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MESSAGE

Dated: 5/1/01 at 20:38

Subject: NEW MEXICO OPEN RECORDS ACT REQUEST STATE ENGINEER  
Sender: scone /mime (scone@infoway.lib.nm.us)

Contents: 2

Item 1

FROM: scone /mime (scone@infoway.lib.nm.us)  
TO: tturney /mime (tturney@seo.state.nm.us)  
psaavedra /mime (psaavedra@seo.state.nm.us)  
ecoriz /mime (ecoriz@seo.state.nm.us)  
CC: jwhipple /mime (jwhipple@seo.state.nm.us)  
tzokan /mime (tzokan@seo.state.nm.us)

Item 2

ATTENTION: NEW MEXICO OPEN RECORDS ACT REQUEST  
(transmitted electronically)  
1 May 2001  
May Day

"electors Concerned about Animas Water" -- CAW  
1217 Chaco Avenue  
Farmington, NM 87401

Tom Turney, New Mexico State Engineer  
Office of the State Engineer  
PO BOX 25102  
Santa Fe, New Mexico 87504-5102

Dear Mr. Turney:

As you well know, it is the mandate of the Office of the State Engineer (OSE) to maintain a constant vigil to protect the State of New Mexico's (State) authority over its waters. In fact the New Mexico State Constitution declares New Mexico water to be the property of the public, and this treasured resource must be closely guarded.

In 1995, at the request of OSE, the Governor created the position of Special Assistant to the State Engineer on Indian Water Resources to promote greater cooperation on water issues between tribal and state governments. Since its inception, Ernest Coriz has acted as Special Assistant to the State Engineer on issues of Indian water resources. The program is said to be aimed at promoting a spirit of cooperation, coordination, communication and good will, and to address issues of mutual concern through a process beginning with negotiations on behalf of each sovereign. The program is said to advocate equal protection of all water users and emphasize conservation, the development of feasible alternative water supplies, and the State's primary role in the management, planning and development of creative solutions for water administration. Through this program, OSE is said to assist tribes in planning and implementing water management policies and promoting intertribal and intergovernmental efforts. For a number of years now, Special Assistant Coriz has sponsored meetings with the Navajo Nation (Navajo) in an ongoing effort to resolve problems in the settlement of the Navajo water claims without costly litigation.

In addition to working with the Navajo, the Special Assistant has responded on behalf of OSE to requests for information from legislative committees and other participants in these water right negotiations.

(1) PLEASE PROVIDE ACCESS TO THE IDENTITIES OF ALL STAKEHOLDERS/PARTIES POTENTIALLY AFFECTED BY THIS CLOSED NEGOTIATION PROCESS.

In the 1996-97 fiscal year, through the efforts of Special Assistant Coriz, the State and the Navajo reached a formal agreement to try to settle the Navajo's contested water rights in the San Juan River stream system. The water resources within the San Juan River Basin -- subject of an ongoing lawsuit to determine disputed water rights in the system -- are of vital importance to both the Navajo and the State.

The negotiations between the State and the Navajo, which began with a

government-to-governme agreement reached in fiscal ye 1996-97, are ongoing. OSE has recently noted that discussions pertaining to the Navajo's rights to the use of water from the San Juan River and in the San Juan Basin have progressed to a more informative level for both sides. The negotiation process is characterized as "complex". In addition to the difficult questions of water rights and water uses, the negotiations have dealt with the San Juan River Basin Recovery Implementation Program for the river's endangered fish, the Navajo Indian Irrigation Project, and the San Juan/Chama Diversion Project, as well as the proposed construction of the revised Animas-La Plata Project (A-LP).

The "Colorado Ute Settlement Act Amendments of 2000", as authorized by the 106th Congress in Public Law 106-554; 114 Stat. 2763A-258-266, hold that no part of the Act "shall be construed to quantify or otherwise adversely affect the water rights and claims to entitlement to water of the Navajo Nation." This can be understood to mean that Navajo benefits from A-LP will have no bearing on a final settlement of Navajo water claims in the San Juan Basin.

(2) PLEASE PROVIDE ACCESS TO THE STATE'S FORMAL AGREEMENT REACHED WITH THE NAVAJO AND A COMPREHENSIVE LIST OF ALL OSE MEETINGS WITH THE NAVAJO, ALONG WITH LISTS OF ALL PARTICIPANTS IN THESE MEETINGS.

Appendix I of OSE's 1998/1999 Annual Report states, "The State of New Mexico is facing claims from the Navajo Nation. The Nation claims more water than New Mexico's entire allotment under the Upper Colorado River Compact. That claim, if granted, could mean all water for the Farmington and the San Juan Basin region would be under control of the Navajo Nation. The State Engineer is currently in the process of seeking negotiation of those claims, but will need more funding to do so, especially if the Navajo's bring the United State's legal and technical resources to the negotiations as they have requested."

Further, in Appendix A of OSE's 1999/2000 Annual Report states, "Negotiations with the Navajo continue."

(3) PLEASE PROVIDE ACCESS TO ALL RECORDS ASSOCIATED WITH A-LP STEMMING FROM SPECIAL ASSISTANT CORIZ'S MEETINGS WITH THE NAVAJO.

On April 10, 2000, OSE submitted specific comments to the Bureau of Reclamation (BOR) on behalf of the State with respect to the Draft Supplemental Environmental Impact Statement (DFSEIS) for the A-LP. On Page 8 of those comments OSE states, "New Mexico fully supports authorization of construction of the (Navajo Nation municipal pipeline) described as alternative NNMP-1 as a non-reimbursable feature. Our support for the Navajo Nation municipal pipeline assumes that the Navajo Nation will not file additional claims against the New Mexico non-Indian beneficiaries of the project (A-LP)." BOR neither noted nor responded the State's comment .

(4) OSE's DFSEIS A-LP COMMENT (ABOVE) SPECIFICALLY REFERS TO A DOCUMENTED HISTORY OF NAVAJO CLAIMS AGAINST ONE OR MORE OF THE NEW MEXICO NON-INDIAN A-LP BENEFICIARIES -- NAMELY THE LA PLATA CONSERVANCY DISTRICT OF NEW MEXICO (DISTRICT) AND THE SAN JUAN WATER COMMISSION (COMMISSION). PLEASE PROVIDE ACCESS TO ALL RECORDS REFERENCING SUCH CLAIMS BY THE NAVAJO AGAINST THE DISTRICT AND THE COMMISSION.

While Public Law 106-554; 114 Stat. 2763A-258-266 features the non-reimbursable Navajo Nation municipal pipeline, it fails to provide the required protection for New Mexico non-Indian A-LP beneficiaries from any (further) water claims brought by the Navajo. The State's support for the Navajo Nation municipal pipeline, as a non-reimbursable feature of A-LP, was specifically predicated on the Navajo's waiver of any such future water claims against the State's non-Indian A-LP beneficiaries.

(5) PLEASE PROVIDE ACCESS TO ALL RECORDS ADDRESSING THE STATE'S OBLIGATION OR INTENT TO CONTEST A-LP'S NON-REIMBURSABLE NAVAJO NATION MUNICIPAL PIPELINE AS CURRENTLY AUTHORIZED IN PUBLIC LAW 106-554; 114 STAT. 2763A-258-266. IN ADDITION, PLEASE PROVIDE ACCESS TO ALL

DOCUMENTATION OF THE OSE'S ASSESSMENT OF THE CONTINUING VULNERABILITY OF THE COMMISSION OR THE DISTRICT TO FUTURE NAVAJO CLAIMS TO SAN JUAN BASIN WATER.

Irrigators in San Juan County are not participants and would reap no benefit from A-LP as authorized. The State's support for the Colorado Ute Tribes' controversial claims and the State's position that only New Mexico's non-Indian A-LP M&I beneficiaries be offered future protection from Navajo claims, dramatically exacerbates the risk that San Juan County irrigators will be forced to bear the brunt of the pending San Juan Basin adjudication of Navajo Nation water rights. On October 14, 1997, the State Engineer said, "No one knows exactly what the claims are that the (Colorado Ute Tribes) would have presented. They settled for a lesser amount than was originally claimed. It is interesting now that they have gone into the A-LP Lite project, that they are willing to settle for even a lesser amount. And this does signal to me that their attorneys (if they had gone to court) might not have been able to substantiate those higher claim numbers. The claims that Indian Tribes make are absolutely enormous. Their claims are very extensive." (Tom Turney, Public Statement, Farmington Municipal Complex)

(6) PLEASE PROVIDE ACCESS TO ALL RECORDS DOCUMENTING THE STATE'S VERIFICATION OF THE COLORADO UTE TRIBES' ENTITLEMENT TO THE ALLOCATIONS OF ANIMAS RIVER WATER ALLOWED THEM IN A-LP. ALSO PROVIDE ACCESS TO ANY RECORDS ADDRESSING THE UTE MOUNTAIN UTE TRIBE'S NEW MEXICO WATER CLAIMS.

Public Law 106-554 allocates 2,340 afy depletion to the Navajo Nation, and in Sec.15(b) provides for a Navajo pipeline to convey "municipal water supplies, in an amount not less than 4,680 acre-feet per year."

(7) PLEASE PROVIDE ACCESS TO ALL DOCUMENTS AND RECORDS IN REFERENCE TO AN "APPLICATION FOR PERMIT TO APPROPRIATE THE PUBLIC SURFACE WATERS OF THE STATE OF NEW MEXICO" AND ASSOCIATED RETURN FLOW PLAN, FOR THE DIVERSION OF 4,680 ACRE-FEET PER YEAR OF ANIMAS RIVER WATER IN CONNECTION WITH THE NAVAJO ALLOCATION OF 2,340 AFY DEPLETION THROUGH A-LP.

No State entity is party to the Colorado Ute Indian Final Water Rights Settlement Agreement of 1986 and the Colorado Ute Tribes hold no adjudicated rights to Animas River water--only a stipulated "Final" Decree from Colorado Water Court No. 7 which must be substantially amended or brought ne novo. The Navajos have no legitimate claim to water from the Animas River, as it does not flow through or appurtenant to Navajo Land. Public Law 106-554, Sec.15(c), states, "PROTECTION OF NAVAJO WATER CLAIMS--Nothing in this Act, including the Permit assignment authorized by subsection (a) shall be construed to quantify or adversely affect the water rights and claims to entitlement to water of the Navajo Nation."

