

DISTRICT COURT, WATER DIVISION 7, COLORADO

Case No. W-1603-76H

DEC 19 1991

CONSENT DECREE

DEC 30 1991

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF THE UNITED STATES OF AMERICA (BUREAU OF INDIAN AFFAIRS, SOUTHERN UTE AND UTE MOUNTAIN UTE INDIAN TRIBES) FOR CLAIMS TO THE DOLORES RIVER IN WATER DIVISION NO. 7, COLORADO

THIS MATTER having come before the Water Court on the Application of the United States of America on behalf of the Bureau of Indian Affairs, the Southern Ute Indian Tribe, and the Ute Mountain Ute Indian Tribe for execution and approval of a Consent Decree based on a Stipulation for a Consent Decree entered into by the State of Colorado, the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, and the United States of America, dated November 12, 1991, and filed with the Court on November 13, 1991; AND the Court having heard the testimony, statements of counsel and otherwise being fully advised in this matter, does hereby FIND, CONCLUDE, ORDER AND DECREE as follows:

1. Name, Address and Telephone No. of Applicant:

United States of America

c/o John P. Lange

United States Department of Justice

Environment and Natural Resources Division JAN 02 1992

Indian Resources Section

999 18th Street, Suite 945

Denver, Colorado 80202

Telephone: (303) 294-1900

2. The Stipulation for a Consent Decree in this case is based on the Colorado Ute Indian Water Rights Final Settlement Agreement of December 10, 1986, (hereinafter Settlement Agreement), and the Colorado Ute Indian Water Rights Settlement Act of 1988, Pub. L. 100-585 (102 Stat. 2973), (hereinafter Settlement Act). All Objectors in this case were sent copies of the Settlement Agreement and Settlement Act by Order of this Court dated November 21, 1988.

3. The Court has jurisdiction over the subject matter of this Application and over all those persons and entities who have standing to appear as parties, whether they have appeared or not.

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4. By Notice and Order dated November 13, 1991, all Objectors were notified that the Stipulation for a Consent Decree in this case had been filed with the Court and that any objections to the Stipulation for a Consent Decree were required to be filed with the Court no later than December 3, 1991. The Court further notified all Objectors that hearings on the Application of the United States and the Stipulation for a Consent Decree would be heard on December 19, 1991, commencing at 2:00 p.m.

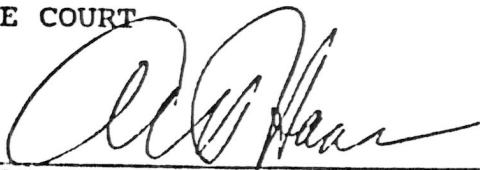
5. No Objector in this case filed any opposition to the Stipulation for a Consent Decree in Case No. W-1603-76H; nor did any Objector oppose the Application or the Stipulation at the December 19, 1991, hearing.

6. The Court has reviewed the Stipulation for a Consent Decree and finds and concludes that the matters set forth therein are fair and reasonable, and further finds and concludes that the Stipulation for a Consent Decree meets the requirements of all applicable State and Federal law. The Court, therefore, adopts as its findings of fact, conclusions of law and Decree, the Stipulation for a Consent Decree made by the State of Colorado, the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, and the United States, including the Exhibits attached thereto, and hereby expressly incorporates by reference the Stipulation for a Consent Decree and the Exhibits attached thereto in their entirety as though set forth fully herein.

7. The Court FURTHER FINDS AND CONCLUDES that the State, the Tribes and the United States have jointly certified that the contingencies set forth in Paragraph 15 of the Stipulation for a Consent Decree relating to the State and Federal Tribal Development Funds appropriations, State-Towaoc Pipeline appropriations, and State-Ridges Basin appropriations have been accomplished to their satisfaction and that they further have jointly certified, pursuant to page 62 of the Settlement Agreement, that the legislative enactments necessary to implement the Settlement Agreement have been obtained to their satisfaction.

Executed and approved by the Court this 19th day of December, 1991.

BY THE COURT



AL HAAS

JUDGE, WATER DIVISION NO. 7

DISTRICT COURT, WATER DIVISION 7, COLORADO

Case No. W-1603-76H

STIPULATION FOR A CONSENT DECREE

IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF THE  
UNITED STATES OF AMERICA (BUREAU OF INDIAN AFFAIRS,  
SOUTHERN UTE AND UTE MOUNTAIN UTE INDIAN TRIBES) FOR CLAIMS  
TO THE DOLORES RIVER IN WATER DIVISION NO. 7, COLORADO.

