text on describing the changes to the 2009 Compact are taken from a Memo dated December 15, 2008, from Tod Smith to Reed Murray, Program Director, Central Utah Project Completion Act Office.

The waiver section includes the most recent waiver language proposed by the Department of Justice as of 2009.

Basic Substantive Terms Unchanged:

1. Art. IV, Sec. A: The total quantities of water, 248,943 acre-feet of depletions and 470,594 acre-feet of diversions, remain unchanged.

2. Art. IV, Sec. B: _Recognition that the Tribal Water Rights are based upon PIA and include lands held by the United States in trust for the Tribe and tribal members, and others who have derived their water rights by or through the Tribe (Waltons, which in this context also includes mixed-bloods terminated under the 1954 Ute Partition Act).

This reference to the mixed-bloods that was included in the 1990 version of the compact was dropped:

“Nothing in this compact shall enlarge or diminish the scope of or otherwise affect either the United States’ trust responsibility, if any, or the Ute Indian Tribe’s responsibility, if any, to those persons who have been designated mixed-bloods under the Act of August 27, 1954 (68 Stat. 868).”

First, because the mixed-bloods were declared by Congress to be non-Indians for legal purpose, *see* 25 U.S.C. § 677v, they are treated in the compact as Waltons, (non-Indians who have acquired former tribal land).

Second, the language quoted is included in the Settlement and does not need to be repeated here.

Third, in the Ute Distribution Corporation’s litigation with the Secretary and Tribe, *UDC v. Secretary*, the UDC has, at various times claimed that this type of language in the Settlement and Compact is a recognition that the mixed-bloods, via the UDC, may have rights to the Tribe’s water and water rights.

Finally, the Ute Indian Tribe has no obligation to the mixed-bloods or the UDC as it pertains to the Tribe’s water or water rights except to the extent a mixed-blood may qualify as a Walton.

3. Art. IV, Sec. C: Priority dates: October 3, 1861 for land Groups 1-5 (lands within the Uintah Reserve portion of the Reservation); January 5, 1882 for land Groups 6 and 7 (lands within the Uncompahgre portion of the Reservation)

Note: The 1990 version of the compact left some Group 7 lands with a “to be determined” priority date subject to future arbitration between the Tribe and State. The Tribe argued for an 1882 date (the date the Uncompahgre Reservation was established), the State argued for a 1948 date (the date the Hill Creek Extension was set aside and taken into trust). The Tribe has suggested a 1933 priority date, which is the date the entire Uncompahgre was temporarily withdrawn from further settlement to allow for establishment of what ultimately became the Hill Creek Extension in 1948.

4. Art. IV, Sec. F (2): Transfer and exchange of water attached to Group 5 lands to Green River. The 1990 version of the compact provided that all the water rights attached to the Tribe’s Group 5 lands would be transferred and exchanged to the Green River for the Tribe’s use. The amounts are 57,948 acre-feet of depletions, and 113,378 acre-feet of diversions. This remains unchanged in the current version of the compact except for the recognition that approximately 2,800 acres of the Group 5 lands included as the “Tribe’s land” in the 1990 version are actually owned by non-Indians (including some mixed-bloods). That revision is addressed below in paragraph C.4 (b).

5. Art. IV, Sec. H: An agreement between the parties, to assist in obtaining consent to the Compact, provided the Tribe with 10,000 acre-feet of depletions from the Green River for municipal and industrial purposes. This right is not identified as a “Winters” reserved water right and does not reflect an admission by the State that M&I rights exist under the Winters Doctrine. But it does recognize that the right is held in trust by the United States in perpetuity for the Tribe with an 1861 priority date. These provisions remain unchanged.

6. Art. V: No loss or forfeiture of the Tribe’s water rights, including the M&I water rights. A provision has been added recognizing that Tribal water rights attached to fee lands owned by non-Indians outside the Uintah Indian Irrigation Project are subject to State law regarding loss or forfeiture.

7. Art. VI, Sec. A & B The recognized uses of Tribal Water and the persons or entities with a right to use Tribal Water remain unchanged. The provision providing that if a person establishes in the General Stream Adjudication a right to Tribal Water for land that is not in the Tabulation, that water right will be deducted from the total amount of Tribal Water recognized in the Compact. This provision is unchanged from the 1990 version.

8. Art. VI, Sec. F: The quantity of PIA remains unchanged: 129,201 acres (as determined in the 1960 Decker Report), less 7% to reflect homes, out-buildings etc. on those lands, for a total PIA of 120,157.

9. Art. VI, Sec. H: The right for the Tribe and tribal members to appropriate additional water under State law remains unchanged.

10. Art. IV, Sec. D: Rates of diversion and depletion by stream system (duty of water), set out in the Tabulation remain unchanged.

11. Art. VII: The basic principles of administration included in the 1990 version of the compact remain the basic principles in the 2009 version. The 1990 version stated:

The Utah State Engineer, in a manner consistent with the agreements and covenants contained herein, shall have general administrative supervision of all surface and ground waters apportioned to the United States in trust for the Ute Indian Tribe and others, including measurement, apportionment, and distribution thereof, to the points of diversion from the main source. The United States and the Tribe shall have general administrative supervision of all water apportioned to the United States, including measurement, apportionment, and distribution thereof, with the canal distribution systems from the various points of river diversion.

The United States on behalf of the Tribe, or the Tribe shall comply with the provisions of Section 73-3-3, Utah Code Annotated 1953, with regard to any change in the point of diversion, place or nature of use; except that neither the United States nor the Tribe need make application

to the State Engineer for change of place of use when the new place of use is within the same canal system.

In addition, the Ute Settlement at Section 502(b) provides:

As provided in the Ute Indian Compact, transfers of certain Indian reserved rights water to different lands or different uses will be made in accordance with the laws of the State of Utah governing change or exchange applications.

These basic terms are incorporated into the 2009 version of the compact but with some additional explanation as described below in paragraph C.9

12. Art. VIII: Provisions regarding off-reservation use of water both within and outside the State of Utah remain unchanged and are also consistent with the terms found in Sections 503(c) and (d) of the Ute Water Settlement.

13. Art. XII: The Enforcement provisions remain the same with some stylistic changes. Each party waives the defense of sovereign immunity for purposes of compelling compliance with the terms of the compact.

More Substantive Revisions:

1. The 1990 version of the compact required that the Tribe pay to the State 20% of the net proceeds from any water marketed off-Reservation. This provision has been removed.

2. Art. IV, Sec. B: In the basis for the quantification of the Tribe's water rights, references have been added to the 1923 federal court decrees for the lands within the Uintah Indian Irrigation Project and the Decker Report, prepared in 1960. Each of these provides the basis for the identification of PIA lands, quantity of water, and rates of diversion (all of which are unchanged from the 1990 version). This is not a substantive change; but is a further explanation of how the fundamental terms of the compact were developed.

3. Art. IV, Sec. D: The Tabulation attached to both versions of the compact provides irrigation and depletion requirements on each stream system. The 2009 version recognizes that these limitations apply to *all* water users on a stream system not just the Tribe. Additionally, the 2009 version recognizes that if a non-tribal water user on a system obtains a higher rate of diversion or depletion in the General Stream Adjudication, the rates of diversion or depletion for the Tribal Water rights on that stream will be increased accordingly. It also recognizes that the delivery schedules, unchanged and included in the Tabulation, apply to all water users on a stream system. For example, early in the irrigation season the delivery schedule establishes a delivery rate of 1 cfs for every 250 acres of the land being irrigated. At the height of the run-off the schedule establishes a delivery rate of 1 cfs for every 70 acres of land being irrigated. The 1990 version of the compact did not clearly state that the rates of delivery apply to all water users on a stream not just Tribal water users.

4. Art. IV, Sec. E & F: The groups 1-3 lands are all included in the Uintah Indian Irrigation Project and the compact now makes clear that the Tribal Water is apportioned to the Project (*see* Art. VI, Sec. G). In reviewing land ownership outside the Project it was determined that approximately 100 acres of Group 4 land and 2,800 acres of Group 5 land are owned by non-Indians (some of whom are mixed-bloods, all of whom are treated as Waltons). Those lands are, and have been since the Decker Report in 1960, included within the calculation of PIA. But, as is now recognized in the 2009 Compact, neither the United States, State, or Tribe has the legal authority to claim or establish water rights for these non-Indian owned fee lands. Therefore, the Tribe and State have agreed to the following process set out in the 2009 version of the compact:

a. Group 4 Lands (Sec. E): If a non-Indian Group 4 landowner (approximately 100 acres total) seeks to adjudicate a water right for the land in the quantities set forth in the Tabulation, the parties to the Compact will not oppose the claim or quantity in the General Stream Adjudication.