(8) PLEASE PROVIDE ACCESS TO ALL RECORDS SHOWING EVIDENCE THAT THE NAVAJO A-LP ALLOCATION OF 4,680 ACRE-FET PER YEAR DIVERSION OF MUNICIPAL WATER WILL OR WILL NOT BE FACTORED INTO TERMS OF A FINAL SETTLEMENT OF NAVAJO CLAIMS TO WATER IN THE SAN JUAN BASIN.

On January 16, 2001, Executive Director L. Randy Kirkpatrick applied to the New Mexico State Engineer for permission to divert 48,000 afy of Animas River water to be held by the Commission for its beneficial use in connection with its interest in New Mexico State Engineer Permit Number 2883 in relation to Public Law 106-554, Sec.15(a). In his letter covering that Application, Mr. Kirkpatrick says that President Clinton on December 21, 2000, "enacted a Congressional determination . . . to deauthorize the original, larger A-LP." The New Mexico State Engineer has recently been overheard to say that the water applied for by the Commission is currently unavailable because the original Animas-La Plata Project has NOT been deauthorized.

(9) PLEASE PROVIDE ACCESS TO ANY AND ALL WRITINGS REFERENCING THE COMMISSION'S JANUARY 16, 2001 APPLICATION, AS WELL AS ANY WRITINGS INDICATING THE OSE'S INTENTION TO REQUEST ASSIGNMENT OF THE DEPARTMENT OF THE INTERIOR'S INTEREST IN NEW MEXICO STATE ENGINEER PERMIT 2883.

By virtue of its status as an agency of the State of New Mexico, the New Mexico State Engineer's Office is subject to New Mexico's Inspection of Public Records Act (NMSA 1978, Chapter 14, Article 2). Section 14-2-1 of this Act states that every person has a right to inspect any public records of this State save those which are specifically excepted. Section 14-2-8 sets forth the requirements for a written request to view such records and the requirement that the custodian of those records permit the inspection within fifteen (15) days or explain in writing, within three (3) business days after receipt of the request, when that request will be acted upon.

We look forward to your timely written reply in compliance with provisions of the New Mexico Inspection of Public Records Act as stated above.

Sincerely,

Steve Cone, Director CAW  
(505) 327-0743  
Verna Forbes Willson, Secretary/Treasurer CAW  
(505) 326-2417  
\*\*\*\*\*  
A-LP CENTRAL  
<http://www.angelfire.com/al/alpcentral>  
in defense of the Animas & LaPlata rivers  
\*\*\*\*\*



# NEW MEXICO INTERSTATE STREAM COMMISSION

*San Juan  
ADP*

## COMMISSION MEMBERS

RICHARD P. CHENEY, Chairman, Farmington  
HAL E. ENGLE, Vice-Chairman, Rociada  
THOMAS C. TURNEY, PE., Secretary, Santa Fe  
PALEMÓN A. MARTÍNEZ, Valdez  
HOYT PATTISON, Clovis  
JOHN S. BULSTERBAUM, Deming  
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BATAAN MEMORIAL BUILDING, ROOM 101  
STATE CAPITOL  
POST OFFICE BOX 25102  
SANTA FE, NEW MEXICO 87504-5102

(505)827-6160  
FAX:(505)827-6188

March 30, 2001

Ms. Joy Munres  
168 Road 3000  
Aztec, New Mexico 87410

Dear Ms. Munres:

Your February 28 letter to the Governor's Chief of Staff regarding the Animas-La Plata Project has been referred to me for comment. The Project will provide water storage needed to meet current and future municipal, industrial and domestic water demands in Colorado and New Mexico. Pursuant to the National Environmental Policy Act, an Environmental Impact Statement for the Project was completed last July.

The Project will divert Animas River flows to off-stream storage in Ridges Basin only during periods of high flows, such as occur during the spring snowmelt runoff period, when flows exceed those required to meet downstream senior water rights in Colorado and New Mexico. During low-flow periods when flows in the Animas River are insufficient to meet both senior water rights and Project demands, releases from Ridges Basin Reservoir back into the river will augment natural flows so that Project demands in New Mexico can be met.

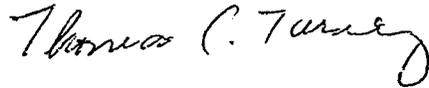
The Office of the State Engineer is in the process of establishing a metering program to meter all surface water diversions from the Animas River in New Mexico and in all likelihood, a watermaster will be charged with administering water rights on the river. Adjudicated and permitted water rights in New Mexico will be protected in accordance with their priorities and state law.

The Interstate Stream Commission supports the Project as approved by Congress and the President. Water storage for municipal and industrial water needs to be used in times of low flows and drought is critical to communities and economic development in San Juan County. The Project will be monitored and operated so as to not impair senior irrigation water rights in the Animas River valley.

Ms. Joy Munres  
March 30, 2001  
Page 2

Please contact Mr. John Whipple of the Commission staff if you have any questions or wish to discuss this matter.

Sincerely,

A handwritten signature in cursive script that reads "Thomas C. Turney".

Thomas C. Turney  
Secretary

copy: Lou Gallegos

rsanjuan\alplet1.f01

*file  
San Juan  
ADP*

Feb 28, 2000

Dear Chief of Staff

After listening to and watching President George W Bushes address to Congress last night I feel that sanity and decency has been restored to the White House at last.

The fate of the small Animas River in Northern New Mexico probably doesn't rank as an issue with top priority in Washington D.C. at this time, but time is of the essence if this life sustaining stream is to be saved! In spite of the fact that the National Environmental Protection Act analysis of the Animas-LaPlata Project was never completed HR 3112 was passed by Congress in late 2000. Just before leaving office BillClinton signed it.

It is our understanding, a representative of the proponents of the Project is in D.C. now seeking government funding to begin construction. On behave of the 6,000 farmers who will be destroyed because of the low flow of water which is inevitable after pumping the precious commodity 500 feet up a steep mountain side to Ridges Basin Reservoir on the pretexts that this will finalize the Colorado Ute Water Rights Settlement. How can this work when there is no delivery system to anyplace?

The Bureau of Reclamation has never considered the amount of water which is necessary to satisfy the water rights adjudicated to the San Juan Basin irrigators in 1949.

I am turning to you because our Senator Pete Domenici refuses to acknowledge the devastation to his own state, that he professes to love, if this evil scheme is brought into being. Please, do your best to prevent any funding of this insane plan.

*Att: Cordier Stambuck  
Foked  
10:20 AM  
505-827-3026  
030101*

Sincerely,

*Joy Murren*

Joy Murren  
168 Rd. 3000  
Aztec, N.M. 87410  
Ph. (505) 334 9109





# NEWS

U.S. DEPARTMENT OF THE INTERIOR

*Handwritten: MTP ALP*

Office of the Deputy Secretary

Contact: Noel L. Gerson  
202/208-6444

*Handwritten: JLG*

For Immediate Release September 26, 2000

## Department of the Interior Issues Decision on Finalizing the Colorado Ute Indian Water Rights Settlement

**September 26, 2000** - Yesterday Secretary of the Interior Bruce Babbitt issued a Record of Decision defining a course of action to finalize the 1988 Colorado Ute Indian Water Rights Settlement Act and resolve the status of the Animas-La Plata (A-LP) Project. The decision adopts the Bureau of Reclamation's recommended alternative contained in its recently completed Final Supplemental Environmental Impact Statement. This alternative, representing a modified version of an Administration proposal made in August, 1998, utilizes a scaled-down A-LP project in conjunction with a water acquisition fund to provide the Ute Mountain Ute and Southern Ute Indian Tribes with a water supply that satisfies and implements their water rights. This approach is the best means to implement the 1988 Settlement, while also representing the environmentally preferred alternative.

"With release of this decision, the Administration is fulfilling its commitment to the Tribes to do everything within its authority to bring much-needed closure to the 1988 Settlement and A-LP," said Secretary Babbitt. "Our analysis confirms, and the Tribes as well as the State of Colorado agree, that the settlement can be honored with significantly less environmental impacts. All that is now needed to resolve this matter is for Congress to enact appropriate legislation."

Implementing the Department's decision would yield other benefits in the San Juan River basin. First, it fulfills the federal government's trust responsibility to address the Tribes' water rights. Second, it achieves this result in a way that respects existing water rights held by non-Indian water users throughout the basin. Indeed, if the settlement is not implemented, non-Indian water users are likely to be put at risk in litigation brought by the Tribes to secure their water rights. Third, the project would furnish the Navajo Nation with a water supply for domestic use in the Shiprock, New Mexico area and a pipeline to deliver that supply. Fourth, the decision will allow for additional municipal and industrial water for non-Indian communities in the Four Corners area. Finally, the Department's decision would provide an increased level of certainty for water managers in the San Juan basin. Noting that the basin is host to a number of ongoing issues concerning endangered species and the needs of other Indian tribes, the Secretary reiterated that "the time is now to fulfill our commitments to the Colorado Ute Tribes and resolve A-LP. Clarity on this matter is an absolute necessity to move forward and address other important water issues in the Four Corners region."

To request copies of the Record of Decision, contact Mr. Pat Schumacher, Four Corners Division Manager, Bureau of Reclamation, 835 East Second Avenue, Suite 300, Durango, Colorado 81301; telephone (970) 385-6500; Internet address [pshumacher@uc.usbr.gov](mailto:pshumacher@uc.usbr.gov). The document is also available

on the Internet at <http://www.usbr.gov> under the Environmental Programs heading, Animas-La Plata EIS site.



FORM 17 11 2

# San Juan Water Commission

800 Municipal Drive · Farmington · New Mexico · 87401  
Ph 505-599-1462 · Fax 505-599-1463 · Email [sjwc@cyberport.com](mailto:sjwc@cyberport.com)

MEMBERS:  
City of Aztec  
City of Bloomfield  
City of Farmington  
San Juan County  
S.J. County Rural Water  
Users Association

SJ-3  
Animas LP

August 31, 2000

Mr. Pat Schumacher  
Four Corners Division Manager  
Bureau of Reclamation  
P.O. Box 640  
Durango, Colorado

Re: EPA Region comments on the Final Supplemental EIS for the Animas-La Plata Project

Dear Mr. Schumacher,

EPA Region 8 comments on the Animas-La Plata Final Supplemental EIS, contained in Acting Regional Administrator Rebecca Hanmer's letter of August 22, 2000, concern me. After acknowledging that EPA concerns regarding the project, its impacts and analysis are resolved, the EPA assumed authority it does not have. The EPA does not speak for the New Mexico Tribes and should not do so in this case. In a letter transmitted to Senators Domenici and Bingaman, on August 22, 2000, Jicarilla Apache Tribe President Rodger Vicenti urged their support for the Animas-La Plata Project as one step to resolve their water rights as well. Further, EPA correctly has a trust obligation to all the Tribes and should not assume the role of spoiler by pitting one Tribe against another.