Based on the Colorado Ute Indian Water Rights Final Settlement Agreement of December 10, 1986, and the Colorado Ute Indian Water Rights Settlement Act of 1988, Public Law 100-585 (102 Stat. 2973), the undersigned parties request the Court to approve this Stipulation as proposed which shall become the Final Consent Decree in this case in accordance with the terms of paragraph 15.

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### STIPULATIONS

#### 1. FILING

On December 29, 1976, the United States of America (hereafter United States) filed an application for confirmation of the reserved rights held by the United States in trust for the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe and individual Indians owning trust allotments on the Southern Ute Indian Reservation and by the Bureau of Indian Affairs. The application was assigned Case No. W-1603-76. It sought confirmation of reserved water rights on the Navajo, Blanco, San Juan, Piedra, Pine, Florida, Animas, La Plata, Mancos, and Dolores Rivers, and McElmo Creek, as described in the application. At the behest of the Water Clerk of Water Division No. 7 on February 2, 1977, the United States amended its application and filed eleven separate amended applications, each amended application covering water rights associated with the specific river identified in the amended application. This Stipulation relates to the amended application, Case No. W-1603-76H, which is an amendment to the original Case No. W-1603-76 and concerns claims of the Ute Mountain Ute Indian Tribe and the Bureau of Indian Affairs and claims by the United States on their behalf, to the water of the Dolores River.

#### 2. INTERVENORS

By Order dated April 25, 1985, the Court granted the Motion of the Ute Mountain Ute Indian Tribe to intervene in this case. By Order dated May 22, 1985, the Court granted the Motion of the Southern Ute Indian Tribe to intervene in this case.

### 3. OBJECTORS

The following objectors filed Statements of Opposition in Case No. W-1603-76 and the amended Case No. W-1603-76H:

Pine River Irrigation District

Vernon Ellis

Fern D. Ellis

Darrel Ellis

Jede Neil Ellis

Ronald C. Ellis

Effie Maurine Smith

Clay V. Bader and Jean Bader

Dolores River Flood Control District

Dolores, Town of

Rico, Town of

Troy and Ione F. Rose

Cortez, City of

Joseph Freed Ditch and Reservoir Co.

Val and Olive June Truelsen

Mancos Water Conservancy District

Dolores Water Conservancy District

Dove Creek, Town of

Lloyd and Kathryn Sehnert

Webster Ahrens

John L. Paquin

Mancos Rural Water Company

Lillian Hightchew  
Lorna Paquin Steerman  
Mrs. C. David Uhl  
Mancos, Town of  
Montezuma Valley Irrigation Company  
Colorado Ute Electric Association, Inc.  
Golf Host West, Inc., succeeded by Tamarron, Inc.  
Eaton International Corporation  
Summit Reservoir & Irrigation, Co., succeeded by  
Fairfield Pagosa, Inc.  
Louis C. and Virginia M. Duddleston  
Carl and Ruby M. Koenig  
Robert E. and Thelma F. Bement  
John K. Zell  
William C. Musson  
Louis B. Beardslee, Jr. and Hermona C. Beardslee  
Beatrice L. (Mace) Gilmore  
Pagosa Water and Sanitation District, now Pagosa Area  
Water and Sanitation District  
Frank J. and Beverly J. Williams  
John B. and Gwenlyn Decker  
Montezuma Water Company  
Charlie M. Rogers  
Navajo Development Company, Inc.  
R.B. Coppinger

William Earl Johnson  
Bauer Lakes Water Company  
John W. Ritter and Maurice T. Ritter  
Harold W. Bradford  
Ohio Match Company  
Ada S. Gibbs Estate  
William H. Hendrickson  
Ralph Edward Robbins  
Percy L. Parker  
Colorado River Water Conservation District  
Mary Akin  
City & County of Denver -- Board of Water Commissioners  
Orval Jahnke  
Rico Argentine Mining Co.  
Everett Ranches, Inc.  
Leroy G. and Lucile V. Everett  
Russel M. and M. Faye Culp  
Louis Eppich  
G.E. Humiston  
Dean Wolcott  
Olen A. Spencer  
James O. Spencer  
Glen K. Spencer  
Eva J. Spencer

Whetsel Allen  
Roy and Catherine Lichliter  
Frank O. Noland  
Dwight L. Wallace  
Lyle A. and Erlien G. Cox  
James C. and Pansy L. Sheek  
Robert F. Jones  
Vern J. and Anna Ruth Koppenhafer  
Alfred and Irene W. Crow  
A.L. and Lewis B. Wheeler  
Carl R. Simpson  
Timothy C. and Susan E. Miller  
Mancos Valley Chamber of Commerce  
Michael R. and Amanda M. Boggs  
F.E. Hall  
Niels L. Martin  
Wilfred W. Michaels  
Nolan Eugene and Jacqueline Sue Harper  
Marilyn Colyer  
Robert F. Willburn, Jr.  
Jack H. and Mary Ann Ott  
Jay Ashcroft  
F.E. and Lottie W. Reddert  
Percy D. Gray