If the landowner seeks a quantity greater than is recognized in the Tabulation, the parties may protest the claim. If the landowner is successful, the amount of additional water is deducted from the total amount of Tribal Water as discussed above in paragraph C.7.

If a Group 4 non-Indian landowner does not put the water right to beneficial use within seven years following its adjudication, it is subject to forfeiture under State law. If the Tribe reacquires any of these Group 4 lands, the water right included in the Tabulation is attached unless it has previously been declared forfeited.

b. Group 5 lands (Sec. F): If a non-Indian Group 5 landowner (approximately 2,800 acres total) seeks to adjudicate a water right for the land the parties to the compact may protest the claim regardless of whether the claim is for the amount recognized in the Tabulation or higher. If the landowner is successful, he or she can then choose to transfer and exchange the water to the Green River under the same conditions as the Tribe or, can leave it in place for use on the Group 5 land. If a Group 5 non-Indian landowner who has kept the water right in-place does not put the water right to beneficial use within seven years following its adjudication, it is subject to forfeiture under State law.

c. Farm Creek Water Rights (Sec. F(4)): The Decker Report recognized water rights for lands under the Farm Creek Proper Ditch totaling 180 acres and identified them as Group 5 lands. But, these lands had been irrigated since the early 1900s and had originally been included in the 1923 Federal Court for the Uintah River. It appears that they should have been included in the Decker Report as Group 1 lands and subsequently in the compacts.

Under the 1990 version of the compact, the water rights, despite the fact that they were being used for irrigation of the land (unlike other Group 5 lands) were transferred to the Green River. Under the current version of the compact these water rights are left in-place for continued irrigation of the lands. The land remains identified as Group 5 land.

5. Art. IV, Sec. G: The current version of the compact clarifies that the Tribe's first use of water transferred and exchanged to the Green River may be put to use following only the Tribe's notification to the State of the type, place, and quantity of use. Subsequent changes must be in accordance with the change of water rights provisions discussed below in paragraph C.9.

6. Art. IV, Sec. I: The current version of the compact recognizes that, subject to agreement with the United States, the Tribe may store its water transferred to the Green River and its M&I water in Flaming Gorge Reservoir.

7. Art. IV, Sec. J: The current version of the compact recognizes that Tribal members may continue to use water for religious and cultural purposes subject to the overall withdrawal limitations set on each stream.

8. Art. VI, Sec. 6: The current version of the compact recognizes that the Tribal water rights for the Groups 1, 2 and 3 lands, all of which are in the Irrigation Project, are allocated to the Project and assigned to the BIA for administration within the Project subject to the terms in Article VII.

9. Art. VII: The current version of the compact provides an extensive explanation of how administration will be conducted under the general terms set out in the 1990 version of the compact and the Settlement, which are discussed above in paragraph B.11. There is a new introductory paragraph that describes the reasoning for establishing the State Engineer as the primary administrator. (The underlying reasoning is that in negotiations leading up to the 1980 version of the compact, the parties agreed that the State would not challenge the PIA determinations of the Decker Report so long as there was unitary administration.) State administration was part of the 1980 and 1990 versions of the compact utilizing the general language discussed above in paragraph B.11.

a. Sec. D: Provides that the Tribe will adopt a Water Code within two years of final approval of the Compact and will hire a full-time Tribal Water Engineer.

b. Sec. E: Within two years of final approval of the Compact the Tribe and State will confirm through a cooperative effort any changes in use from the locations set out in the Tabulation.

c. Sec. G: Establishes a water right numbering system that will allow coordination between Tribal water rights and other State water rights.

d. Sec. H: Describes the procedures used in a change of use. It requires:

1) Change of use for water attached to land outside the Project are filed with the State Engineer;

2) BIA approval of a change in use of Project landowner's pro-rata share of water. If the BIA approves, a change application is filed with the State Engineer;

3) Notice of all change applications for Tribal Water are sent to the BIA and Tribal Water Resources Department;

4) If the State Engineer holds an informal hearing on a change application filed by or protested by a Tribal water user, the hearing is held before a representative of the State Engineer (usually the Regional Engineer) *and* the Tribal Water Engineer who make a joint or individual recommendations to the State Engineer;

5) Judicial review of a State Engineer's decision in which the United States, the Tribe, or a Tribal water user has participated, shall be in the Eighth Judicial District Court for the State of Utah; provided that in any such action where the United States has not participated or intervened, but the Tribe has done so, the Tribe shall have the right at its discretion to change venue of the action to the Third Judicial District Court in Salt Lake County. Participation by the United States as authorized by subsections (a) through (c) of section 208 of the Department of Justice Appropriation Act, 1953 (43 U.S.C. § 666), or participation by the Tribe, either as a plaintiff or intervener, shall not divest the Utah State Courts of jurisdiction to review a State Engineer decision;

6) Groundwater permits are issued by the Tribe and, if a change of water right is required it goes through the process described above;

7) Well construction regulated by the Tribe with guidelines no less stringent than the State's and well driller must have a Utah license;

8) Change applications must utilize the diversion and depletion duties set out in the Tabulation;

9) There is no consideration of whether a water project proposed by the Tribe or tribal member is physically or economically feasible; and,

10) No criminal sanctions can be imposed by the State Engineer against the Tribe or tribal members with respect to the use of Tribal Water.

e. Section J: Water Commissioners are appointed by the State Engineer but if the Tribe and BIA object, they together with the non-Indian water users can submit two names from which the State Engineer must select a Water Commissioner.

10. Art. X: There is an entire new article on grandfathering rights-of-way for existing canals, ditches and pipelines. Those constructed prior to August 25, 1945, with no right-of-way documentation are automatically grandfathered subject to payment of the fair market value. Those constructed after that date must go through the 25 CFR Part 169 Right-of-way Process except that the fee charged is limited to the fair market value and the right-of-way must be granted. Every ditch, canal or pipeline must install a real time satellite measuring device to allow any water user to check on the amount being diverted at any time.

11. Art. XIII, Sec. A: A new provision outlines the steps leading up to and required for Tribe and State re-ratification of the Compact as required by Congress in Section 503 of the Settlement.

12. Art. XVI: The waiver section includes the most recent waiver language proposed by the Department of Justice as of 2009, and is as follows:

ARTICLE XVI WAIVERS

Section A. Waiver and Release of Claims by the Tribe and the United States Acting in its Capacity as Trustee for the Tribe: Subject to the retention of rights set forth in Section E, in return for recognition of the Tribal Water Rights, Municipal and Industrial water rights, and other benefits set forth in this Compact, the Tribe, on behalf of itself and its Members (but not tribal members in their capacities as allottees), and the United States acting in its capacity as trustee for the Tribe and its members (but not tribal members in the capacity as allottees), hereby waives and releases all claims for water rights in the State of Utah, under any and all legal theories, that the Tribe, or the United States acting in its capacity as trustee for the Tribe and its Members, asserted, or could have asserted, in any proceeding, including but not limited to the pending General Stream Adjudication up to and including the Enforceability Date, except to the extent that such rights are recognized in this Compact.

Section B. Waiver and Release of Claims by the United States Acting in its Capacity as Trustee for Allottees: Subject to the retention of rights set forth in Section E, in return for recognition of the Tribal Water Rights, Municipal and Industrial water rights, and other benefits set forth in this Compact, the United States acting in its capacity as trustee for allottees, hereby waives and releases all claims for water rights within the Reservation that the United States acting in its capacity as trustee for the allottees asserted, or could have asserted, under any and all legal theories, in any proceeding, including but not limited to the pending General Stream Adjudication up to and including the Enforceability Date, except to the extent that such rights are recognized in this Compact.

Section C. Waiver and Release of Claims by the Tribe against the United States: Subject to the retention of rights set forth in subsections E and F, the Tribe, on behalf of itself and its Members, waives and releases:

- (1) All claims against the United States, its agencies, or employees, relating to claims for water rights in the State of Utah that the United States acting in its capacity as trustee

for the Tribe asserted, or could have asserted, in any proceeding, including but not limited to the pending General Stream Adjudication, except to the extent that such rights are recognized in this Compact;

- (2) All claims against the United States, its agencies, or employees relating to damages, losses, or injuries to water, water rights, land, or natural resources due to loss of water or water rights (including but not limited to damages, losses, or injuries to hunting, fishing, gathering or cultural rights due to loss of water or water rights; claims relating to interference with, diversion or taking of water; or claims relating to failure to protect, acquire, replace, or develop water, water rights or water infrastructure) within the State of Utah that first accrued at any time up to and including the Enforceability Date;
- (3) All claims against the United States, its agencies, or employees relating to the litigation of claims relating to the Tribe's water rights in the State; and,
- (4) All claims against the United States, its agencies, or employees relating to the negotiation, execution, or the adoption of this Compact, exhibits thereto, or the Final Decree.