The use of interstate marketing of water in the Upper Colorado River Basin is not an issue properly before any one for the federal agencies, be it the Bureau or EPA. Advocating such marketing, therefore, is inappropriate because it is an issue for the states. Advocating the position would put the Bureau or EPA in the role of New Mexico, and there is no allowance in law for the either agency to assume the role of New Mexico. Adding measures for interstate marketing to the ROD would be an inappropriate seizure of authority.

If there are in fact unmet public health needs, they will be addressed, as a priority, by the Navajo Nation and Jicarilla Tribe. Both of these sovereign entities are capable of addressing the issue. Only today in the Farmington Daily Times the Navajo Nation was seeking to assist its members by outlining the process to obtain home, natural gas, water and wastewater services.

Water shortages, if caused by fish, seem to be an antithesis for meeting public health needs. The public health should be paramount, not the needs of fish. That said, however, forced sharing without specific legislated authority would be a violation of state authority. Further, the sharing of shortages already is addressed by several federal statutes, compacts and agreements. The apparently unconsidered addition of another sharing provision is inappropriate, as well as illegal. The water supply you describe supplies varied needs, and shorting a municipal supply is very different from curtailing an agricultural supply. The ALP supply meets public health needs, while other federal projects in the San Juan Basin are primarily for irrigation purposes. In short, this provision should not be added to the ROD.

The inclusion of the proposed language in the ROD would be inappropriate and possibly violate existing law and relationships. Ultimately, it would delay, again, the long-standing commitment to assist the Ute Tribes and the region's health and well being by creating a secure water supply.

Thank you for your consideration.

Sincerely,



L. Randy Kirkpatrick

Executive Director  
San Juan Water Commission.

- cc.     The Honorable Pete V. Domenici  
          The Honorable Jeff Bingaman
- The Honorable Tom Udall  
          The Honorable Heather Wilson  
          The Honorable Joe Skeen
- The Honorable John Baker  
          The Honorable Ernest House  
          The Honorable Rodger Venciti  
          The Honorable Kelsey A. Begaye
- The Honorable Bruce Babbitt  
          The Honorable David Hayes  
          Thomas Turney  
          Rebecca W. Hammer



# NEW MEXICO INTERSTATE STREAM COMMISSION

*File  
San Juan 3  
ALP*

## COMMISSION MEMBERS

RICHARD P. CHENEY, Chairman, Farmington  
HAL E. ENGLE, Vice-Chairman, Rociada  
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BATAAN MEMORIAL BUILDING, ROOM 101  
STATE CAPITOL  
POST OFFICE BOX 25102  
SANTA FE, NEW MEXICO 87504-5102

(505)827-6160  
FAX:(505)827-6188

September 20, 2000

Patrick J. Schumacher  
Southwestern Division Manager  
Bureau of Reclamation  
Western Colorado Area Office  
835 E. 2<sup>nd</sup> Avenue, Suite 300  
Durango, Colorado 81301

Dear Pat:

Reference is made to a meeting held in Farmington on August 30, 2000, to discuss the response made in the Supplemental EIS, Animas-La Plata Project to two of the comments of this office on the Draft of the Supplemental EIS. Those attending were yourself and Errol Jensen and John Simon of your staff, John Whipple of this office and myself. The two comments made by this office are numbered SA7-45 and SA7-65 in the Bureau of Reclamation's response.

The response of SA7-45 is:

"If the return flows are depleted in Colorado the depletion would be charged to Colorado depletion. However, if the return flows cannot be protected and they are depleted (water diverted for irrigation or M&I uses) in New Mexico, that depletion would be charged to New Mexico's allocations."

At the August 30 meeting, we advised that New Mexico cannot be so charged as we have no control over the place or purpose of uses of project water in Colorado. Further, we advised that such return flow in the streamflow arriving in New Mexico from Colorado would be considered part of the native streamflow to be administered in New Mexico.

In a related item we advised that the Animas-La Plata Project water (Project water) being delivered to a Project water user in New Mexico could be protected against diversion by another user and Project water would be charged its share of conveyance loss while in transit.

Also, we advised that to administer the water of a stream system in New Mexico, return flow from Project water diverted and applied to the intended beneficial use in New Mexico by a contractor for Project water, or its lessee, is native water of that stream system. To the extent such return flow can be measured at the point of return to the stream, and with appropriate adjustment, if applicable, for losses due to a different point of diversion than the original point of diversion of Project water, the State Engineer will allow credit for such return flow by allowing an equivalent diversion of native water. No subsequent return flow credit will be allowed.

The response of SA7-65 in pertinent part is:

“Navajo Dam does store water for historic downstream uses as an offset to depletions caused by the San Juan-Chama diversion. The stored water delivered to them is to offset the impact caused by the San Juan-Chama Project and Navajo Reservoir evaporation and, is therefore, not considered project water and no delivery contract is required. Otherwise, a strict accounting of reservoir inflow would be required, delivering only inflow to downstream historic users, which is not the case.”

At the August 30 meeting, we advised that the response was not in accordance with the provisions of Public Law 87-483, which in pertinent part are:

“Sec. 11(a) No person shall have or be entitled to have the use for any purpose, including uses under the Navajo Indian irrigation project and the San Juan-Chama project authorized by sections 2 and 8 of this Act, of water stored in Navajo Reservoir or of any other waters of the San Juan River and its tributaries originating above Navajo Reservoir to the use of which the United States is entitled under these projects except under contract satisfactory to the Secretary and conforming to the provisions of this Act.”

As we understand, the Act requires a contract before water stored in Navajo Reservoir can be released for downstream historic uses even if the San Juan-Chama project had an impact on the water supply of the downstream uses. As we discussed, the by-pass flow requirements at the San Juan-Chama project diversion points generally limit project diversions at such times as the inflow downstream is not sufficient for the downstream senior uses in New Mexico. Even if the opportunity occurred for the San Juan-Chama Project to divert water that would supply prior downstream rights in New Mexico, contracts would be required by P.L. 87-483 before stored water from Navajo Reservoir could be released to offset the San Juan-Chama impact. We also advised that the most senior rights on the river system in New Mexico probably were the two Indian projects located downstream of the mouth of the Animas River.

While we did not discuss impacts of Navajo Reservoir evaporation during times when downstream senior rights place a demand on the inflow to the reservoir, that impact on downstream uses is easily managed by simply allowing the reservoir level to decline by

Mr. Patrick J. Schumacher  
September 20, 2000  
Page 3

an amount equal to the calculated evaporation for the duration of the period of demand and no contract would be required.

We also discussed the historic operation of the reservoir which has been an agreed release of about 500 cfs unless larger releases are required to evacuate storage, recognizing that until the contract demand for stored water was much larger, the accumulated reservoir storage had to be released to accomplish its authorized purpose of river regulation and to avoid spill. Thus, there has been no need for administration of the rights on the river. A similar method of operation can continue until the contract demand for stored water becomes large enough to warrant otherwise.

Sincerely,



Philip B. Mutz  
Upper Colorado River Commissioner

PBM:rav

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NEW MEXICO INTERSTATE STREAM COMMISSION

San Juan - 3  
ALB

COMMISSION MEMBERS

RICHARD P. CHENEY, Chairman, Farmington  
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September 20, 2000

Patrick J. Schumacher  
Southwestern Division Manager  
Bureau of Reclamation  
Western Colorado Area Office  
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At the August 30 meeting, we advised that New Mexico cannot be so charged as we have no control over the place or purpose of uses of project water in Colorado. Further, we advised that such return flow in the streamflow arriving in New Mexico from Colorado would be considered part of the native streamflow to be administered in New Mexico.

In a related item we advised that the Animas-La Plata Project water (Project water) being delivered to a Project water user in New Mexico could be protected against diversion by another user and Project water would be charged its share of conveyance loss while in transit.

Also, we advised that to administer the water of a stream system in New Mexico, return flow from Project water diverted and applied to the intended beneficial use in New Mexico by a contractor for Project water, or its lessee, is native water of that stream system. To the extent such return flow can be measured at the point of return to the stream, and with appropriate adjustment, if applicable, for losses due to a different point of diversion than the original point of diversion of Project water, the State Engineer will allow credit for such return flow by allowing an equivalent diversion of native water. No subsequent return flow credit will be allowed.

*Applies to  
diversion of  
Fitzger's Basin  
Reservoir  
release.*

The response of SA7-65 in pertinent part is:

"Navajo Dam does store water for historic downstream uses as an offset to depletions caused by the San Juan-Chama diversion. The stored water delivered to them is to offset the impact caused by the San Juan-Chama Project and Navajo Reservoir evaporation and, is therefore, not considered project water and no delivery contract is required. Otherwise, a strict accounting of reservoir inflow would be required, delivering only inflow to downstream historic users, which is not the case."

At the August 30 meeting, we advised that the response was not in accordance with the provisions of Public Law 87-483, which in pertinent part are:

"Sec. 11(a) No person shall have or be entitled to have the use for any purpose, including uses under the Navajo Indian irrigation project and the San Juan-Chama project authorized by sections 2 and 8 of this Act, of water stored in Navajo Reservoir or of any other waters of the San Juan River and its tributaries originating above Navajo Reservoir to the use of which the United States is entitled under these projects except under contract satisfactory to the Secretary and conforming to the provisions of this Act."

As we understand, the Act requires a contract before water stored in Navajo Reservoir can be released for downstream historic uses even if the San Juan-Chama project had an impact on the water supply of the downstream uses. As we discussed, the by-pass flow requirements at the San Juan-Chama project diversion points generally limit project diversions at such times as the inflow downstream is not sufficient for the downstream senior uses in New Mexico. Even if the opportunity occurred for the San Juan-Chama Project to divert water that would supply prior downstream rights in New Mexico, contracts would be required by P.L. 87-483 before stored water from Navajo Reservoir could be released to offset the San Juan-Chama impact. We also advised that the most senior rights on the river system in New Mexico probably were the two Indian projects located downstream of the mouth of the Animas River.