Lillian C. Gawthrop  
Oen D. Nolan  
Ira A. and Beatrice Cox  
Wilda L. Brimhall  
Jack L. Julian  
Wilodine Levitt  
Wilbert L. Porter  
Clarence and Rowena Robbins  
Homestead Cattle Ranch, Ltd.  
Root and Ratliff Ditch Co.  
Weber Reservoir Co.  
Noland K. and Betty Alexander  
Jim G. Ervien  
Herbert L. Hawkins  
Andrew O. and Opal Pauline Simmons  
Benjamin D. And Elizabeth P. Shaw  
J. Perry Lewis  
Webber Ditch Company  
William R. Mitchell or Saundra G. Mitchell  
Rayford D. and Margaret Lawrence  
Southwestern Water Conservation District  
Durango, City of  
Florida Water Conservancy District  
La Plata Water Conservancy District

Four Corners Christian Service Camp

James-Walters

Animas Consolidated Ditch Company

Ignacio, Town of

San Luis Valley Water Conservancy District

State of Colorado

#### 4. RESERVATION BOUNDARIES AND DATES

As to that portion of the Ute Mountain Ute Indian Reservation located within the Brunot Cession of 1874, 18 Stat. 36, and as described in the Act of June 30, 1913, 38 Stat. 77, 82 (see Exhibit 1), the United States of America claims a priority date of May 10, 1911, when such lands were reserved by the United States of America for the Ute Mountain Ute Indian Tribe, based upon the Agreement of May 10, 1911, and ratified by the Act of June 30, 1913, supra. For all other portions of the Reservation, the United States claims a priority date of time immemorial and the parties agree to the date of the Ute Reservation Treaty of March 2, 1868, 15 Stat. 619 (see Exhibit 2).

#### 5. SETTLEMENT HISTORY

On December 10, 1986, the State of Colorado, the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, the United States Department of the Interior, the United States Department of Justice, the Animas-La Plata Water Conservancy District, the Dolores Water Conservancy District, the Florida Water Conservancy District, the Mancos Water Conservancy District, the Southwestern Water Conservation District, the City of Durango, the Town of Pagosa Springs, the Florida Farmers Ditch Company, the Florida Canal Company, and the Fairfield Communities, Inc., entered into the Colorado Ute Indian Water Rights Final Settlement Agreement ("Settlement Agreement"). The Settlement Agreement requires that a stipulation reflecting certain terms of the Settlement Agreement be filed with the Court and that those terms be incorporated into a Final Consent Decree. A copy of the Settlement Agreement is attached for reference (see Exhibit 3). The settlement of each of the river systems filed on by the United States in the original W-1603-76 as amended, is dependent upon the settlement of all other such river systems in a manner in accordance with the terms of the Settlement Agreement and the federal implementing statute discussed infra.

Congress thereafter enacted the "Colorado Ute Indian Water Rights Settlement Act of 1988" ("Settlement Act"), P.L. 100-585, 102 Stat. 2973, which implemented portions of the Settlement Agreement. The United States, the Southern Ute Indian Tribe, the Ute Mountain Ute Indian Tribe and the State of Colorado did not void the Settlement Agreement within 60 days. The other parties agree that the rights secured to them in the Settlement Agreement have not been materially or adversely affected by the modifications contained in the Settlement Act. A copy of the Settlement Act is attached for reference (see Exhibit 4). In the event of any inconsistency between the Settlement Act and the Settlement Agreement, the Settlement Act will control.

#### 6. RESERVED WATER RIGHTS OF THE UTE MOUNTAIN UTE INDIAN TRIBE

The Ute Mountain Ute Indian Tribe shall be entitled to the rights described below to beneficially use water from the Dolores River drainage:

##### A. Dolores Project

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

The water right shall entitle the Tribe to receive and beneficially use, on that part of the Ute Mountain Ute Indian Reservation within the State or within the boundaries of the Dolores Water Conservancy District, the following allocations of water from the Project, as measured at McPhee Dam and Reservoir:

- (i) a maximum of 1,000 acre-feet per annum of municipal and industrial water;
- (ii) A maximum of 23,300 acre-feet per annum of agricultural irrigation water; and
- (iii) a maximum of 800 acre-feet per annum for fish and wildlife development.

The right shall not exceed the total of the above allocations.