Section D. Enforceability Date: The waivers shall become effective once a Final Decree is issued in the General Stream Adjudication.

Section E. Reservation of Rights and Retention of Claims: Notwithstanding the waivers and releases authorized in this Compact, the Tribe on behalf of itself and its members and the United States acting in its capacity as trustee for the Tribe retain:

- (1) All claims for the enforcement of the Compact and the Final Decree entered in the General Stream Adjudication, through such legal and equitable remedies as may be available in the decree court or the appropriate Federal Court;
- (2) All rights to use and protect water rights acquired after the Enforceability Date;

- (3) All rights to use and protect water rights acquired pursuant to state law, to the extent not inconsistent with this Compact;
- (4) All claims relating to activities affecting the quality of water including but not limited to any claims the Tribe might have under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*) (including but not limited to claims for damages to natural resources), the Safe Drinking Water Act (42 U.S.C. 300f, *et seq.*), and the Clean Water Act (33 U.S.C. 1251 *et seq.*), and the regulations implementing those Acts;
- (5) All claims relating to damages, losses, or injuries to land or natural resources not due to loss of water or water rights (including, but not limited to hunting, fishing, gathering, or cultural rights);
- (6) All rights, remedies, privileges, immunities, and powers not specifically waived and released pursuant to this Compact;
- (7) All claims against any person or entity other than the United States, including claims for monetary damages, with respect to claims that first accrued after the Enforceability Date with respect to claims otherwise waived in accordance with subsection (C)(2):
- (8) All claims the Tribe may have against the United States, including claims for monetary damages, with respect to any claim by the Ute Distribution Corporation or mixed-bloods under the Ute Partition Act (25 U.S.C. 677 *et seq.*), to Tribal Water, Tribal Water Rights or Municipal and Industrial Water, except as set forth in this Compact.

Section F. Effect of Section: Nothing in this Section:

- (1) Affects the ability of the United States acting in its sovereign capacity to take actions authorized by law, including but not limited to any laws relating to health, safety, or

the environment, including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act, the Clean Water Act, the Safe Drinking Water Act, the Resource Conservation and Recovery Act, and the regulations implementing such Acts;

(2) Affects the ability of the United States to take actions acting in its capacity as trustee for any other Tribe, Pueblo, or Allottee of any other Indian tribe;

(3) Confers jurisdiction on any State to:

(a) Interpret Federal law regarding health, safety, or the environment or determine the duties of the United States or other parties pursuant to such Federal law; or

(b) Conduct judicial review of Federal agency action;

(4) Waives any claim of a Member of the Tribe in an individual capacity that does not derive from a right of the Tribe;

(5) Affects the authority of the Tribe over its Members who are Allottees.

Section G. Tolling of Claims: Nothing in this Article revives any claim or tolls any period of limitation or time-based equitable defense that expired before the date of enactment of this Compact.

Section H. Delay not a Waiver: No delay or failure by any Party to exercise any right under this Compact, and no partial or single exercise of that right, shall constitute waiver of that or any other right, unless expressly provided herein. No waiver by a Party under this Compact shall affect or alter the remainder of this Compact, and each and every covenant, duty, and condition hereof shall continue in full force and effect with respect to any other then existing and subsequently occurring breach.

13. Art. XXII, Sec. C: New language proposed by the State stating that the Compact is not for the benefit of any third party and does not confer any rights or causes of action upon any person or entity other than the Parties.

Federal Implementation Team Recommendations:

Upon reviewing, the 2009 version of the Compact; the Federal Implementation Team had concerns on language regarding the issue of federal sovereignty. Because of those concerns, the Implementation Team engaged with the State and Tribe regarding the sovereignty issue. Since a change in Tribal leadership in 2010, the Tribe had not engaged in the Compact discussions.

The Team, however, continued to meet with the State and though a series of meetings was successful in including language to address the Federal concerns. The new language had been approved by the Tribe's legal counsel prior to a leadership change and subsequent change in legal counsel.

These slight changes resulted in a version of the Compact dated June 15, 2011. After carefully reviewing the Compact, the Federal Team believed the latest 2011 version was a solid document that provided substantial benefits to the Ute Indian Tribe regarding their water rights.

By August of 2011 the Federal Implementation Team was ready to recommend this version to the Secretary's Indian Water Rights Office. Prior to sending the recommendation, however, the Federal Team met with the Tribe and their legal counsel, at the request of the Tribe and their legal counsel, the recommendation was never sent. The Tribe had begun drafting a new version that substantially differed from the 2009 and 2011 versions.

12. Title V – Ute Indian Rights Settlement

In years prior to 1992, several attempts were made to introduce legislation that would ratify a water compact and settle the Ute Tribes' water rights. On July 13, 1988 Utah Congressman Howard Nielson filed a bill that he titled the Ute Indian Water Settlement Act. Later in 1988 Congressmen Wayne Owens introduced a separate bill, H. R. 5307, titled the Ute Indian Water Rights Settlement of 1988.²³ Although the language in the bills differed on the amount of monetary compensation, both bills provided for Congressional ratification of the 1980 Compact. A hearing was held on H.R. 5307 on October 4, 1988, with many proponents testifying before the Committee on Interior and Insular Affairs. Those testifying in support of H. R. 5307 included:

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| Senator Jake Garn, Utah | Representative Howard Nielson, Utah |
| Dee Hansen, State of Utah | Larry Ross, Duchesne County Commissioner |
| Lester Chapoose, Chairman, Ute Tribe | Irene Cuch, Ute Tribe |
| Wilford Conetah, Ute Tribe | Maxine Natchees, Ute Tribe |
| Gary Poowegup Sr., Ute Tribe | Stephen Boyden, Tribal Attorney |
| Don Christiansen, CUWCD | Mel White, Board Member, CUWCD |
| Leo Brady, Duchesne County Water Resources Board | |

A panel representing the Department of Interior spoke before the Committee and made a statement which opposed the proposed legislation. The panel consisted of:

Richard Whitesell, Acting Deputy to the Assistant Secretary of Indian Affairs
Ray Smith, Bureau of Indian Affairs
Wes Hirschi, Assistant Regional Director, Upper Colorado Region, Bureau of Reclamation
Kirt Carpenter, Manager, Utah Projects Office, Bureau of Reclamation

Ultimately, neither of these bills became law, but the political climate was such that similar bills in support of an Indian rights settlement were forthcoming.

²³ Ute Indian Water Rights Settlement, Hearing, Before the Committee on Interior and Insular Affairs, House of Representatives, One Hundredth Congress, Second Session, on H.R. 5307, UTE INDIAN WATER SETTLEMENT ACT OF 1988, Hearing Held in Washington, DC, October 4, 1988.

Soon after the 1988 bills failed to become law, the Tribe hired Daniel H. Israel as their water attorney, and engaged a new strategy in resolving their water right claims. The strategy shifted to pursuing a financial settlement in lieu of CUP facilities to settle the commitments of the 1965 deferral agreement. A revised version of the 1980 Compact was negotiated with the State of Utah, and at the same time, new settlement language was crafted by Mr. Israel and the Tribe. This language would eventually be included as part of the Central Utah Project Completion Act. The United States was not invited to participate in this process and was left out of any discussions involving the drafting of the 1990 Compact and proposed Settlement language.

The new language proposed by Dan Israel was included in 1990 H.R. 3960 and very nearly became law, but it appears the Senate did not act on the house version before the session ended. Titles I through V of H.R. 3960 are very similar to Titles II through VI of H.R. 429 which became Public Law 102-575.

On October 30, 1992, Congress enacted Public Law 102-575, an omnibus bill entitled “The Reclamation Projects Authorization and Adjustment Act of 1992”. Titles II through VI of this act are known as the Central Utah Completion Act (CUPCA). This includes Title V which is the Ute Indian Rights Settlement.

Title V was enacted by congress as a comprehensive settlement to deal with the issues of un-quantified federal reserved water rights of the Ute Indian Tribe being subject to existing claims and prospective lawsuits and other unresolved tribal claims arising out the 1965 Deferral Agreement.

The Central Utah Project Completion Act Office (CUPCA Office) was established to implement and provide oversight of CUPCA, including Title V. An Implementation Team was established by the Secretary to oversee the implementation of Title V. The Team prepares an annual report and meets periodically to review progress and address issues relating to the implementation of Title V.

In the Deferral Agreement the Tribe deferred, for forty years, the development of a portion of its reserved water rights in order to facilitate the construction of the Bonneville Unit of the Central Utah Project. Certain features contemplated in the Deferral Agreement that would benefit the Tribe were

never constructed. Title V provides financial benefits to the Tribe in lieu of the commitments made in the Deferral Agreement.