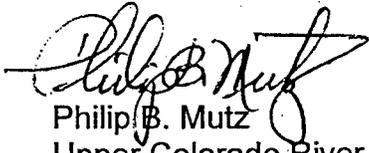
While we did not discuss impacts of Navajo Reservoir evaporation during times when downstream senior rights place a demand on the inflow to the reservoir, that impact on downstream uses is easily managed by simply allowing the reservoir level to decline by

Mr. Patrick J. Schumacher  
September 20, 2000  
Page 3

an amount equal to the calculated evaporation for the duration of the period of demand and no contract would be required.

We also discussed the historic operation of the reservoir which has been an agreed release of about 500 cfs unless larger releases are required to evacuate storage, recognizing that until the contract demand for stored water was much larger, the accumulated reservoir storage had to be released to accomplish its authorized purpose of river regulation and to avoid spill. Thus, there has been no need for administration of the rights on the river. A similar method of operation can continue until the contract demand for stored water becomes large enough to warrant otherwise.

Sincerely,



Philip B. Mutz  
Upper Colorado River Commissioner

PBM:rav

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
999 18<sup>TH</sup> STREET - SUITE 500  
DENVER, CO 80202-2428  
<http://www.epa.gov/region08>

AUG 22 2000

Ref: 8EPR-EP

Mr. Pat Schumacher  
Bureau of Reclamation  
P. O. Box 640  
Durango, Colorado 81301

RE: Review of the Final Supplemental Environmental  
Impact Statement, Animas-La Plata Project,  
Colorado and New Mexico, CEQ #000250

Dear Mr. Schumacher:

The Region 8 Office of the U.S. Environmental Protection Agency has reviewed the Final Supplemental Environmental Impact Statement (FSEIS) for the Animas-La Plata (ALP) Project in La Plata and Montezuma Counties, Colorado, and San Juan County, New Mexico. As you know, on June 23, 2000, we transmitted EPA's compliance determination regarding the Clean Water Act Section 404(b)(1) process for the ALP Project to your office. We are enclosing a copy of that letter with these comments so our compliance determination letter will become part of the FSEIS comment file. On the same date, June 23, 2000, EPA Region 8 also provided its review of the preliminary FSEIS to the Department of the Interior (DOI), and we are enclosing a copy of that correspondence for your FSEIS comment file as well.

Pursuant to EPA's authorities under §309 of the Clean Air Act (CAA), §404 of the Clean Water Act (CWA), the Council on Environmental Quality (CEQ) November 1980 Memorandum to Heads of Agencies regarding the CWA §404(r) exemption process, and the National Environmental Policy Act (NEPA), EPA provides the following comments for your consideration.

EPA's role regarding NEPA compliance for ALP

As we noted in our comments in April 2000 on the Draft Supplemental EIS, EPA has expressed serious concerns with the proposed Project since 1979. EPA Region 8 provided comments on the draft and final environmental statements in 1979 and 1980 and on the Draft and Final Supplemental EISs in 1992 and 1996. EPA senior officials have met and discussed the Project with Reclamation senior staff. In 1998, EPA and Reclamation entered into a Cooperating Agency Agreement that provided for EPA staff's assistance in the preparation of the Draft and Final Supplemental EIS. During these meetings, and on several occasions since November 1998, we have discussed our concerns with respect to: 1) the impacts of the proposed Project, 2) the



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analysis in the EIS process, and 3) the harm ALP operations would have on the Navajo Nation's and the Jicarilla Apache Tribe's abilities to secure their future water projects. Since that time we have satisfactorily resolved the first and second issues and now suggest that you consider means to further investigate options that might reduce the impact ALP could have on the Navajo Nation and Jicarilla Apache Tribe.

EPA concerns with ALP operations upon other Indian Tribes

As noted in my letter to DOI, EPA offers the following suggestions to ameliorate the impact of operating the ALP Project upon the downstream Tribes in New Mexico:

- 1) Set priorities for construction of Indian water projects in the San Juan Basin based on currently unmet public health water supply needs, giving first priority to meeting those needs.
- 2) Consider measures to allow the Colorado Ute Tribes to market their water to downstream Indian Tribes in New Mexico.
- 3) In the event of a shortage of flows needed for fish, allocate water among all users of federal water projects in the San Juan River basin, including users of the ALP Project. A basin-wide shortage obligation for all users of federal water facilities, including those using the ALP Project, would avoid placing this burden solely on future projects proposed by the Jicarilla-Apache Tribe or the Navajo Nation.

Consequently we recommend that the following stipulation be included in the your Record of Decision (ROD):

In the event of a shortage of flows needed for fish, water in the San Juan River Basin will be shared among all users of federal water facilities in the San Juan River, including the users of the Animas-La Plata Project.

EPA suggested improvements to the Environmental Commitments

We concur with the basic plan to monitor water quality in conjunction with the Southern Ute Tribe, Colorado, and New Mexico. EPA suggests that this data, along with information on appropriate thresholds for triggering the proposed non-compliance measures, be compiled annually for public distribution.

Although we concur with the wetland mitigation commitments to compensate for the loss of 134 acres of wetland/riparian habitat on a 1.5 to 1 ratio, we remain concerned about the ability to do so without augmentation of water supply to the La Plata River. We are concerned that the decision whether to pipe water from Ridges Basin to the La Plata for wetland mitigation will not be made concurrently with a decision to build a water supply line to the La Plata for municipal or industrial purposes. We recommend you proceed immediately as planned and purchase lands for

wetland mitigation sufficient to meet the required mitigation ratio without consideration of using new water supply to the La Plata River. We suggest reconvening the Project beneficiaries before construction begins to ascertain their plans for La Plata M&I deliveries.

We also agree with the broad intention to monitor and, potentially, mitigate the native fish impacts in the Animas River. EPA would appreciate being kept informed regarding this issue. Again, we recommend the information and data be compiled annually for public distribution, showing appropriate thresholds for triggering the proposed mitigation in the La Plata River.

Should you have any questions concerning EPA's comments, please contact me at (303) 312-6308.

Sincerely,

*Rebecca W. Hammer*

Rebecca W. Hammer  
Acting Regional Administrator

**Enclosures:**

Letter from EPA to Reclamation, June 23, 2000, 5 pages

Letter from EPA to the Department of the Interior, June 23, 2000, 3 pages

cc: Ernest House, Sr., Ute Mountain Ute Tribe, Towaoc, Colorado  
John Baker, Jr., Southern Ute Tribe, Ignacio, Colorado  
Kelsey A. Begaye, Navajo Nation  
Rodger Vincenti, Jicarilla Apache Tribe, Dulce, New Mexico



# Animas - La Plata Project

Colorado - New Mexico

Final Supplemental  
Environmental Impact Statement

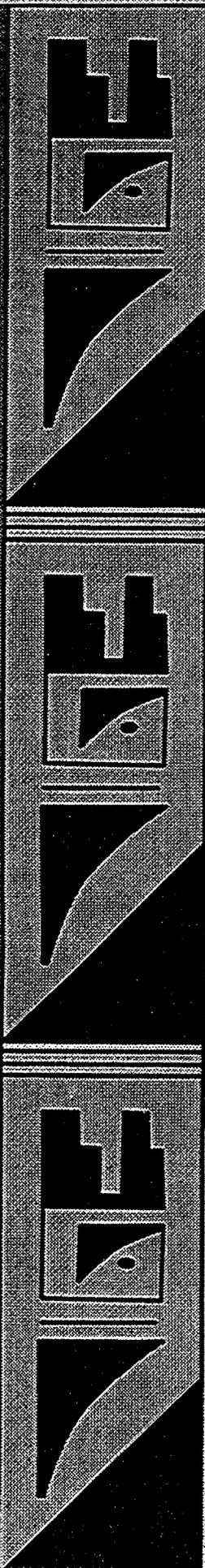
Executive Summary

JULY 2000



Prepared By  
U.S. Department of the Interior  
Bureau of Reclamation  
Upper Colorado Region

OSE-1900



# Animas - La Plata Project

Colorado – New Mexico

Final Supplemental  
Environmental Impact Statement

Executive Summary



Prepared By:  
U.S. Department of the Interior  
Bureau of Reclamation  
Upper Colorado Region

# EXECUTIVE SUMMARY

## Introduction

The Department of the Interior (Interior), through the Bureau of Reclamation (Reclamation) and in cooperation with the United States Environmental Protection Agency (EPA), and the Ute Mountain Ute Tribe and the Southern Ute Indian Tribes (Colorado Ute Tribes), has prepared this Final Supplemental Environmental Impact Statement (FSEIS). This FSEIS is prepared under the provisions of Public Law (P.L.) 93-638, the Indian Self-Determination and Education Assistance Act and the National Environmental Policy Act (NEPA).

## Settlement Act

The Animas-La Plata Project (ALP Project) FSEIS evaluates the potential impacts of implementing the Colorado Ute Indian Water Rights Settlement Act of 1988 (P.L. 100-585) (Settlement Act). The Settlement Act, through construction of the ALP Project, is intended to provide the Colorado Ute Tribes an assured long-term water supply in order to satisfy the Colorado Ute Tribes' senior water rights claims. The ALP Project was authorized by the Colorado River Basin Project Act of 1968 to be located in La Plata and Montezuma Counties in southwestern Colorado and in San Juan County in northwestern New Mexico (see **Map 1** showing the ALP Project area). The ALP Project was designed to provide irrigation and municipal and industrial (M&I) water supplies to the Colorado Ute Tribes and other project beneficiaries. A Colorado Ute Indian Water Rights Final Settlement Agreement (Settlement Agreement) was signed on December 10, 1986, which quantified the Colorado Ute Tribes' water rights. The water rights allow the Colorado Ute Tribes to obtain water from several rivers and projects, including water supplied from the ALP Project. In 1988, Congress incorporated the ALP Project into the Settlement Act in order to settle Colorado Ute Tribal water rights claims.

The Settlement Act requires delivery of ALP Project water to the Colorado Ute Tribes by January 1, 2000, to avoid future litigation or renegotiation of Tribal water rights claims. If a project is not approved, or implementation is delayed, the Colorado Ute Tribes have the option of commencing litigation or renegotiating their reserved water rights claims by January 1, 2005.

The completion of the Settlement Act has been delayed because of a convergence of factors: an increasingly prominent role of endangered species and recovery efforts, decreasing federal support for irrigated agriculture, a decline in new reservoirs and dams built by Reclamation, and increasing local participation in water resource development matters. Each of these factors has led to a series of refinements to the original ALP Project.