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

(i) municipal and industrial water allocations as quantified in the Definite Plan Report for the Dolores Project (defined on pages 4 and 5 of the Settlement Agreement, hereinafter "DPR"), shall first be fully satisfied;

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

(iii) stream fishery releases to the Dolores River set forth in the DPR shall be made in accordance with the operating agreement between the Dolores Water Conservancy District and the United States Bureau of Reclamation's Contracting Officer as specified by the repayment contract between the District and the United States. The sharing of shortages in the project's water supply shall govern the actual amount of agricultural irrigation water and water for fish and wildlife development delivered to the Tribe whether or not the average supply of 22,900 acre-feet per annum of agricultural irrigation water and 800 acre-feet per annum for fish and wildlife development water, as contemplated by the DPR, is actually achieved.

In proceedings pursuant to subparagraph 11.D. below, the computations concerning the Tribe's historic beneficial use of water shall be based upon:

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

<u>Month</u>	<u>Agricultural Irrigation Water</u>	<u>M&amp;I Water</u>	<u>Fish and Wildlife Development Water</u>
October	4 percent	6 percent	12.5 percent
November	0	5	0
Decem- ber	0	3	0
Janu- ary	0	3	0
Febru- ary	0	3	0
March	0	5	0
April	2	8	37.5
May	15	13	0
June	25	16	12.5
July	28	16	12.5
August	16	13	12.5
September	10	9	12.5
Totals	100 percent	100 percent	100 percent

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

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

The water right shall always be consistent with:

- (i) The DPR, except as modified by this Stipulation;
- (ii) The allocations, shortage provisions, delivery schedules, and consumptive use calculations described in this subsection;

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

The water right may be changed pursuant to the change in water right procedures set forth in subparagraph 11.D. below; provided, however, that the water right shall not entitle the Tribe to any other reserved water right from the Mancos or Dolores Rivers, except, in the event of the failure of the project, the Tribe may convert the water right to a separate reserved storage or reserved direct flow water right from these rivers with the consent of the State Attorney General, the Mancos Water Conservancy District, and the Dolores Water Conservancy District, so that the Tribe and all other project beneficiaries will be placed in the same position in attempting to put their water rights to use.

Based upon the parties' expectation that the combined Highline-Towaoc Canal will be completed, subject to Congressional appropriations, the final settlement of the Tribe's reserved water rights claims on the Mancos and Dolores Rivers as described herein shall be subject to the following conditions:

(i) If the Dolores Project is completed so as to enable the delivery of water to the Reservation through the combined Highline-Towaoc Canal on or before May 1, 1994, then: (a) the settlement of the Tribe's pending reserved and appropriative water rights claims on both the Mancos River and the Dolores River contained in the Agreement shall become final; (b) the Tribe shall be entitled to the full water right as described in subparagraph 6.A.; and (c) the Tribe shall not be entitled to claim any additional reserved water rights, not now described in the appropriate consent decrees, either on the Mancos River or on the Dolores River.

(ii) If the combined Highline-Towaoc Canal is not completed so as to enable the delivery of water to the Reservation by May 1, 1994, then by January 1, 1995, the Tribe, in consultation with the United States as trustee, must elect either: (a) to retain the water right by accepting any portion of the Tribe's allocations of water, excluding municipal and industrial water, for delivery directly from McPhee

Reservoir; or (b) to commence litigation or renegotiation of its pending reserved water rights claims on the Mancos River. If the Tribe, in consultation with the United States as trustee for the Tribe, has not elected to commence litigation or renegotiation of its pending claims on the Mancos River by notification to the parties by January 1, 1995, as provided below, then: (a) the Tribe shall be deemed to have elected to retain the water right by accepting delivery of its allocations of water directly from McPhee Reservoir, (b) the settlement of the Tribe's pending reserved and appropriative water rights claims on both the Mancos River and the Dolores River contained in the Agreement shall become final; and (c) the Tribe shall not be entitled to claim any additional reserved water rights either on the Mancos River or on the Dolores River. If the Tribe elects to commence litigation or renegotiation of its pending reserved water rights claims on the Mancos River, then: (a) the Tribe shall retain its water right to 1000 acre feet of municipal and industrial water; (b) the Tribe shall relinquish and forfeit the remainder of the water right from the Dolores Project as described in this subparagraph 6.A. and all other pending reserved and appropriative water rights claims on the Dolores River; and (c) the Tribe shall not be entitled to claim any additional reserved water rights on the Dolores River; provided, however, that if the combined Highline-Towaoc Canal is at any time thereafter completed so as to enable the delivery of water to the Reservation or if the Tribe elects any time thereafter to receive an allocation of water from McPhee Reservoir, in addition to the 1,000 acre feet of municipal and industrial water, then: (a) the Tribe shall be entitled to the full water right as described in this subparagraph 6.A.; (b) the Tribe shall not be entitled to claim any other reserved water rights on either the Mancos River or the Dolores River, and (c) the Tribe shall relinquish any then pending reserved water rights claims or any benefits it may have obtained by litigating or negotiating its reserved water rights claims on the Mancos River, including all reserved water rights which may have been decreed. Notice of the Tribe's election shall be made as follows: to the United States, through the Secretary of the Interior and the Attorney General; to the Tribes, through the respective Tribal Chairman; to the