The following is a detailed overview of Title V:

Purpose – This Act and the proposed Revised Ute Indian Compact of 1990 are intended to:

- (1) Quantify the Tribe’s reserved water rights;
- (2) Allow increased beneficial use of such water; and
- (3) Put the Tribe in the same economic position it would have enjoyed had the features contemplated by the September 20, 1965 agreement been constructed.

In order to achieve the stated purposes in Title V:

- Section 502 provided for an annual payment to the Tribe, in lieu of storage from the Uintah and Upalco Units;
- Section 503 ratified the 1990 water compact (subject to re-ratification by the State of Utah and the Tribe);
- Section 504 authorized appropriations for Tribal farming operations, individual farming assistance and improvements to the Uintah Indian Irrigation Project that would reduce the Tribe’s O&M costs;
- Section 505 authorized appropriations for reservoir, stream, habitat and road improvements; and
- Section 506 authorized appropriations for a Tribal development fund.

All of the authorized amounts in sections 504, 505, and 506 have been appropriated by Congress, making Title V fully funded as of Fiscal Year 2004. Each section of Title V is discussed in more detail below.

Section 501 – Findings

Section 501(a) discusses four findings, the findings are as follows:

- (1) The unquantified Federal reserved water rights of the Ute Indian Tribe are the subject of existing claims and prospective lawsuits involving the United States, the State, and the District and numerous other water users in the Uintah Basin. The State and the Tribe negotiated, but did not implement, a compact to quantify the Tribe's reserved water rights.
- (2) There are other unresolved tribal claims arising out of an agreement dated September 20, 1965, where the Tribe deferred development of a portion of its reserved water rights for 15,242 acres of the Tribe's Group 5 Lands in order to facilitate the construction of the Bonneville Unit of the Central Utah Project. In exchange the United States undertook to develop substitute water for the benefit of the Tribe.
- (3) It was intended that the Central Utah Project, through construction of the Upalco and Uintah units (Initial Phase) and the Ute Indian Unit (Ultimate Phase) would provide water for growth in the Uintah Basin and for late season irrigation for both the Indian and non-Indian water users. However, construction of the Upalco and Uintah Units has not been undertaken, in part because the Bureau was unable to find adequate and economically feasible reservoir sites. The Ute Indian unit has not been authorized by Congress, and there is no present intent to proceed with Ultimate Phase construction.
- (4) Without the implementation of the plans to construct additional storage in the Uintah Basin, the water users (both Indian and non-Indian) continue to suffer water shortages and resulting economic decline.

Section 501(b) states the purpose of the Act is to:

- (1) Quantify the Tribe's reserved water rights;
- (2) Allow increased beneficial use of such water; and
- (3) Put the Tribe in the same economic position it would have enjoyed had the features contemplated by the September 20, 1965 Agreement been constructed.

Section 502 - Provisions for Payment to the Ute Indian Tribe

Section 502(a) provides for an annual payment to the Tribe in lieu of 35,500 acre-feet of water that would have been supplied to the Tribe by storage from the Central Utah Project had the Upalco and Uintah units been constructed.

The language in Section 502, in addition to the revisions to the 1980 Compact as reflected in the 1990 Compact, is a clear indication that the CUP facilities promised under the 1965 Deferral Agreement were no longer being considered. Rather the Tribe elected to receive a monetary settlement in lieu of storage facilities.

Commencing one year from the date of enactment of this act and continuing for fifty years the Tribe's payment will be 26% of the annual Bonneville Unit municipal and industrial (M&I) capital repayment obligation attributable to 35,500 acre feet of water. Based on that calculation, the current annual payment to the Tribe is \$2,143,668. In 1999 the Central Utah Water Conservancy District (District) prepaid the Bonneville Unit M&I obligation. Sufficient funds from the total prepayment amount were reserved in the Basin Fund for the continuation of this annual payment.

Commencing in the year 2042, the Tribe shall collect from the District 7% of the then fair market value of 35,500 acre-feet of Bonneville Unit agricultural water which has been converted to M&I water. The fair market value of such water shall be recalculated every five years. In the event 35,500 acre-feet of Bonneville Unit converted agricultural water to M&I have not yet been marketed as of the year 2042, the Tribe shall receive 7% of the fair market value of the first 35,500 acre-feet of such water converted to M&I water.

Payments to the Tribe pursuant to Section 502(a) began in FY-1994 and have been made each year since. Initially an account was established in OST in which the annual payment was deposited, thus allowing the Tribe to withdraw these funds using guidelines established by the Tribe and the CUPCA Office. Beginning in 2005, under modified guidelines established and agreed to by the Tribe and the CUPCA Office, it was decided to make the annual payment directly to the Tribe and the OST account was subsequently closed.

| Section 502 Payments | | | |
|----------------------------------|-------------|---------------------|-------------|
| Year | Amount | Year | Amount |
| 1994 | \$1,946,053 | 2004 | \$2,143,668 |
| 1995 | \$1,946,053 | 2005 | \$2,143,668 |
| 1996 | \$1,946,053 | 2006 | \$2,143,668 |
| 1997 | \$1,946,053 | 2007 | \$2,143,668 |
| 1998 | \$2,143,668 | 2008 | \$2,143,668 |
| 1999 | \$2,143,668 | 2009 | \$2,143,668 |
| 2000 | \$2,143,668 | 2010 | \$2,143,668 |
| 2001 | \$2,143,668 | 2011 | \$2,143,668 |
| 2002 | \$2,143,668 | 2012 | \$2,143,668 |
| 2003 | \$2,143,668 | | |
| Total Payments as of 2012 | | \$39,939,232 | |

The monies received by the Tribe under Section 502(a) shall be utilized by the Tribe for governmental purposes, shall not be distributed per capita, and shall be used to enhance the educational, social, and economic opportunities for the Tribe. In order to comply with this provision, the CUPCA Office, the Tribe, and BIA have developed a process where the BIA reviews the Tribe’s annual budget and certifies to the CUPCA Office that the use of Section 502 funds under the Tribe’s FY budget is within the restrictions on the use of these funds as outlined in Section 502. Upon receipt of the BIA’s certification the CUPCA Office requests the Bureau of Reclamation’s finance office to make the payment to the Tribe.

Section 502(b) authorizes the Secretary to make any unused capacity in the Bonneville Unit Strawberry Aqueduct and Collection System diversion facilities available for use by the Tribe. Unused capacity shall constitute capacity, only as available, in excess of the needs of the District for delivery of Bonneville Unit water and for satisfaction of minimum stream flow obligations established by this Act.

The Tribe has not yet requested to take advantage of this provision in Section 502(b) regarding the unused capacity in the above mentioned facilities.

Section 503 – Tribal Use of Water

In Section 503(a) Congress ratified the Revised Ute Indian Compact of 1990 subject to re-ratification by the Tribe and the State of Utah. The Secretary is authorized to take all actions necessary to implement the Compact.

Between 1993 and 2004 the Tribe held meetings regarding the Compact but no real progress was made towards a referendum vote. In 2005 the Tribe authorized their water attorney to enter into more aggressive negotiations with the State of Utah. In September 2009, with the negotiations on the Compact between the Tribe and the State basically completed, the Tribe's Business Committee put the 2009 Revised Compact before a referendum of the Tribal members. The referendum was invalid due to insufficient voter turn-out although of the votes cast, nearly 75% were in favor of the Compact.

In 2011 the Ute Indian Tribe changed legal counsel regarding water issues and is now proposing to begin new negotiations on the Ute Compact. The State has indicated that it will take no action in ratifying the Compact until the Tribe has done so.

Section 504 – Tribal Farming Operations

Section 504 authorizes funding for the Tribe to:

- (1) Develop a seven thousand five hundred acre farming/feed lot operation equipped with satisfactory off-farm and on-farm water facilities out of Tribally-owned lands and adjoining non-Indian lands now served by the Uintah Indian Irrigation Project;
- (2) Develop a plan to reduce the Tribe's expense on the remaining sixteen thousand acres of Tribal land now served by the Uintah Indian Irrigation Project; and
- (3) Develop a fund to permit Tribal members to upgrade their individual farming operations.

All appropriated Title V funds were deposited into interest bearing trust accounts managed by the Office of the Special Trustee for American Indians (OST).