## Purpose and Need

The purpose of and need for the proposed federal action is:

*... to implement the Settlement Act by providing the Ute Tribes an assured long-term water supply and water acquisition fund in order to satisfy the Tribes' senior water rights claims as quantified in the Settlement Act, and to provide for identified M&I water needs in the Project area." [Federal Register Notice, January 4, 1999]*

Providing the Colorado Ute Tribes with an assured long-term water supply is necessary to protect existing water users from senior water rights claims. The Colorado Ute Tribes would use this assured water supply to satisfy future M&I water demands on their reservations and to provide water for regional

M&I needs. In addition to providing an assured water supply as a settlement of the Colorado Ute Tribes' senior water rights, the ALP Project as proposed provides a dependable long-term water supply for neighboring Indian and non-Indian community water needs, including the Navajo Nation at and near Shiprock, New Mexico, the Animas La Plata Water Conservancy District (ALPWCD) and the San Juan Water Commission (SJWC). In addition, water would be provided to the State of Colorado and the La Plata Conservancy District in New Mexico from the Colorado Ute Tribal allocation.

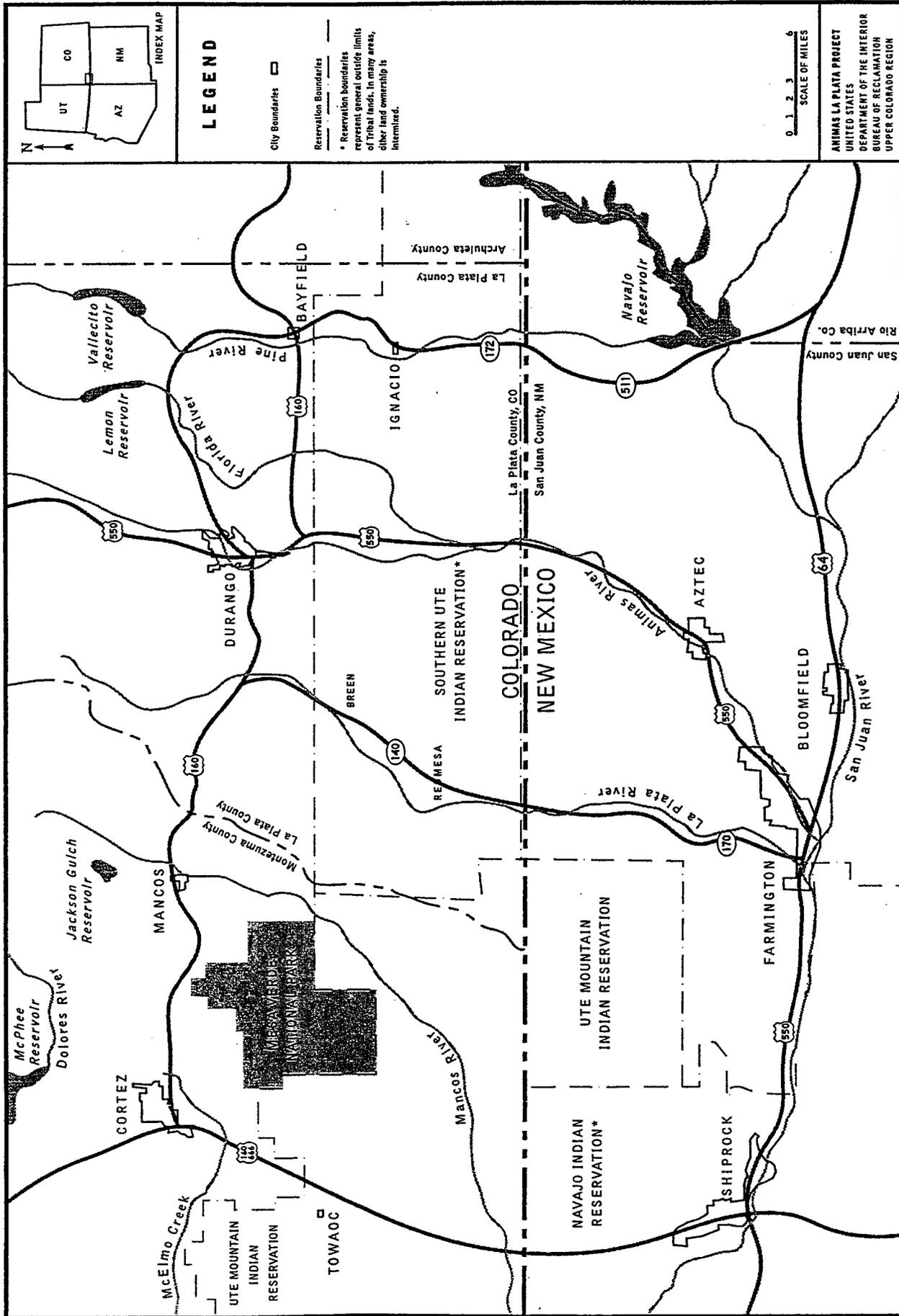
It should be noted that the non-federal parties of the Settlement Agreement, working with their congressional representatives, have introduced proposed legislation (H.R. 3112 and S. 2508) in response to the Administration Proposal and the ongoing NEPA process. The project purpose and need reflects the reality that the pending legislation will likely result in a modification to the Settlement Act which will eliminate the irrigation component and provide substitute benefits to the Colorado Ute Indian Tribes that are equivalent to those that the Tribes would have received under the Settlement Act. See Chapter 2, Section 2.1.1 for further discussion of this issue.

### **Water Rights of the Colorado Ute Tribes**

Based on the Supreme Court's decision in *Winters v. United States*, 207 U.S. 564 (1908), when Congress or the President establishes an Indian Reservation, there is reserved the amount of water necessary in order to accomplish the purposes of the reservation. Under the *Winters* doctrine, the priority date to which the reservation is entitled is no later than the date of creation of the reservation. One of the unique aspects of Indian reserved water rights is that they are not subject to the beneficial use requirements ("use or lose") of state water law. Indian water rights, therefore, may not be diminished for failing to meet a beneficial use standard under state law. As a general rule, Indian water rights are very senior and because these rights are premised on sufficient water being reserved to insure full utilization of the purposes of the reservation, both presently and in the future, Indian water rights are usually sizeable in quantity.

The Colorado Ute Tribes' reserved water rights arise from an 1868 treaty with the United States. 15 stat. 619. This treaty states that the land which is now part of the reservation was "set apart for the absolute and undisturbed use and occupation" by the Colorado Ute Tribes. Art. XIII. Additionally, the treaty provides for the basic tools, facilities and livestock needed to become self-sustaining. Based on these broad purposes, the tribes are entitled to make a claim for water in the Animas and La Plata basins. The Colorado Ute Tribes have over 25,000 acres of arable land in the immediate vicinity (13,780 acres of which were to be irrigated by the original ALP Project) and therefore have the basis for a sizeable water rights claim based solely on the agricultural purposes of their reservations. In return for not asserting a possibly sizeable claim, the Colorado Ute Tribes will receive a much smaller amount of "wet water" for settling their Winters rights.

Because the Animas La Plata project is a settlement of the Colorado Ute Tribal Winters rights, the ultimate use of the water is left to tribal discretion in accordance with federal law. As of this time the tribes have not conclusively specified to what end uses they will put their water. Because NEPA requires the federal government to make a reasonable projection of the potential environmental consequences of any proposed action, Reclamation, in conjunction with input from the tribes, developed potential water use scenarios on how the Tribes could put their water to use in order to effectively evaluate the potential environmental effects of settling the water rights claims of the Colorado Ute Tribes and providing for identified M&I uses in the project area. Reclamation believes that this approach fulfills the requirements of NEPA while not impinging upon the sovereignty of the Colorado Ute Tribes.



**MAP 1**  
**General ALP Project Area**

Any future actions would be subject to future environmental review, and NEPA compliance would be required as part of any approval by a federal agency. Future federal actions would serve as “triggers” for future NEPA compliance activities, and could include future connection to a federal facility for water conveyance enlargement or extension of certain existing conveyance systems, and, certain uses of a water acquisition fund. In addition, other federal and state regulatory and environmental requirements would have to be met in implementation of future actions (e.g., compliance with the ESA, Clean Water Act, Colorado and New Mexico water laws).

## The ALP Project

Reclamation proposes to develop a modified ALP Project in southwestern Colorado and northwestern New Mexico for the purpose of implementing the Settlement Act. Since the ALP Project is intended to provide stored water in lieu of the assertion of senior Tribal water rights claims, a majority of the project's water supply is not targeted for specific near-term uses. Rather, the waters would be used in the region over an indefinite period of time. The Colorado Ute Tribal M&I water uses are currently not specified but were projected. Non-binding projected water uses, both on and off the Colorado Ute Tribal reservations, were evaluated in order to provide possible uses and their associated impacts. Projections were made of a range of potential future M&I uses for project water as a basis for developing alternatives which would effectively provide water to meet these allocations. The scenarios for future water use were based on reasonable estimates of regional growth and projected needs by the Colorado Ute Tribes, Navajo Nation, the ALPWCD, and the SJWC.

The specific percentage allocation between the Colorado Ute Tribes and other project beneficiaries may not be fixed. Comments received during scoping, and support for recently introduced legislation (i.e., HR 3112 and S 2508) indicate that the Colorado Ute Tribes may agree to a reallocation of 6,010 acre-feet per year (afy) to the State of Colorado and entities in New Mexico. This reallocation of some of the Colorado Utes water does not change the environmental evaluation presented in the SEIS. Further, the ALP Project would be operated to include conservation measures contained in the 2000 Biological Opinion issued by the U.S. Fish and Wildlife Service (Service) (Service 2000a) in compliance with the Endangered Species Act (ESA). Among other measures, this opinion limits average water depletions by the project from the San Juan River Basin to 57,100 acre-feet per year (afy).

Under the ALP Project, the Colorado Ute Tribes would receive 79,050 afy (this represents 39,960 afy of depletions from the San Juan River system). The future uses to which water may be put by the Colorado Ute Tribes will be the subject of future NEPA review at the time the uses are determined and structural components are designed to convey water to those uses. A projection of future water uses by the Colorado Ute Tribes included the following types:

- Municipal
- Industrial park
- Recreation and tourism development
- Energy development
- Livestock and wildlife water use
- Regional municipal water supply
- Instream leasing of water

Table ES-1 displays the allocation of water among the Colorado Ute Tribes and other project participants. Under these allocations, the Colorado Ute Tribes would still be approximately 13,000 afy short of the total quantity of depletion recognized in the Settlement Agreement. The Administration Proposal, therefore, also includes a non-structural element that would establish and use a water acquisition fund, which the Colorado Ute Tribes could use over time to acquire water rights on a willing

buyer/seller basis. The water acquisition fund was developed to acquire 13,000 afy of depletion in addition to the depletions shown in Table ES-1, or for other uses that they may choose.