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

Subject to Congressional appropriations, nothing in this subparagraph 6.A. shall reduce or limit the present authorization of the United States to complete the construction of the Dolores Project in general conformity with the DPR, including the Towaoc drains, if needed.

If the Tribe does not take delivery of its agricultural irrigation or fish and wildlife development water through the combined Highline-Towaoc Canal, then the Tribe shall: (a) continue to remain responsible for such portion of the OM&R costs of the combined Highline-Towaoc Canal as will ensure that all other project users under the combined Highline-Towaoc Canal bear no greater OM&R costs than would have otherwise been the case; and (b) ensure that deliveries to, and carriage losses of, all other project water users under the combined Highline-Towaoc Canal are not adversely affected. Similarly, the Dolores Water Conservancy District shall ensure that if non-Indian water users do not take delivery of their agricultural irrigation water through the combined Highline-Towaoc Canal there will not be an increase in the OM&R costs or a reduction in deliveries to the Tribe.

Under no circumstances shall anything in this decree be construed as an admission, or be used by any party as evidence that the Tribe is or is not legally entitled to reserved water rights on the Dolores River. This water right shall have no precedential or presumptive value in the event these terms of the decree do not become final.

B. Existing Uses

None.

C. Future Domestic and Livestock Tributary Groundwater Uses

None.

D. Oil and Gas

None.

E. Road Construction and Maintenance

None.

7. DEFINITIONS

For the purposes of this Stipulation the following definitions apply:

A. Net Acres

The term "net acres" shall mean the acres, exclusive of lands necessary for roads, buildings, or farm practices, which the Tribe has a right to irrigate.

B. Per Annum

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

C. Tribal Lands

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

8. EXISTING STATE DECREES

The parties further agree that whenever a reserved water right is recognized herein for use on a parcel of Tribal land that is already irrigated under an existing State decreed right owned by the Tribe, individual Tribal members, or by the United States for the benefit of the Tribe or individual Tribal members, the State decreed right shall be deemed relinquished unless otherwise expressly agreed.

9. INDIVIDUAL ENTITLEMENTS

Any entitlement to reserved water of any individual member of the Tribe shall be satisfied from the reserved water rights secured to that member's Tribe.

10. DISPUTES

All disputes over whether water is being beneficially used in accordance with paragraph 6 shall be presented to the Colorado



District Court for Water Division No. 7.

11. ADMINISTRATION

In the Settlement Agreement, the parties reached a compromise on the administration of the Tribe's reserved water rights within the exterior boundaries of the Tribe's Reservation. The State, the Tribe, and the United States further acknowledge the hydrologic relationship between surface and underground use of water and among the Tribe's reserved water rights, the water rights used by non-Indians within Colorado, and the waters used outside the State. The parties recognize the need for a cooperative and coordinated administration of water rights arising under State law and the reserved water rights secured to the Tribe and intend to provide for such administration. The purpose of this paragraph 11 is to establish the means by which the water rights confirmed in paragraph 6 shall be administered. Administration by the State Engineer as described below shall ensure that the water rights of all users, including the Tribe, are fully protected. The Tribe agrees to coordinate its administrative responsibilities under this paragraph 11 with the Secretary of the Interior when those administrative responsibilities affect the water right of allottees. The Tribe agrees to allow the State Engineer access to Reservation lands solely for the purpose of performing his administrative duties.

A. Surface Diversions

The State Engineer shall have primary administrative responsibility over all waters apportioned to the Tribe at the points of diversion located on the Dolores River. The Tribe shall have primary administrative responsibility over all the waters within the Tribe's canal distribution systems.

When water is put to use, the Tribe agrees to install and maintain headgates on the diversion points from the Dolores River and to install and maintain necessary totalizing or accumulating meters, gauges or other measuring devices on these headgates, to inspect the recorders on a weekly basis, and to report to the State Engineer the reading of these meters as often as needed to ensure compliance with this Final Consent Decree.