Funding for Section 504 was fully funded after the Fiscal Year 1996 appropriation for a total of \$49,308,000 including indexing.

| Section 504 Appropriations | | | | | |
|-----------------------------------|-----------------------|--------------|--------------|--------------|--------------|
| | FY 1992 Authorized | FY 1993 | FY 1994 | FY 1995 | FY 1996 |
| Ceiling as Indexed | \$45,000,000 | \$46,230,000 | \$47,705,000 | \$33,858,000 | \$19,459,000 |
| Appropriation | | | \$14,698,000 | \$15,151,000 | \$19,459,000 |
| Remaining Authorization | \$45,000,000 | | \$33,007,000 | \$18,707,000 | \$0 |
| Cumulative Appropriation | \$0 | \$0 | \$14,698,000 | \$29,849,000 | \$49,308,000 |

| Section 504 Annual Expenditures and Fund Balances | | | |
|--|--------------------------------|------------------------------|-----------------------------|
| 1992 Authorized | Total Indexed Appropriation | Expended as of 10/31/2012 | Balance as of 10/31/2012 |
| \$45,000,000 | \$49,308,000 | \$46,718,141 | \$45,800,988 |

| Expended FY 1996 | Expended FY 1997 | Expended FY 1998 | Expended FY 1999 | Expended FY 2000 | Expended FY 2001 | Expended FY 2002 | Expended FY 2003 |
|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|
| \$2,000,000 | \$3,323,431 | \$8,529,350 | \$2,945,000 | \$2,906,610 | \$3,214,311 | \$2,173,757 | \$3,164,850 |

| Expended FY 2004 | Expended FY 2005 | Expended FY 2006 | Expended FY 2007 | Expended FY 2008 | Expended FY 2009 | Expended FY 2010 | Expended FY 2011 |
|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|
| \$1,354,319 | \$1,388,673 | \$2,880,068 | \$1,961,343 | \$2,027,080 | \$3,044,074 | \$957,438 | \$957,437 |

| |
|---------------------|
| Expended FY 2012 |
| \$3,890,400 |

Since 1996 the Tribe has used section 504 funding to improve the Tribe’s farming and cattle operation. Two pipeline projects, the Four Corners and the Farm Creek pipelines, to improve the Uintah Indian Irrigation Project, have been completed. Funding is being used to assist Tribal members in upgrading their individual farming operations using policies and guidelines developed by the Tribe and approved by the CUPCA Office.

This is an on-going program as the Tribe accomplishes the objectives outlined in Section 504. Expenditures are about \$2 million per year.

In 2002, the Tribe sought to withdraw the Sections 504 & 505 funds, but OST held they were not subject to withdrawal because they were not Tribal funds under the Reform Act. Section 504 funds were authorized for the “Secretary to permit the Tribe to develop” various projects and Section 505 funds were made available to the Secretary (in cooperation with the Tribe) for specific purposes. In denying the withdrawal request, OST emphasized that “only congressional action can change these provisions.”

In 2005-2006, the Tribe proposed legislation to allow withdrawal of Section 504 & 505 funds from OST (without meeting Reform Act requirements). The proposed legislation was never acted upon in part because the Tribe was unwilling to meet concerns of local water users. In 2006 the Tribe passed a referendum of its members which included (among many other things) a directive that “the Business Committee shall take such steps as are reasonable and necessary to secure the administrative withdrawal of the Section 504 and Section 505 Funds.”

Late in 2006, the Tribe filed suit in the United States Court of Claims seeking monetary damages for breaches of trust and fiduciary duties in the management all Title V funds (as well as any others Tribal funds managed by OST). In addition, the Tribe was seeking an accounting, reconciliation, and certification of those funds. The Tribe’s suit joined those of hundreds of other tribes that were meeting a December 31, 2006, deadline for the filing of such lawsuits.

The Ute Tribe ultimately negotiated an out of court settlement resulting in the Tribe receiving about \$125 million.²⁴

Section 505 – Reservoir, Stream, Habitat and Road Improvements with respect to the Ute Indian Reservation

Section 505 authorizes funding for Reservoir, Stream, and Habitat improvements on the Ute Indian Reservation as described below. Section 505 was fully funded after the Fiscal Year 2004 appropriation. Section 505 was funded by sub-sections and deposited into an interest bearing trust account managed by the Office of the Special Trustee for American Indians.

²⁴ Settlement Agreement between Ute Indian Tribe of the Uintah and Ouray Reservation (plaintiff) and the United States, in the United States Court of Claims, Case NO. 06-866E-MCW, signed on March 8, 2012.

Section 505(a) Repair of Cedarview Reservoir:

A total of \$6,636,125 was appropriated and made available to the Secretary, in cooperation with the Tribe to repair the leak in Cedarview Reservoir.

| Section 505(a) Appropriations | | | | |
|--------------------------------------|-----------------------|-------------|----------------|-------------|
| | FY 1992 Authorized | FY 1996 | FY 1998 | FY 2004 |
| Ceiling as Indexed | \$5,000,000 | \$5,564,000 | \$3,957,000 | \$6,472,000 |
| Appropriation | | \$1,651,000 | *(\$1,486,875) | \$6,472,000 |
| Remaining Authorization | \$5,000,000 | \$3,913,000 | \$5,443,875 | \$0 |
| Cumulative Appropriation | | \$1,651,000 | \$164,125 | \$6,636,125 |

*Transferred from the 505(a) account to the 505(b) account

| Section 505(a) Cedar View Reservoir Annual Expenditures and Fund Balances | | | |
|--|--------------------------------|------------------------------|-----------------------------|
| 1992 Authorized | Total Indexed Appropriation | Expended as of 10/31/2012 | Balance as of 10/31/2012 |
| \$5,000,000 | \$6,636,125 | \$5,469,792 | \$3,490,802 |

| Expended FY 1998 | Expended FY 1999 | Expended FY 2000 | Expended FY 2001 | Expended FY 2002 | Expended FY 2003 | Expended FY 2004 | Expended FY 2005 |
|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|
| \$90,129 | \$14,991 | \$0 | \$61,650 | \$0 | \$0 | \$0 | \$0 |

| Expended FY 2006 | Expended FY 2007 | Expended FY 2008 | Expended FY 2010 | Expended FY 2011 | Expended FY 2012 |
|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|
| \$0 | \$0 | \$195,294 | \$1,872,260 | \$1,688,853 | \$127,048 |

Cedarview Reservoir was drained in 2008 and the Tribe entered into a contract with the Bureau of Reclamation to identify and treat areas of possible leakage within the reservoir and to design and implement a repair of Cedarview Dam. Design was completed in early 2009 and construction began in May of 2009. Work continued through the summers of 2009, 2010, 2011, and was completed in 2011. Now that the work is completed Cedarview Reservoir should be a much improved recreation area with a viable fishery for Tribal members.



Cedarview Dam & Reservoir after repairs were completed



Cedarview Reservoir with view of new boat ramp



Day use recreation facilities at Cedarview Reservoir



Day use facilities at Cedarview Reservoir

Section 505(b) Reservation Stream Improvements:

A total of \$13,449,875 was appropriated and made available to the Secretary, in cooperation with the Tribe and in consultation with the Utah Reclamation Mitigation and Conservation Commission (Commission) to improve stream habitat on 53 linear miles on Pole Creek, Rock Creek, Yellowstone River, Lake Fork River, Uinta River, and Whiterocks River.

| Section 505(b) Appropriations | | | |
|--------------------------------------|--------------------|--------------|--------------|
| | FY 1992 Authorized | FY 1998 | FY 2004 |
| Ceiling as Indexed | \$10,000,000 | \$11,966,000 | \$11,963,000 |
| Appropriation | | *\$1,486,875 | \$11,963,000 |
| Remaining Authorization | \$10,000,000 | \$10,479,125 | \$0 |
| Cumulative Appropriation | | \$1,486,875 | \$13,449,875 |

*Transferred from the 505(a) account to the 505(b) account

| Section 505b Stream Improvements Annual Expenditures and Fund Balance | | | |
|--|--------------------------------|------------------------------|-----------------------------|
| 1992 Authorized | Total Indexed Appropriation | Expended as of 10/31/2012 | Balance as of 10/31/2012 |
| \$10,000,000 | \$13,449,875 | \$2,742,072 | \$16,338,681 |

| Expended FY 1999 | Expended FY 2000 | Expended FY 2001 | Expended FY 2002 | Expended FY 2003 | Expended FY 2004 | Expended FY 2005 | Expended FY 2006 |
|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|
| \$111,058 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$136,800 |

| Expended FY 2007 | Expended FY 2008 | Expended FY 2009 | Expended FY 2010 | Expended FY 2011 | Expended FY 2012 |
|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|
| \$0 | \$0 | \$2,236,502 | \$252,712 | \$5,000 | \$0 |

In 2009 the Tribe utilized \$1.7 million of Section 505(b) funds, as a cost share with the Commission, to build a fish hatchery. Construction on the Big Springs Fish Hatchery was initiated in June 2009 and completed November 2010. The Commission was responsible for providing 75% of the construction cost. Funds were provided through the American Recovery and Reinvestment Act of 2009. The first stocking was made in May 2012 to Midview Reservoir.