<b>Table ES-1 Proposed Water Depletions and Allocations for the ALP Project</b>	
<b>Water Recipient</b>	<b>Depletion from the San Juan River Basin (afy)</b>
Southern Ute Indian Tribe	19,980
Ute Mountain Ute Tribe	19,980
Navajo Nation	2,340
Animas-La Plata Water Conservancy District	2,600
San Juan Water Commission	10,400
<b>Subtotal</b>	<b>55,300</b>
Allowance for Reservoir Evaporation	1,800
<b>Total Depletion</b>	<b>57,100</b>

The Navajo Nation, ALPWCD, and SJWC would annually receive a combined total of 30,680 acre-feet (af) (representing 15,340 afy of depletion) of water from the ALP Project. With a small amount accounted for by system operational losses, annual water allocations for the Colorado Ute Tribes, Navajo Nation, ALPWCD, and the SJWC would total 111,965 af (57,100 afy depletion).

The Navajo Nation would receive 4,680 afy (2,340 afy depletion) and would use it to serve a portion of the M&I requirements of the Shiprock, Cudei, Hogback, Nenahnezad, Upper Fruitland, San Juan, and Beclaibito Chapters in the Shiprock, New Mexico area. A new water pipeline, the Navajo Nation Municipal Pipeline (NNMP), is proposed for construction to deliver this water to these seven Navajo Nation Chapters, replacing the existing pipeline between Farmington and Shiprock. The 4,680 afy represents about one-half of the future projected M&I requirements of these chapters, based on a 40-year projection.

The ALPWCD projects growth of M&I water needs in the Durango, Colorado area (Gronning 1994), based on the continued increase in population of about 2 percent annually during the 1990s in its service area, as well as residential, commercial, and industrial growth in outlying areas near Durango. Water allocations of 5,200 afy (2,600 afy depletions) from the ALP Project would supplement existing water supplies and would serve this growth. Future development of facilities to serve the City of Durango and other ALPWCD water users would potentially be the subject of future NEPA compliance.

The SJWC has identified water use needs and projected M&I growth in its service area, including the Cities of Aztec, Bloomfield, and Farmington, New Mexico (Cielo 1995). Under the ALP Project allocations, the SJWC would receive 20,800 afy (10,900 afy depletion), which would meet a portion of its projected water needs. Future development of facilities to serve the Cities of Aztec, Bloomfield, and Farmington and other SJWC water users would potentially be the subject of future NEPA compliance.

## **Supplemental Environmental Impact Statement**

On January 4, 1999, Reclamation announced its intent in the Federal Register (Volume 64, No. 1) to prepare a Supplemental Environmental Impact Statement (SEIS) to the 1996 Final Supplement to the Final Environmental Statement (1996 FSFES) for the ALP Project. The new SEIS is intended to supplement the 1996 FSFES and the 1980 Final Environmental Statement (1980 FES) with the objective of providing an environmental evaluation to assist Interior and other involved parties in reaching a final

settlement of the water claims of the Colorado Ute Tribes. The SEIS has been prepared to meet the procedural requirements of NEPA following the regulations established by the Council on Environmental Quality (CEQ) (40 Code of Federal Regulations (CFR) Parts 1500 to 1508). These regulations provide the legal and regulatory guidelines for preparation of environmental impact statements (EIS). The 1996 FSFES and the 1980 FES are incorporated by reference to eliminate duplication and repetitive discussions of the same issues, and also incorporates information from the 1996 FSFES and 1980 FES (40 CFR 1508.28 and 1500.4(j)).

## **Public Involvement Activities**

The Draft Supplemental Environmental Impact Statement (DSEIS) for the Animas-La Plata Project was filed with the Environmental Protection Agency and distributed to the public on January 14, 2000. The public comment period opened on January 14, 2000 and was originally set to close on March 17, 2000; however, the comment period was extended by 30 days, as noticed in the *Federal Register* on March 9, 2000. The public comment period closed on April 17, 2000.

The Bureau of Reclamation (Reclamation) conducted three public hearings on the ALP Project DSEIS in Durango, Colorado; Farmington, New Mexico; and Denver, Colorado on February 15, 16, and 17, 2000, respectively. Notice of the public hearings was announced in the local media and published in the *Federal Register* on January 14, 2000. A total of 77 people presented oral testimony. Speakers represented the Colorado Ute Tribes, Navajo Nation, federal and state agencies, various organizations including county and local offices, water districts, environmental groups, and individuals.

Written comments were accepted by Reclamation at each hearing and were also received as letters and via email throughout the entire public comment period. A total of 397 oral and written comments/letters/e-mails were received. Responses have been prepared for each of these comments, and where appropriate, changes have been made in the text of the FSEIS. Changes made are marked in the FSEIS by a bar in the margin of the text. Responses were developed for comments and questions that were within the scope of the proposed action.

## **SEIS Evaluation Process**

This FSEIS evaluates 10 alternatives, including 9 action alternatives that include several structural and non-structural components, and a no action alternative (see **Table ES-2** below). Project structural components were evaluated, including storage reservoirs, a pumping plant, and conveyance facilities. These are defined in detail, their environmental settings and potential environmental impacts are evaluated, and mitigation measures are proposed. The construction and operation of a water pipeline to transmit treated water to the Navajo Nation at and near Shiprock (the NNMP) is also a structural component of the ALP Project.

Non-structural components include acquiring existing water sources. As part of this analysis, this FSEIS inventories the available land and associated water rights in the McElmo Creek and Mancos, La Plata, Animas, Florida, and Pine River Basin drainages in the vicinity of the two Colorado Ute Tribal reservations. Land values, seniority of water rights, parcel sizes, and other factors were evaluated to develop a reasonable picture of the potential acquisition of land and direct flow water rights. Working with the basic assumptions that water and land would be purchased from willing sellers, and that project modifications and reoperation would be able to receive the approval of all participating parties to proceed, representative areas were identified in order to develop an analysis of the range of likely non-structural component options that might be implemented by one or more of the water users in the future. Finally, as part of the non-structural analysis, the potential for securing water supplies from existing Reclamation-owned storage facilities in the region was evaluated.

<b>Table ES-2 List of ALP Project Alternatives</b>	
<b>Number</b>	<b>Title</b>
1	Administration Proposal
2	Administration Proposal with Recreation Element Added
3	Administration Proposal with San Juan River Basin Recovery Implementation Program (SJRBRIP) Element Added
4	Administration Proposal with SJRBRIP and Recreation Element Added
5	Animas-La Plata Reconciliation Plan
6	Animas River Citizen's Coalition Conceptual Alternative
7	1996 Final Supplement to the Final Environmental Statement Recommended Action
8	Administration Proposal with an Alternative Water Supply for Non-Colorado Ute Indian Entities
9	Citizens' Progressive Alliance Alternative
10	No Action Alternative

The 10 alternatives, and their structural and non-structural components, were then evaluated to determine the relative practicality of each alternative in terms of:

- Potential environmental impacts
- Meeting the ALP Project purpose and need
- Technical and economic factors

Considering all three sets of these factors (i.e., environmental, purpose and need, and technical and economic merits) for each of the 10 alternatives, Alternatives 4 and 6 (modified to provide for water to non-Colorado Ute Tribal entities) were identified as warranting refinement. Each alternative had unique strengths in various areas, and together they represented significantly different approaches to meeting the purpose and need of the project. Alternative 4 is principally a structural alternative and Alternative 6 is principally a non-structural alternative. Alternatives 4 and 6 were both determined to have merit. As such, Alternatives 4 and 6 were then refined to more closely meet project requirements, and the structural and non-structural components of both refined alternatives were then evaluated. The environmental impacts and proposed mitigation for Refined Alternatives 4 and 6 are discussed in this FSEIS. A more detailed discussion of the alternatives evaluation process is contained in Sections 2.3, 2.4, and 2.5 of the FSEIS. A further discussion of the evaluation of impacts from Refined Alternatives 4 and 6 is included in Chapter 3, and in Section 5.2 of this FSEIS.

#### **Refined Alternative 4**

Refined Alternative 4 includes both structural and non-structural elements designed to achieve the fundamental purpose of securing the Colorado Ute Tribes an assured water supply in satisfaction of their water rights as determined by the 1986 Settlement Agreement and the 1988 Settlement Act and by providing for identified M&I water needs in the project area. Refined Alternative 4 includes measures to mitigate fish and wildlife, wetlands, and cultural resource impacts.

The structural component of Refined Alternative 4 would include an off-stream storage reservoir at Ridges Basin with an active capacity of approximately 90,000 af (approximately 120,000 af total capacity), a pumping plant with a pumping capacity of up to 280 cubic feet per second (cfs); a reservoir

inlet conduit (all designed to pump and store water from the Animas River); and the NNMP to transport treated municipal water to the Shiprock area, New Mexico. Consumptive use of water from the structural portion of the project would be restricted to M&I uses only and would be allocated as shown in Table ES-1.

Under this allocation, the Colorado Ute Tribes would still be approximately 13,000 af short of the total quantity of depletion recognized in the Settlement Agreement. Therefore, the non-structural component of the project would establish a \$40 million water acquisition fund which the Colorado Ute Tribes could use on a discretionary basis to purchase land to satisfy non-structural water rights (approximately 13,000 afy). To provide flexibility in the use of the fund, authorization from the US Department of Interior to the Colorado Ute Tribes would allow some or all of the funds to be redirected for on-farm development, water delivery infrastructure, or for water-related economic development activities.

The primary source of the water for the structural portion of Refined Alternative 4 is the Animas River. The water supply for the non-structural component would include the Pine, Florida, Animas, La Plata, Mancos and Dolores Rivers and McElmo Creek. The supply could be developed from existing uses within each basin, with the associated historic shortages, so that no additional water would be needed to meet the demands of the non-structural components.