The Tribe agrees to allow reasonable inspection of headgates by the State Engineer upon request. The Tribe further agrees to keep its diversion, transportation, and storage facilities in good repair. The Tribe agrees to

annually provide the State Engineer with: (1) Aerial photos or remote sensing images of the lands irrigated or (2) Bureau of Indian Affairs Crop Reports, showing the lands irrigated. If these aerial photos, remote sensing images, or crop reports are unsatisfactory, the Tribe agrees to allow the State Engineer access to Tribal lands to inventory the number and location of irrigated acres. The Tribe may elect to allow the State Engineer to conduct an annual examination of the irrigated lands so that the State Engineer can inventory the number and location of irrigated acres in substitution for the images and reports. At least once in every five-year period the Tribe shall provide the State Engineer with aerial photos or remote sensing images satisfactory to the State Engineer, or shall allow the State Engineer access to Tribal lands to inventory the location and number of irrigated acres.

The Tribe agrees that when there is an administrative call on the waters of the Dolores River and a demonstrated likelihood of shortage exists, the Tribe will permit the State Engineer to monitor the Tribe's diversions of water within the priority system to ensure that the waters are being beneficially used in compliance with the terms of the Final Consent Decree.

The parties shall present to the Colorado District Court for Water Division No. 7 all disputes over whether waters are being used in accordance with the terms of paragraph 11, provided that disputes involving solely Tribal members or lessees of the Tribe over the use of water within the Tribe's canal distribution system may be resolved in a Tribal forum.

#### B. Individual Wells

The Tribe agrees to provide the State Engineer with the following information in a Tribal permit 30 days before the Tribe intends to permit the drilling of a well for individual domestic or livestock purposes as set forth in subparagraph 6.C: the aquifer or, if the aquifer is unknown, the depth from which the water is proposed to be withdrawn, the location of the proposed well, the name of the owner of the land on which the well will be located, the estimated average annual amount of water applied for in acre-feet, and the estimated maximum pumping rate in gallons per minute. Thirty (30) days after the receipt of a Tribal permit to drill a well, the State shall issue well permits for individual domestic and livestock wells within



the parameters and up to the amounts specified in Article III, Section C, subsection 2 of the Settlement Agreement and in subparagraph 6.C of this Stipulation. The parties shall present to the Colorado District Court for Water Division No. 7 all disputes arising under this subparagraph 11.B.

C. Aquifer Protection and Water Well and Pump Installation

The Tribes agree to drill, maintain, and/or abandon wells in a manner consistent with public health and safety and applicable laws or regulations. Well completion reports and well drilling logs shall be completed and filed with the State Engineer within 30 days of completion of the well. Disputes arising under this subparagraph 11.C shall be decided by a court of competent jurisdiction.

D. Change of Water Rights

The Tribe may change water rights described in paragraph 6 from the types of use, places of use, amounts, times of use or location of points of diversion set forth in paragraph 6. No change shall be allowed unless the Tribe and the United States file, to the same extent other project water users are required to file, an application for a change of water rights in the Colorado District Court for Water Division No. 7 and the Court grants such change. If the change is to an off-reservation use, the Tribe must affirmatively state that it is voluntarily electing to change the use to an off-reservation place of use and understands that as a condition precedent, that portion of its water right shall be changed to a Colorado State water right, but be such a State water right only during the use of that right off the Reservation. Changes of water rights may be to any beneficial use.

A change of water right shall be granted by the District Court if the change does not increase the consumptive use of the Tribal water right or injure other water rights. In determining the consumptive use of Tribal water rights and injury to other water rights for the change of a Tribal water right within the boundaries of the Reservation or from within the boundaries of the Reservation to outside the boundaries of the Reservation, the Tribal water right shall be deemed to have been historically diverted and beneficially used in the full amounts, in the manner and for the purposes set forth in paragraph 6 above.

The Tribe and the United States further agree that for a change of a surface diversion of agricultural irrigation water to a groundwater diversion the Tribe will provide the State Engineer with a Tribal permit containing the following information before the Tribe and the United States file an application for a change of water right in Colorado District Court for Water Division No. 7: the aquifer or, if the aquifer is unknown, the depth from which the water is proposed to be withdrawn, the location of the proposed well, the name of the owner of the land on which the well will be located, the estimated average annual amount of water applied for in acre-feet, the estimated maximum pumping rate in gallons per minute, the proposed use, and a description of the land proposed to be irrigated or the use to which the water will be put and the location of that use. Within thirty (30) days after receipt of a Tribal permit to drill a well, the State Engineer shall issue a well permit for the proposed well if the change does not increase the consumptive use of the Tribal water right or injure other water users. In determining the consumptive use of water and injury to other water users, the Tribal water right shall be deemed to have been diverted and beneficially used in the full amounts, and manner, and for the purposes contemplated in paragraph 6 above.