Big Springs Fish Hatchery

The hatchery will help the Tribe meet its long-term fish stocking needs and management objectives for providing cold-water sport fishing opportunities. It will also help conserve Colorado River cutthroat trout in its historic range in Utah. Under the Fish Hatchery Production Plan, other fish species that may be reared here are rainbow, brown, brook and lake trout.

The Tribe is in the planning and design phase on stream improvement projects.

505(c) Bottle Hollow Reservoir:

A total of \$555,000 was appropriated and made available to permit the Secretary²⁵ to:

- (1) Clean the Bottle Hollow Reservoir of debris and trash resulting from a submerged sanitary landfill,
- (2) Remove all non-game fish and,

²⁵ Section 505(c) differs from other sections in 505, in that it does not require consultation with the Tribe.

- (3) Secure a minimum flow of water to the reservoir to make it a suitable habitat for a cold water fishery.

| Section 505(c) Appropriations | | |
|--------------------------------------|--------------------|-----------|
| | FY 1992 Authorized | FY 1996 |
| Ceiling as Indexed | \$500,000 | \$555,000 |
| Appropriation | | \$555,000 |
| Remaining Authorization | \$500,000 | \$0 |
| Cumulative Appropriation | | \$555,000 |

| Section 505c Bottle Hollow Reservoir Annual Expenditures and Fund Balance | | | |
|--|--------------------------------|------------------------------|-----------------------------|
| 1992 Authorized | Total Indexed Appropriation | Expended as of 10/31/2012 | Balance as of 10/31/2012 |
| \$500,000 | \$555,000 | \$20,000 | \$1,062,546 |

| Expended FY 1998 | Expended FY 1999 |
|---------------------|---------------------|
| \$10,000 | \$10,000 |

The name Bottle Hollow is derived from the time when the U.S. Army occupied Fort Duchesne. It is said that the soldiers routinely left the post to drink, and on the way back to the Fort they threw their empty bottles into a ravine. The ravine has since become known as Bottle Hollow.

Bottle Hollow Dam was constructed in the late 1960's early 70's as a mitigation measure to replace the loss of fisheries incurred on the reservation as a result of water lost through Bonneville Unit diversions from Rock Creek. Along with the 12,000 acre foot reservoir, mitigation also included the construction of the Bottle Hollow Complex adjacent to Highway 40 near Fort Duchene. The Bottle Hollow Complex consisted of recreational amenities, including a motel, swimming pool, crafts store, restaurant and office buildings. The buildings were designed to have a unique Native American look that blended into the surrounding landscape of red sandstone. In the years since its construction, the Bottle Hollow Complex fell into disrepair and, with the exception of one teepee shaped building, has been torn down.



*Bottle Hollow Resort dedicated in July of 1971 and featured Paul Harvey as speaker
Vernal (UT) Express Photograph Collection*

Bottle Hollow Reservoir was filled initially in 1972 using excess flows from the Uintah River delivered through the Bench Canal. The Bench Canal is part of the Uintah Indian Irrigation Project operated by the BIA. Reclamation planned to provide a permanent water supply for the reservoir from the Uintah Unit.

Since its construction the Bottle Hollow Reservoir has suffered from an inadequate water supply, which likely contributes to its failure to support a cold water fishery. In fact, since the Uintah Unit was not constructed, Bottle Hollow has no water supply except what BIA is able to provide from excess flows from the Uintah River during periods of high run-off, and as pass through flows that are released back into the Uintah River and re-diverted into the Henry Jim Canal.

Its failure as a cold-water fishery disappointed tribal leaders, some of whom became concerned that the reservoir site may be contaminated, thus the language in section 505(c) directing the Secretary to clean the Bottle Hollow Reservoir of debris and trash resulting from a submerged sanitary landfill.

In 1989, prior to the passage of the Title V legislation, in order to repair the outlet gates on Bottle Hollow Reservoir, the reservoir was drained. BIA drained the reservoir and the Bureau of

Reclamation repaired the gates. While the reservoir was empty and dry, items (1) & (2) above were addressed. Since the reservoir was empty and dry, all the fish were completely eliminated. Upon the initial construction of Bottle Hollow Reservoir, before the reservoir began filling, Reclamation had performed a thorough clean up. However, in 1991 while the reservoir was empty efforts were made to locate any source of contamination. After an extensive search the purported “submerged sanitary landfill” could not be located.

The following article was published in the Deseret News on May 7, 1992:

After sitting empty for the past two years, Bottle Hollow Reservoir, a popular fishing and boating spot 10 miles east of Roosevelt, is slowly being refilled.

The reservoir is owned and operated by the Ute Indian Tribe in conjunction with the Bureau of Indian Affairs (BIA). Workers began draining the reservoir in 1989 in order to repair an outlet works gate that had become inoperable. “We had concerns about the safety of people living below the reservoir,” stated Fred Chavez, BIA Land Operation manager. “The gate stems were damaged, and we couldn’t open them completely. Because we couldn’t open the gates, we asked the tribe if we could drain the entire reservoir in order to correct the problem. It was the only option we had.”

At the same time faulty gates plagued operations at the reservoir, so did stagnant conditions that resulted in the deterioration of the fish population and the decline of recreational activities.

“We were already having problems with the anchor worms on the fish. It didn’t affect the quality of the meat, but it looked ugly on the fish. People were getting discouraged. They determined it was due to a lack of circulation,” Chavez explained. Trash fish had also invaded the waters.

The complete drainage of the reservoir also allowed core samples to be taken to determine if suspected contamination may have been responsible for less than ideal conditions that had cropped up just prior to 1989.

The reservoir was built on a dump site used in the late 1800s by members of the U.S. Cavalry stationed at Fort Duchesne.

However, according to Lynn Hansen, BIA Project manager, the samples were inconclusive and basically turned up just small amounts of naturally occurring mercury.

New methods of filling the lake are expected to eliminate stagnate conditions and create enough oxygen for fish to thrive.

“Bottle Hollow is in the process of being refilled by the Bench Canal just to the west. To increase circulation, fresh water from the Uinta River will be diverted through the reservoir, then run into the Henry Jim Canal,” Hansen said.

Chavez estimates rainbow and brook trout won’t be restocked in the lake until September or October, providing there’s sufficient water to prevent winter kill from freezing conditions.

“It’s a matter of how much water we can get in to ensure the survival of the fish. We’re at the mercy of Mother Nature. It’s only 60 or 70 percent of a normal water year, and we have to depend on runoff to fill the reservoir. If we don’t get any more water this year, it will take about two or 2 1/2 years to completely fill it.”

Bottle Hollow Reservoir was built 20 years ago by the Bureau of Reclamation to mitigate the impacts of the Central Utah Project by providing 400 surface acre-feet of water or the tribe, said Chavez.

\$20,000 of 505(c) funds were expended in 1998 and 1999 for a study proposed by the Tribe to analyze possible alternatives to develop a suitable cold water fishery in Bottle Hollow. Since then, however no further action has been taken in regards to section 505(c).

505(d) Minimum Stream Flows

No funding is associated with Section 505(d). This section directs the Secretary to endeavor to maintain continuous releases into Rock Creek to maintain flows of 29 cubic feet per second during the summer and 23 cubic feet per second during the winter measured at the reservation boundary.

Shortly after the passage of Title V, the Tribe and their attorney Dan Israel, who drafted the Title V legislation, expressed their concern over the language in the legislation and contended that the flows in Rock Creek should have been measured at Stillwater Dam rather than at the reservation boundary. There are several small tributaries that add water to Rock Creek between Stillwater Dam and the reservation boundary. In H.R. 5307, as proposed by Congressman Owens in 1988, minimum flows in Rock Creek would have been measured at Stillwater Dam. That language changed in the 1990 version of H.R. 3960 and remained the same in the final version of H.R. 429 which became the enacted legislation.

The requirement of the legislation stands. However, based on the 1980 Stream Flow Agreement as amended in 1993, the Interagency Biological Assessment Team (IBAT) was established to recommend flow regimes for various streams affected by the Central Utah Project. The IBAT's recommendation for Rock Creek closely matches the flows of the earlier proposed legislation and with the Tribe's position. The IBAT's recommended winter regimen flows in Rock Creek are 19 cfs from the dam and 4 cfs from the South Fork of Rock Creek, which is released at Docs Diversion into Rock Creek just downstream from Stillwater Dam. The summer regimen of 29 cfs, has 21 cfs coming from the dam and 8 cfs coming from South Fork.