For Refined Alternative 4, it is estimated that the purchase of about 10,300 acres of irrigated land, distributed in four river basins, could be necessary to obtain the 13,000 afy of depletion described as part of the water acquisition fund. The acreage could be distributed among the four basins approximately in this manner:

- Pine River Basin - Purchase 2,300 acres of land and leave the water on the land.
- La Plata River Basin - Purchase 2,300 acres of land and leave the water on the land.
- Animas/Florida River Basins - Purchase 2,300 acres of land and leave the water on the land.
- Mancos River Basin - Purchase 3,300 acres of land and leave water on the land.

## Refined Alternative 6

Refined Alternative 6 proposes that water rights under the Settlement Act be obtained through (1) augmentation and the coordinated operation of existing federal projects in the area proximal to the Colorado Ute Tribal reservations; and (2) purchase of water rights on irrigated agricultural lands; or (3) a combination of both. Other elements of Refined Alternative 6 include the NNMP and measures to avoid impacting wetlands as a result of purchases of water and transferring it to M&I use. Refined Alternative 6 has been modified to the equivalency of the depletion amounts in Refined Alternative 4 in order to analyze both alternatives on a commensurate or equivalent basis. As with Refined Alternative 4, Refined Alternative 6 also consists of two components:

- One component would be equivalent to the structural component of Refined Alternative 4 by developing up to 57,100 afy of depletions in the San Juan River Basin to serve essentially the same M&I needs as would be served by Refined Alternative 4.
- A second component for Refined Alternative 6 was developed under the assumption that water could be acquired to develop an equal amount of depletions of 13,000 afy and in a manner similar to Refined Alternative 4 by purchasing agricultural lands and associated water rights.

For the first component of Refined Alternative 6, approximately 11,933 acres would be purchased to yield 17,432 afy of depletions. Other proposed sources of water for Refined Alternative 6 include: the purchase of storage from Red Mesa Reservoir, the coordinated operation of existing reservoirs with streamflows in the San Juan Basin for more efficient utilization of water supplies, and the raising of Lemon Dam.

Land (11,933 acres) and associated water rights would be purchased in the Pine, La Plata, and Mancos River Basins, and McElmo Creek Basin to supply a yield of 17,432 afy of historical depletions. This does not include the land required to supply the 13,000 afy depletions for the water acquisition fund.

- Pine River Basin - A total of 10,000 acres of non-Colorado Ute irrigated land would be purchased in the Pine River Basin. The associated 15,114 af of average annual depletion would be removed from the land and allowed to flow into Navajo Reservoir under the same delivery pattern that would have occurred to the irrigated land. This would become project water with the delivery point at Navajo Reservoir for purposes of administering the purchased water rights in the Pine River.
- La Plata River Basin - To meet the demands not met by available streamflow, a total of 785 acres of irrigated land would be purchased and the associated average annual depletion of 521 af transferred to M&I use.
- Mancos River Basin - To meet the demands not met by available streamflow, a total of 500 acres of irrigated land would be purchased and the associated average annual depletion of 761 af transferred to M&I use.
- McElmo Creek Basin - A total of 648 acres, sufficient to provide a firm yield depletion of 1,036 af, would be purchased and the water transferred to M&I use to satisfy regional demand in Montezuma County. All water resulting from these purchases from McElmo Creek would be for the benefit of the Ute Mountain Ute Tribe.

Several federal storage facilities were evaluated for coordinated operation with streamflows in the San Juan Basin for more efficient utilization of water supplies. Navajo Reservoir would be operated to supplement available Animas River flow in meeting the SJWC and Navajo Nation demand, the Farmington, Aztec and Kirtland regional water demands, and the demands for the non-binding uses at the coal mine, coal-fired power plant and gas-fired power plant for the Colorado Ute tribes. To the extent that capacity is not sufficient, additional irrigated acreage could be purchased and retired above the reservoir to augment the water supply. Vallecito Reservoir would continue to operate as it has historically, with any water transferred from irrigation to M&I use delivered in the same pattern as would normally occur for irrigation. Jackson Gulch Reservoir would be operated to store agricultural water purchased for conversion to M&I and release it according to demand as long as such operation did not impact the delivery of agricultural water to existing right holders.

Approximately 200 af of storage space would be purchased in Red Mesa Reservoir (also referred to as Mormon Reservoir).

In summary, approximately 36,891 af of water may become available through coordinated operation of existing reservoirs with streamflows in the San Juan Basin. Subsequent computer modeling studies would need to verify the amount.

The capacity of Lemon Reservoir would be increased from approximately 40,000 af to 50,000 af by raising the dam 11.5 feet. Increased capacity would be used to deliver water to the Florida Mesa Housing Unit and supplement Animas River diversions to meet the City of Durango demands and the Durango

regional demands. The depletion supplied by Lemon Reservoir to the uses ranges from zero to 1,500 afy, with an average annual depletion of approximately 500 af. More detailed water operation modeling studies would need to be completed to verify the yield from enlarging Lemon Reservoir.

A water acquisition component of Refined Alternative 6 was developed that would be commensurate with the non-structural component of Refined Alternative 4 for the purchase of agricultural lands to obtain 13,000 afy depletions. Under this component the water would be left on the land. A summary of the lands purchased under this component are as follows:

- Animas and Florida River Basins - Acreage sufficient to provide a firm yield depletion of 6,500 af would be purchased in the Animas and Florida River Basins as an equivalent to the non-structural component of Refined Alternative 4. The water would remain on the land as described in Refined Alternative 4. With a depletion factor of 1.4 af per acre, 4,643 acres would be required.
- McElmo Creek Basin (Montezuma County) - Approximately 4,062 acres, an amount sufficient to provide an annual firm yield depletion of 6,500 af, would be purchased in the Montezuma Valley, either within the Montezuma Valley Company or elsewhere in the Dolores Project service area as an equivalent to the non-structural component of Refined Alternative 4. The water would remain on the land.

## **SEIS Conclusions and Recommendations**

The initial 10 alternatives, additional structural and non-structural components, and Refined Alternatives 4 and 6 were thoroughly evaluated in the SEIS. The analysis is included in Chapters, Volume 1 of the FSEIS for the full range of alternatives. Additional analysis for Refined Alternatives 4 and 6 is included in Chapters 3 and 4 of this FSEIS, Volume 1. In Chapter 5, additional analysis to test the ability of the refined alternatives to meet the purpose and need of the project.

Project alternatives would affect resources such as streamflows, fish and wildlife, vegetation and wetlands, cultural resources, and recreation as described in Chapter 3. Chapters 3 and 5 describe mitigation measures and environmental commitments to reduce these impacts.

The evaluation of several factors reveals that implementation of Refined Alternative 6 presents a number of problems:

- It would impose significant risks on the ability of the project to provide an assured water supply commensurate with the water rights established in the settlement;
- The wholesale purchase of land and transfer of water may be opposed by the local community, thereby impacting completion of the settlement;
- It would require an extended and uncertain time frame to secure the settlement benefits, which would affect the ability to finalize the settlement; and
- It would substantially impact Indian trust water rights by using the remaining capacity of the Navajo Reservoir, a facility designed to supply these demands, thus creating a likely conflict with the Navajo Nation and Jicarilla Apache Tribe.

On the basis of this overall evaluation, it was determined that Refined Alternative 4 would best meet the ALP Project purpose and need. Accordingly, Refined Alternative 4 was designated as Reclamation's Preferred Alternative.

Tables ES-3 and ES-4 summarize the water supply and project cost projections for the Preferred Alternative.

Table ES-3 Water Supply and Costs Preferred Alternative		
Allocation of ALP Project Water		
Entity	Source of Water	Depletion (afy)
Southern Ute Indian Tribe	Animas River/Ridges Basin Reservoir	19,980 <sup>a</sup>
Ute Mountain Ute Tribe	Animas River/Ridges Basin Reservoir	19,980 <sup>a</sup>
Navajo Nation	Animas River/Ridges Basin Reservoir	2,340
Animas-La Plata Water Conservancy District	Animas River/Ridges Basin Reservoir	2,600
San Juan Water Commission	Animas River/Ridges Basin Reservoir	10,400
Subtotal		55,300
Allowance for Reservoir Evaporation		1,800
Total Depletion <sup>b</sup>		57,100

<sup>a</sup> Support for recently introduced federal legislation indicates that the Colorado Ute Tribes may agree to a reallocation of 5,280 afy depletion to the State of Colorado and 780 afy depletion to the La Plata Conservancy District in New Mexico.  
<sup>b</sup> Through implementation of the \$40 million water acquisition fund, the Colorado Ute Tribes could acquire an additional 13,000 afy depletion.

Table ES-4 Total Costs for Preferred Alternative		
Item	Description	Cost (Million)
<b>Project Components</b>		
Ridges Basin Dam	Consists of 120,000 acre-foot reservoir with a conservation pool of 30,000 acre-feet. Included in the cost of the dam are costs of relocations for County Road 211, gas pipelines, and electrical transmission facilities.	\$145.0
Durango Pumping Plant	Maximum pump capacity is 280 cfs. Pumping limited to 240 cfs in June for endangered species requirements	\$36.3
Ridges Basin Inlet Conduit	Delivers water from Durango Pumping Plant to Ridges Basin Reservoir. Length of conduit is 11,200 feet and diameter of pipe is 66 inches. Maximum design capacity of the conduit is 280 cfs.	\$8.7
Water Acquisition Fund	A fund to be used at the discretion of the Ute Tribes for either the purchase of water rights to satisfy 13,000 acre-feet per year depletion or for other economic development by the Tribes	\$40.0
Cultural Resources Mitigation	Mitigation includes survey, recovery, protection, preservation and display of cultural resources.	\$9.0

<b>Table ES-4 (continued)</b>		
<b>Total Costs for Preferred Alternative</b>		
<b>Item</b>	<b>Description</b>	<b>Cost (Million)</b>
Wetland, Fish, and Wildlife Mitigation	Included in the cost is \$2.1 million for a fish hatchery and fisherman access.	\$12.8
<b>Subtotal: Cost of Project Components<sup>a</sup></b>		<b>\$251.8</b>
<b>Other Components</b>		
Navajo Nation Municipal Pipeline	Pipeline would deliver 4,680 acre-feet of water to seven Navajo chapters located between Farmington to Shiprock, New Mexico. Total length of pipeline is 28.9 miles. Capacity of pipeline and pumping plant would be 12.9 cfs. New water storage tanks of 5.5 million gallon capacity would be required.	\$24.0
<b>Subtotal: Cost of Other Components</b>		<b>\$24.0</b>
<b>COST TO IMPLEMENT THE PREFERRED ALTERNATIVE</b>		<b>\$275.8</b>
Project Costs Through FY 1998	These costs, commonly referred to as sunk costs, are costs that have been expended on the project and cannot be recovered. They include planning preconstruction investigations, data gathering and analyses, and field investigations leading to the preparation of various planning and environmental reports through FY 1998.	\$68.0
<b>TOTAL COSTS FOR THE PREFERRED ALTERNATIVE</b>		<b>\$343.8</b>
<sup>a</sup> Project costs are the cost to construct and implement the various components of the ALP Project.		