The parties shall present to the Colorado District Court for Water Division No. 7 all disputes arising under this subparagraph 11.D.

#### E. State Appropriative Rights

The parties acknowledge that the administrative provisions of this paragraph 11 govern the Tribe's use of the reserved water rights confirmed in paragraph 6 herein. The parties further agree that any and all other waters appropriated by the Tribe or on its behalf or on behalf of individual members of the Tribe pursuant to the State adjudication or permitting process will be decreed, administered, and regulated by the State pursuant to State law. The State shall also administer all rights to the use of surface or groundwater within or outside the Reservation which are not a part of the Tribe's reserved water rights. Further, the District Court for Water Division No. 7 shall have exclusive jurisdiction to resolve all disputes over uses of nonreserved water rights established under State law. The Tribe or its members, or the United States, on its own behalf, or on behalf of the Tribe or Tribal members, shall be entitled to seek additional water rights by appropria-

tion in accordance with and pursuant to State law and to acquire existing State law water rights by purchase, relinquishment, or other operation of law.

## 12. PERMANENCY OF RESERVED WATER RIGHTS

When the water rights confirmed in paragraph 6 are used off reservation, they will be State water rights only during that use and will regain the status of Indian reserved water rights for the use of the Tribes when the off-reservation use is concluded, thus ensuring that the rights are permanent and cannot be lost as a result of change of use, forfeiture, abandonment, or nonuse.

## 13. WAIVERS

### A. Waivers Upon Entry of Final Consent Decrees

Upon the entry of Final Consent Decrees in Case No. W-1603-76 and W-1603-76A through W-1603-76J, as provided in Article VI of the Settlement Agreement, reflecting the terms of the Stipulations entered in Case Nos. W-1603-76 and W-1603-76A through W-1603-76J, the Tribes and the United States as Trustee for the Tribes shall waive any and all claims to water rights within the State of Colorado not expressly identified in the Final Consent Decrees, established by existing State or Federal court decree, or otherwise recognized under State law, including all claims to water rights or injury to water rights for the benefit of the Tribes or any individual claiming the right to use water under the Tribes, from any source of surface water or waters tributary thereto, arising under any laws of the United States or of the State of Colorado.

### B. Waivers Required for Performance by Secretary

Performance by the Secretary of the Interior of the actions required by the Settlement Act is conditioned on the Tribes executing waivers and releases of all claims concerning water rights whether in rem or against any party to the Settlement Agreement other than those which may arise under the terms of the Settlement Agreement;

provided, that the waivers of such claims, if any, relative to the Animas and La Plata Rivers shall not be effective until Phase I of the Animas-La Plata Project as defined in the June 30, 1986, Binding Agreement for Animas-La Plata Project Cost-Sharing, is complete or the Tribes elect to retain their reserved water rights as described on page 64 the Settlement Agreement, except

that waivers of such claims, if any, for monetary damages against the State shall be effective as soon as the State appropriates and disburses the funds described in Article VI, Section A, subsection 2 of the Settlement Agreement;

provided further, that the waivers of such claims relative to the Mancos River shall not be effective until the combined Highline-Towaoc Canal is completed so as to enable the delivery of water to the Ute Mountain Ute Indian Reservation, or the Ute Mountain Ute Indian Tribe elects to exercise its reserved water right by taking the Tribe's allocation of water directly from McPhee Reservoir; except that waivers of such claims, if any, for monetary damages against the State shall be effective as soon as the State appropriates the funds described in Article VI, Section A, subsection 2 of the Settlement Agreement;

provided further, that in the event that either Tribe obtains a judgment for monetary damages against the United States, the State or any other parties, the United States or the State or the affected party shall be entitled to apply as an offset against the judgment, the money actually provided by that party to the Tribe as Tribal Development Funds, and any interest or any other money generated by these funds under the Settlement Agreement and its implementing legislation;

provided further, that nothing in this paragraph shall be deemed to create or give validity to any claim by the Tribes against the United States, the State, or any other parties to this settlement, or in any way constitute an acknowledgment of the validity of any claims by the Tribes against the United States, the State, or any other party to the settlement;

provided further, that neither Tribe may assert any claim against the United States, the State, or any other party, arising out of:

(i) The negotiation of the Settlement Agreement and the Stipulations in Case Nos. W-1603-76 and W-1603-76A through W-1603-76J;

(ii) The adoption of the specific terms of the Settlement Agreement and the Stipulations in Case Nos. W-1603-76 and W-1603-76A through W-1603-76J; or

(iii) Allegations concerning the lack of authority of either Tribe or the other parties to enter into the Settlement Agreement and the Stipulations in Case Nos. W-1603-76 and W-1603-76A through W-1603-76J.