By following IBAT's recommendations the CUWCD essentially accomplishes what the Tribe had asked for, of 29 cubic feet per second during the summer and 23 cubic feet per second during the

winter measured at Stillwater Dam. Records indicate that flows have met or exceeded the requirement each day since monitoring began in 1994.²⁶

505(e) Land Transfer

No funding is associated with Section 505(e). The Bureau shall transfer 315 acres of land to the Forest Service, located at the proposed site of the Lower Stillwater Reservoir as a wildlife mitigation measure. The earlier 1988 versions had the land being transferred to the Tribe, but the final enacted legislation transferred the 315 acres to the Forest Service.

505(f) Recreation Enhancement

A total of \$11,335,000 was appropriated to develop big game hunting, fisheries, campgrounds and fish and wildlife management facilities on the reservation.

| Section 505(f) Appropriations | | | | |
|--------------------------------------|--------------------|--------------|-------------|--------------|
| | FY 1992 Authorized | FY 1994 | FY 1995 | FY 1996 |
| Ceiling as Indexed | \$10,000,000 | \$10,880,000 | \$8,803,000 | \$3,335,000 |
| Appropriation | | \$2,500,000 | \$5,500,000 | \$3,335,000 |
| Remaining Authorization | \$10,000,000 | \$8,380,000 | \$3,303,000 | \$0 |
| Cumulative Appropriation | | \$2,500,000 | \$8,000,000 | \$11,335,000 |

| Section 505f Recreation Enhancement Annual Expenditures and Fund Balance | | | |
|---|-----------------------------|---------------------------|--------------------------|
| 1992 Authorized | Total Indexed Appropriation | Expended as of 10/31/2012 | Balance as of 10/31/2012 |
| \$10,000,000 | \$11,335,000 | \$9,627,011 | \$11,681,823 |

| Expended FY 1997 | Expended FY 1998 | Expended FY 1999 | Expended FY 2000 | Expended FY 2001 | Expended FY 2002 | Expended FY 2003 | Expended FY 2004 |
|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| \$1,114,386 | \$1,418,694 | \$1,630,486 | \$0 | \$1,053,522 | \$117,649 | \$1,216,853 | \$525,142 |

| Expended FY 2005 | Expended FY 2006 | Expended FY 2007 | Expended FY 2008 | Expended FY 2009 | Expended FY 2010 | Expended FY 2011 | Expended FY 2012 |
|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| \$0 | \$459,458 | \$495,166 | \$0 | \$1,195,655 | \$400,000 | \$0 | \$0 |

²⁶ Central Utah Water Conservancy District, SCATA records.

This fund is heavily used by the Tribe on an annual basis to develop and enhance hunting, fishing, and recreation on the reservation. Notable accomplishments include the construction of a fish and wildlife administration building, a bison management facility, and various new or improved camping and recreation facilities within the reservation.

505(g) Municipal Water Conveyance System

A total of \$4,209,000 was appropriated for participation by the Tribe in the construction of pipelines associated with the Duchesne County Municipal Water Conveyance System.

| Section 505(g) Appropriations | | | |
|--------------------------------------|--------------------|-------------|-------------|
| | FY 1992 Authorized | FY 2003 | FY 2004 |
| Ceiling as Indexed | \$3,000,000 | \$4,147,000 | \$2,405,000 |
| Appropriation | | \$1,804,000 | \$2,405,000 |
| Remaining Authorization | \$3,000,000 | \$2,343,000 | \$0 |
| Cumulative Appropriation | | \$1,804,000 | \$4,209,000 |

| Section 505g Municipal Water Systems Annual Expenditures and Fund Balance | | | |
|--|--------------------------------|------------------------------|-----------------------------|
| 1992 Authorized | Total Indexed Appropriation | Expended as of 10/31/2012 | Balance as of 10/31/2012 |
| \$3,000,000 | \$4,209,000 | \$0 | \$5,783,295 |

The Tribe has not yet requested any funding under 505(g).

Decision to restrict expenditures to interest income only:

The Tribal Business Committee, by Resolutions 96-198, dated October 7, 1996, and 96-240, dated December 5, 1996, restricted the use of sections 504 and 505 funds to interest accrued on the invested principal. In the resolution, the principal was deemed to be the amounts identified in the legislation and did not include any indexing which subsequently increased the actual amounts that were appropriated after the enactment of CUPCA.

In 2007 the restriction on the 505(a) funds was withdrawn in order to complete the repairs to Cedar View Dam.

Section 506

Section 506 authorized funding for the Secretary to establish a Tribal Development Fund. Section 506 was fully funded after the Fiscal Year 2004 appropriation for a total of \$172,195,000 including penalty and indexing.

| Section 506 Appropriations | | | | | |
|-----------------------------------|--------------------|---------------|---------------|---------------|---------------|
| | FY 1992 Authorized | FY 1997 | FY 1998 | FY 1999 | |
| Ceiling, Indexed and penalty | \$125,000,000 | \$144,807,000 | \$123,763,000 | \$101,159,000 | |
| Appropriation to Principle | | \$25,000,000 | \$23,519,000 | \$21,830,000 | |
| Appropriation to Penalty | | | \$1,481,000 | \$3,170,000 | |
| Remaining Authorization | \$125,000,000 | \$119,807,000 | \$98,763,000 | \$76,159,000 | |
| Cumulative Appropriation | | \$25,000,000 | \$50,000,000 | \$75,000,000 | |
| | FY2000 | FY2001 | FY 2002 | FY 2003 | FY 2004 |
| Ceiling, Indexed and penalty | \$81,483,000 | \$63,275,000 | \$42,927,000 | \$22,707,000 | -\$62,000 |
| Appropriation to Principle | \$19,838,000 | \$20,895,000 | \$22,008,000 | \$21,507,000 | -\$56,000 |
| Appropriation to Penalty | \$5,045,000 | \$3,988,000 | \$2,720,000 | \$1,256,000 | -\$6,000 |
| Remaining Authorization | \$56,600,000 | \$38,392,000 | \$18,199,000 | -\$56,000 | \$0 |
| Cumulative Appropriation | \$99,883,000 | \$124,766,000 | \$149,494,000 | \$172,257,000 | \$172,195,000 |

| Section 506 Annual Expenditures and Fund Balance | | | |
|---|-----------------|-----------------------------|---|
| | 1992 Authorized | Total Indexed Appropriation | Expended or Withdrawn as of 3/17/2005 |
| | \$125,000,000 | \$172,195,000 | \$217,872,265 |
| Appropriation to Principal | \$154,541,000 | | Includes \$181,911,376.81 that was withdrawn from OST on March 17, 2005 |
| Appropriation to Penalty | \$17,654,000 | | |

| Expended FY 1997 | Expended FY 1998 | Expended FY 1999 | Expended FY 2000 | Expended FY 2001 | Expended FY 2002 | Expended FY 2003 | Expended FY 2004 |
|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| \$89,266 | \$4,438,114 | \$3,740,219 | \$6,706,276 | \$5,146,725 | \$12,850,000 | \$2,128,563 | \$861,725 |

Language in the authorizing legislation directed that the Tribal Development Fund be established with only the interest generated from the invested principal available to the Tribe for economic development projects.

The Tribe was required to prepare a Tribal Development Plan for all or a part of this Tribal Development Fund.

“Such Tribal Development Plan shall set forth from time to time economic projects proposed by the Tribe which in the opinion of two independent financial consultants are deemed to be reasonable, prudent and likely to return a reasonable investment to the Tribe. The financial consultants shall be selected by the Tribe with the advice and consent of the Secretary.”

Consultants submitted by the Tribe and approved by the Secretary include:

- Craig Lawson, CPA
- Ernst & Young, LLP
- First Security Bank, N. A.
- Grant Thornton, LLP
- Hansen, Barnett & Maxwell, CPA
- KPMG Peat Marwick, LLP
- Merrill Lynch
- Parry Lawrence & Ward, Law Office
- Squires & Company, CPA
- University of Utah
- Utah State University
- Zion’s First National Bank

In 2005, the Tribe withdrew the Section 506 funds from OST management under the provisions of the Indian Trust Fund Reform Act of 1994. The Secretary no longer supervises the Section 506 funds. Notable projects completed by the Tribe prior to 2005 include; the Ute Plaza grocery store, two gas station\convenience stores, a water bottling facility, a water hauling business and the purchase of a strip mall complex located off the reservation in Cheyenne, Wyoming.