## Consultation and Coordination

Reclamation and the U.S. Fish and Wildlife Service (Service) have consulted, both formally and informally, regarding potential impacts to special status species which may occur as a result of the development and operation of the proposed ALP Project. A Biological Assessment was prepared by Reclamation and was submitted to the Service in December 1999 and the Service has completed a final Biological Opinion (both documents are included in Appendix G in Volume 2). The Biological Opinion supercedes previous opinions on the ALP Project. It is the Service's opinion that the ALP Project, as described in this FSEIS and the Biological Opinion, is not likely to jeopardize the continued existence of the Colorado pikeminnow and razorback sucker, nor is the proposed project likely to destroy or adversely modify their designated critical habitat. The Service has also concluded that the proposed ALP Project is not likely to jeopardize the continued existence of the bald eagle. These conclusions are based on the description of the proposed action contained in the opinion and FSEIS, with full implementation of the conservation measures. The Service also concluded that the project may affect, but is not likely to adversely affect, the southwestern willow flycatcher. Other special status species would not be affected.

A Fish and Wildlife Coordination Act Report (FWCAR) has also been completed by the Service (see Technical Appendix 7).

Reclamation has also coordinated with EPA regarding potential ALP Project effects on wetlands and water quality, and with EPA and the U.S. Army Corps of Engineers on consideration of the Section 404(b)(1) guidelines. The required 404(b)(1) Evaluation is contained in Attachment B-1 to the FSEIS,

Volume 2. A letter of concurrence from EPA confirming Reclamation's compliance with 404(r) requirements is attached as B-3, Volume 2. The 404(b)(1) Evaluation used EPA guidelines to evaluate Refined Alternatives 4 and 6. As a result of the evaluation, Reclamation found that Refined Alternative 4 would comply with the requirements of the EPA guidelines. Revised Alternative 4 would have fewer overall impacts to wetlands and endangered species (southwestern willow flycatcher habitat) than Refined Alternative 6.

Pursuant to the Native American Graves Repatriation and Protection Act (NAGPRA), Reclamation has consulted with interested and concerned Indian tribes. Tribal representatives included elected officials, recognized traditional and religious leaders, Tribal representatives and historians, and cultural committees. A NAGPRA Plan has been prepared for the ALP Project. The Plan has been prepared with regard to potential ALP Project effects on Native American human remains, associated grave goods, and objects of cultural patrimony. A Programmatic Agreement has also been prepared pursuant to the National Historic Preservation Act. Both the Programmatic Agreement and NAGPRA Plan are included in Attachment H of the FSEIS, Volume 2. In addition, a draft Historic Preservation Management Plan has been prepared (see Technical Appendix 8).

NAVAJO INDIAN RESERVATION

DELAWARE INDIAN RESERVATION

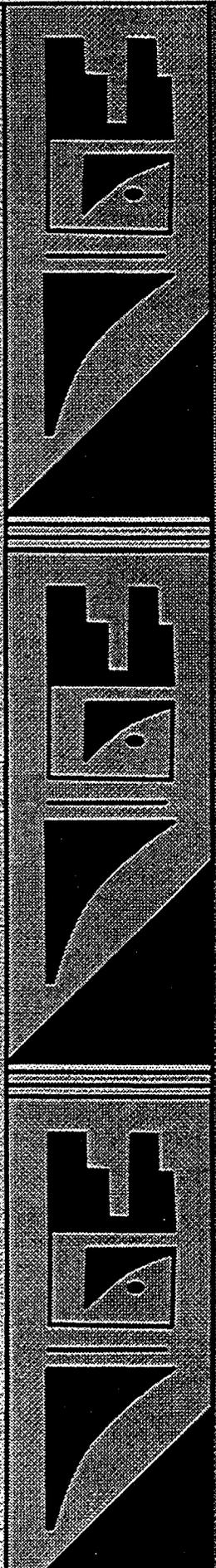
FRANCIS RIVER

SOUTHERN UTAH INDIAN RESERVATION

NAVAJO INDIAN RESERVATION

SOUTHERN UTAH INDIAN RESERVATION

FRANCIS RIVER







IN REPLY REFER TO:

# United States Department of the Interior



#1206  
HW  
San Juan-3  
ALP

2000 JUL BUREAU OF RECLAMATION  
Washington, D.C. 20240  
OFFICE OF THE  
STATE ENGINEER  
A.S.D. SANTA FE, NM

JUL 14 2000

Dear Interested Individuals, Organizations, and Agencies:

Enclosed is the Executive Summary for the Final Supplemental Environmental Impact Statement (FSEIS) for the Animas-La Plata Project (Project). The FSEIS contains an analysis of the environmental impacts of various alternatives for the Project.

One of the alternatives analyzed in the FSEIS is the Administration Proposal for a Project limited to a smaller dam and reservoir designed to supply municipal and industrial water to the Colorado Ute Tribes, Navajo Nation, and non-Indian entities in the local area. The Administration Proposal also contains a nonstructural element. The FSEIS identifies a Preferred Alternative, Refined Alternative 4 (a refined version of the Administration Proposal), which achieves the fundamental purpose of implementing the 1988 Settlement Act by securing the Colorado Ute Tribes an assured long-term water supply in satisfaction of their water rights as well as for identified municipal and industrial water needs in the Project area.

The FSEIS will be used by decision-makers in the Bureau of Reclamation and the Department of the Interior and is provided for public information. A record of decision may be executed 30 days after publication of release of the FSEIS in the *Federal Register*. Any decision regarding the Animas-La Plata Project, as well as opportunities for future public involvement, will be publicized.

If you desire a copy of the entire document, please contact Mr. Pat Schumacher, Four Corners Division Manager, Bureau of Reclamation, 835 East Second Avenue, Suite 300, Durango, Colorado 81301; telephone (970) 385-6590; faxogram (970) 385-6539; or e-mail [pschumacher@uc.usbr.gov](mailto:pschumacher@uc.usbr.gov). The document is also available on CD-ROM or the Internet at <http://www.uc.usbr.gov> under the Environmental Studies, Summaries & Reports heading.

Sincerely,

Eluid L. Martinez  
Commissioner

Enclosures





*K. Hill Mute* 25  
*San Juan - 3*  
*ALB*

# ATTORNEY GENERAL OF COLORADO

Ken Salazar

June 16, 2000

Wesley Warren  
Associate Director for Natural Resources,  
the Environment, and Science  
Office of Management and Budget  
Old Executive Office Building  
Washington, D.C. 20503

RE: Animas-La Plata Project

Dear Wesley:

Thank you for meeting with me by telephone yesterday. I think our discussion was very productive. I want to follow up with a more detailed explanation of why it is important to the State of Colorado that Ute Tribes settlement legislation not deauthorize those features of the Animas-La Plata Project that are not currently contemplated.

In 1956, Congress enacted the Colorado River Storage Project Act to enable the states of the Upper Colorado River Basin to use their compact allocations. CRSP is composed of four initial storage units – Aspinall, Flaming Gorge, Navajo, and Glen Canyon – and 25 additional authorized participating projects in Colorado, New Mexico, Utah, and Wyoming – eight of which (including Animas-La Plata) have not been built.

The CRSP Act authorized a separate fund in the United States Treasury, the Upper Colorado River Basin Fund. Revenues in the Basin Fund collected in connection with operation of the initial units are used first to repay the operating costs of the initial units and second to repay the United States Treasury investment costs previously spent on those units. Any excess revenues from the initial units are then used to help repay the Treasury for participating project irrigation costs within each upper basin state that exceed the irrigators' ability to repay. These excess revenues are apportioned among Colorado (46%), Utah (21.5%), Wyoming (15.5%), and New Mexico (17%).

This allocation of Basin Fund revenues was the result of hard bargaining among the upper basin states. Colorado anticipated that a large part of its allocation would be used to repay the irrigation costs of the Animas-La Plata Project, and those costs are still included in the apportioned revenue repayment schedule. Although H.R. 3112 and S. 2508 authorize a much smaller project than originally contemplated and completely eliminate irrigation uses, the

authorized participating project still serves as a "placeholder" for Colorado's share of the Basin Fund. Colorado could in the future seek legislation that would allow it to use those revenues for other purposes, such as the endangered species recovery programs on the Colorado River, San Juan River, and Platte River.

Environmental and "green scissors" organizations have raised the concern that, unless the remainder of Animas-La Plata is deauthorized, the reduced project will be a foot in the door for a larger project. H.R. 3112 and S. 2508 address that concern by explicitly requiring express Congressional authorization before any other facilities could be added. Moreover, any additional facilities would be subject to all the requirements of NEPA, the Clean Water Act, and the Endangered Species Act. In short, any attempt to build additional project facilities would encounter all the obstacles that have blocked construction in the past.

Although I believe that the "delinking" language of H.R. 3112 and S. 2508 is adequate to ensure that the smaller project is not the opening wedge for a larger project, Colorado and its water users are willing to work with the Administration to satisfy its concerns. We ask that you meet us halfway, however, and not insist on language that could deprive Colorado of the benefit of hard-fought negotiations and a carefully crafted agreement with the other upper basin states and the United States. This narrow Indian water rights settlement legislation is not the place to try to resolve broader "law of the river" issues.

Another issue that is important to Colorado and its water users is the repayment provision. We agree that the non-Indian project partners should pay their full share of project costs. However, it is important that Colorado water users have the option of paying their share as a lump sum prior to construction. In agreeing to a smaller project, the State of Colorado and its water users are giving up substantial benefits negotiated as part of the original settlement and Phase I of the project. In return, we should receive reasonable certainty as to project costs. I also urge the Administration to deal fairly with water users in determining reimbursable costs. For instance, they should not be held responsible for sunk costs associated with water that will not be provided to them by the reduced project.

I appreciate the Administration's support for this legislation. I am committed to working with the Administration to achieve final settlement this session. Please feel free to call me if I can be of any assistance.

Sincerely,



KEN SALAZAR  
Attorney General  
(303) 866-3557  
(303) 866-4745 (FAX)