Nothing in this proviso shall be deemed to preclude the judicial enforcement of the terms of the Stipulations and Final Consent Decrees or to waive the liability of any party for its failure to satisfy its obligations under the Stipulations and Final Consent Decrees.

#### 14. FINAL CONSENT DECREES NOT PRECEDENT

The Final Consent Decrees shall be entered pursuant to the Settlement Agreement and Settlement Act; the matters set forth herein have not been litigated among the parties and therefore, the parties shall not be collaterally estopped or barred in any other way by these proceedings or the Final Consent Decrees from asserting any factual or legal issues in any other action not involving these water rights. The Final Consent Decrees shall not be used, considered, or cited as precedent in any other case except and only to the extent that, the rights decreed herein are involved.

#### 15. CONTINGENCIES

Execution and entry of the Final Consent Decree reflecting the terms of this Stipulation is contingent upon certification by the State of Colorado, the Tribes, and the United States that the matters set forth below have been accomplished or accepted by the State of Colorado, the Tribes and the United States.

##### A. Federal-Tribal Development Fund Appropriations

Appropriation of the Federal share of the \$60.5 million Tribal Development Funds as provided for in Article VI, Section B, of the Settlement Agreement.

##### B. State-Tribal Development Fund Appropriations

Authorization and appropriation of \$5 million to be deposited by the State of Colorado to the Tribal Development Funds no later than 30 days following the deposit of the first installment of Federal monies to said Development Funds.

##### C. State-Towaoc Pipeline Appropriations

Authorization of such amount as needed, estimated at \$6 million, to be expended by the State of Colorado for construction of the Towaoc Pipeline, and a domestic water distribution system for the Ute Mountain Ute Indian Tribe as a credit to the Ute Mountain Ute Tribal Development Fund,



with said construction to be initiated within 1 year of the execution of the Settlement Agreement, and completed within 1 year of the initiation of construction.

#### D. State-Ridges Basin Appropriations

Authorization and appropriation of \$5.6 million to be provided by the State of Colorado to the Secretary of the Interior for Ridges Basin Dam on a schedule acceptable to the State of Colorado and the Secretary of the Interior beginning in the first year of construction of said dam, provided that the State of Colorado's obligation to provide \$5.6 million to the Secretary of the Interior for Ridges Basin Dam shall be contingent upon appropriations by the Colorado General Assembly and shall be fulfilled by the State of Colorado no later than the date that the last Federal appropriation to the Tribal Development Funds is made

or the date the money is otherwise required to be appropriated pursuant to the language of the Settlement Agreement, whichever is first.

#### 16. SURVIVAL OF EXCLUDED SECTIONS

As provided in Article VI, Section A of the Settlement Agreement, the following sections of the Settlement Agreement are excluded from this Stipulation and shall be excluded from the Final Consent Decree: Article IV Section C; Article VI Section A.1 except for subsection A.1.e; Article VI Sections A.2 and B; and Article VII Section G. Such exclusion shall not delete or alter the terms or the effect of these excluded sections.

#### 17. APPROPRIATIONS

Nothing in this Stipulation or Final Consent Decree shall commit or obligate the United States to expend funds which have not been appropriated and budgeted. Nothing in this Stipulation or Final Consent Decree shall commit or obligate the State of Colorado to expend funds which have not been appropriated and budgeted.

Signed this \_\_\_\_\_ day of **NOV 12 1991** 91.

GALE A. NORTON  
Attorney General

RAYMOND T. SLAUGHTER  
Chief Deputy Attorney General

TIMOTHY M. TYMKOVICH  
Solicitor General



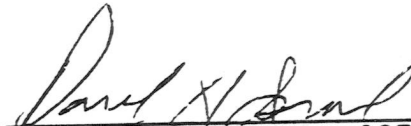
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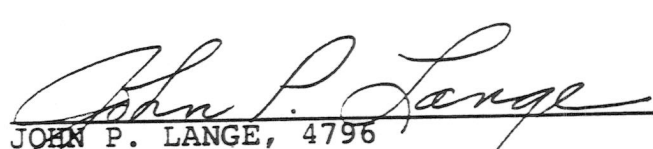


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W-1603-76H

EXHIBIT LIST

DOLORS RIVER

EXHIBIT NO.

DOCUMENT TITLE

1. Act of June 30, 1913, 38 Stat. 77
2. Ute Reservation Treaty of March 2, 1868, 15.  
Stat. 619
3. Colorado Ute Indian Water Rights Final  
Settlement Agreement ("Settlement Agreement")
4. Colorado Ute Indian Water Rights Settlement  
Act of 1988 (Settlement Act")