The following table is a list of approved Section 506 Economic Development Projects. The amounts listed are project costs and do not include other costs such as administration, planning and consultant fees.

| Approved Section 506 Economic Development Projects Prior to the Tribes Withdrawal of the funds in 2005 | | | |
|---|-------------------------------------|--|----------------------|
| Project Name | Date Approved by CUPCA Office | Independent Financial Consultants | Amount Authorized |
| UDC Stock Purchase | March 10, 1998 | First Security Bank, and KMPG Peat Marwick LLP | \$250,000 |
| Ute Plaza Grocery Store | May 22, 1998 | Grant Thornton LLP, and KMPG Peat Marwick LLP | \$3,137,237 |
| Gas Station/Truck Stop & Convenience Store | June 17, 1998 | Grant Thornton LLP, and Lawson & Company P.C. | \$899,599 |
| Ute Finance Company | January 25, 1999 | Lawson & Company P.C. and Squire & Company P.C. | \$1,000,000 |
| Ute Plaza Grocery Store Inventory Security Deposit | August 18, 1999 | Grant Thornton LLP, and Squire & Company P.C. | \$212,500 |
| Water Hauling Business | October 5, 1999 | Lawson & Company P.C. and Squire & Company P.C. | \$776,154 |
| Cattle Investment Company | October 20, 1999 | Grant Thornton LLP, and Zions First National Bank | \$3,170,000 |
| Bottled Water Facility | April 14, 2000 | Squire & Company P.C. and Hansen Barnett & Maxwell P.C. | \$2,416,000 |
| Myton Truck Stop Facility | June 5, 2000 | Squire & Company P.C. and Hansen Barnett & Maxwell P.C. | \$900,000 |
| Uintah River Technology LLC Business | January 9, 2001 | Grant Thornton LLP, and Barnett, & Maxwell P.C. | \$2,235,000 |
| Dell Range Marketplace, Cheyenne, WY | August 13, 2002 | Lawson & Company P.C. and Squire & Company P.C. | \$11,150,000 |

Section 507. Waiver of Claims

(a) Authorizes the Tribe to waive and release claims concerning or related to water rights as described below.

(b) The Tribe shall waive, upon receipt of the section 504, 505, and 506 moneys, any and all claims relating to its water rights covered under the agreement of September 20, 1965, including claims by the Tribe that it retains the right to develop lands as set forth in the Ute Indian Compact and deferred in such agreement. Nothing in this waiver of claims shall prevent the Tribe from enforcing rights

granted to it under this Act or under the Compact. To the extent necessary to effect a complete release of the claims, the United States concurs in such release.

(c) In the event the Tribe does not receive on a timely basis the moneys described in section 502, the Tribe is authorized to bring an action for an accounting against the United States, if applicable, in the United States Claims Court for moneys owed plus interest at 10 percent, and against the District, if applicable, in the United States District Court for the District of Utah for moneys owed plus interest at 10 percent. The United States and the District waive any defense based upon sovereign immunity in such proceedings.

In 1993, the Regional Solicitor in Salt Lake City issued a memorandum addressing whether the Tribe would need to execute a waiver of claims once the Secretary secured the necessary appropriations for sections 504 through 506. The memorandum concluded that the Settlement did not require further action by the Tribe to waive its claims once the Secretary received and deposited these funds into appropriate U.S. Treasury accounts.

For informational purposes: the table on the following page compares the proposed 1988 settlement to Title V.

1988 proposed Settlement

Title V – Ute Indian Rights Settlement

| Would have ratified the 1980 Compact | | Ratified the 1990 Compact | | |
|---|---|---------------------------|--|---|
| Study by CUWCD & Tribe to rehab the UIIP | \$1,000,000.00 | | Section 504 - Tribal Farm, Individual Farm Improvement, & UIIP Rehab | \$45,000,000.00 |
| UIIP Rehab | \$75,000,000.00 | | | |
| Trust fund for the deferred use of 15,252 acres | \$150,000,000.00 | | Section 506 Economic Development Fund | \$125,000,000.00 |
| Repair Cedarview Reservoir | \$250,000.00 | | Section 505(a) | \$5,000,000.00 |
| Stream Improvement | \$7,000,000.00 | | Section 505(b) | \$10,000,000.00 |
| Bottle Hollow Reservoir Clean-up | \$500,000.00 | | Section 505c | \$500,000.00 |
| Fish & Wildlife and recreation enhancement | \$30,000,000.00 | | Section 505(f) | \$10,000,000.00 |
| Water Fowl Management Area on Duchesne River | \$2,200,000.00 | | Lower Duchesne Wetlands Funded through Section 315 of CUPCA | \$24,000,000.00 |
| Authorization to contract UIIP | No funding associated with this authorization | | Section 203(f) of CUPCA | No funding associated with this authorization |
| | | | Section 505(g) Municipal Water Conveyance System | \$3,000,000.00 |
| \$265,950,000.00 | | \$222,500,000.00 | | |

| | | | | |
|---|-------------------------|--|---|---|
| Study by CUWCD & Tribe for alternate designs for storage facilities | \$2,000,000.00 | Tribe would have gotten about 47% of the Benefit | Section 502 annual payment in perpetuity because storage not received from Uintah & Upalco Units. Paid from Bonneville Unit Repayment Obligations | Current payment \$2,143,668 per year |
| Construct access road from Mountain Home to Taskeech Dam | \$3,300,000.00 | | | Total received as of 2012 |
| Taskeech Dam/Upalco Unit | \$93,300,000.00 | | | \$39,939,232 |
| Whiterocks Dam/Uintah Unit | \$150,000,000.00 | | | |
| | \$248,600,000.00 | | | |
| | \$116,842,000.00 | | 47% of total | |

13. Current Status

There is still much debate as to whether Title V fully satisfied or settled the Tribes water right claims. In 2011 the Tribe changed their legal counsel and hired a new law firm to advise them concerning water issues. At the advice of their attorneys, the Tribe has proposed a revised compact which differs from the previous versions. Both the Department of the Interior and the State of Utah has advised the Tribe that they do not support the new proposed compact.

The Tribe's position is:

That substantive Reserved Water Rights claims remain unresolved and require reinitiating settlement negotiations between the Federal Government and the Tribe in order to complete a comprehensive negotiated settlement of the Tribe's Reserved Water Rights.²⁷

The United States position is:

That the 1992 Settlement Act, which was fully funded in 2004, intended to resolve all of the Tribe's reserved water rights claims, including issues arising under the 1965 Deferral Agreement.²⁸

The State of Utah's does not support the Tribe's latest compact proposal, and has said that the concessions to the 1990 compact resulting in the revised 2009 version were as far as they could go.

In a letter to the Tribe dated December 17, 2012 the State said the following:

“We emphasize that virtually all the changes and revisions to the Compact from 1980 to 2009 were made to accommodate or address Tribal concerns.”²⁹

“At the July meeting Tribal representatives stressed that any settlement of the Tribe's reserved water rights must be acceptable to Tribal members and their concerns. While we appreciate that proposition, the same applies for the State of Utah and its citizens. Any settlement must

²⁷ Memorandum to Anne J. Castle, Assistant Secretary for Water and Science, Alletta Belin, Counselor to the Deputy Secretary, dated July 13, 2012 from Tom Fredericks of Fredericks, Peebles & Morgan, Attorneys at Law.

²⁸ Letter to Honorable Irene C. Cuch, Chairwoman, Ute Tribal Business Committee, from Alletta Belin, Counselor to the Assistant Secretary, and Anne J. Castle, Deputy Secretary for Water and Science, dated October 12, 2012.

²⁹ Letter from the State of Utah to Irene Cuch, Chairwoman, Ute Tribe, dated December 17, 2012.

be one on which we can garner support from the non-Indian water users in the Uintah Basin because the Utah Legislature will not ratify a settlement that does not have the support of the non-Indian water user community. We do not believe the recent Tribal proposal comes close to being a document that would be acceptable to non-Indian water users in the Basin.”

On January 24, 2014, the State sent the Tribe’s legal counsel a letter in which they stated the following:

“Just over a year ago, on December 17, 2012, we sent you a letter outlining our initial response to your Compact rewrite. We pointed out, in particular, that certain changes to the document were so likely to lead to its failure that, as a matter of time management if nothing else, we needed to reach agreement on those issues before we tried to work on the numerous other changes you proposed. Since we wrote that letter we have not deviated from it and are not inclined to do so now.”³⁰

Although not everyone agrees on the current version of the Compact, all parties agree that for Title V to be fully implemented, the 1990 Compact, or an acceptable revised version, must be ratified by the Tribe and the State. If the Tribe and the State ratify a version that differs significantly from the 1990 Compact, it will likely need further action from Congress.

Indian water rights are complex and those of the Ute Tribe are no exception. Although, over the last forty years, significant progress has been made in quantifying and settling the Ute water rights, there is still much to be accomplished.

The Department of the Interior through the CUPCA Office continues to oversee the implementation of the settlement as outlined in Title V. The Tribe and its legal team continue to push for revisions to a compact and what they believe is a fair and comprehensive settlement. We all wait to see what happens next.

³⁰ Letter from the State of Utah to Thomas W. Fredericks, Fredericks Peebles & Morgan LLP, dated January 24, 2014.