

THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT

one tribal attorney's perspective

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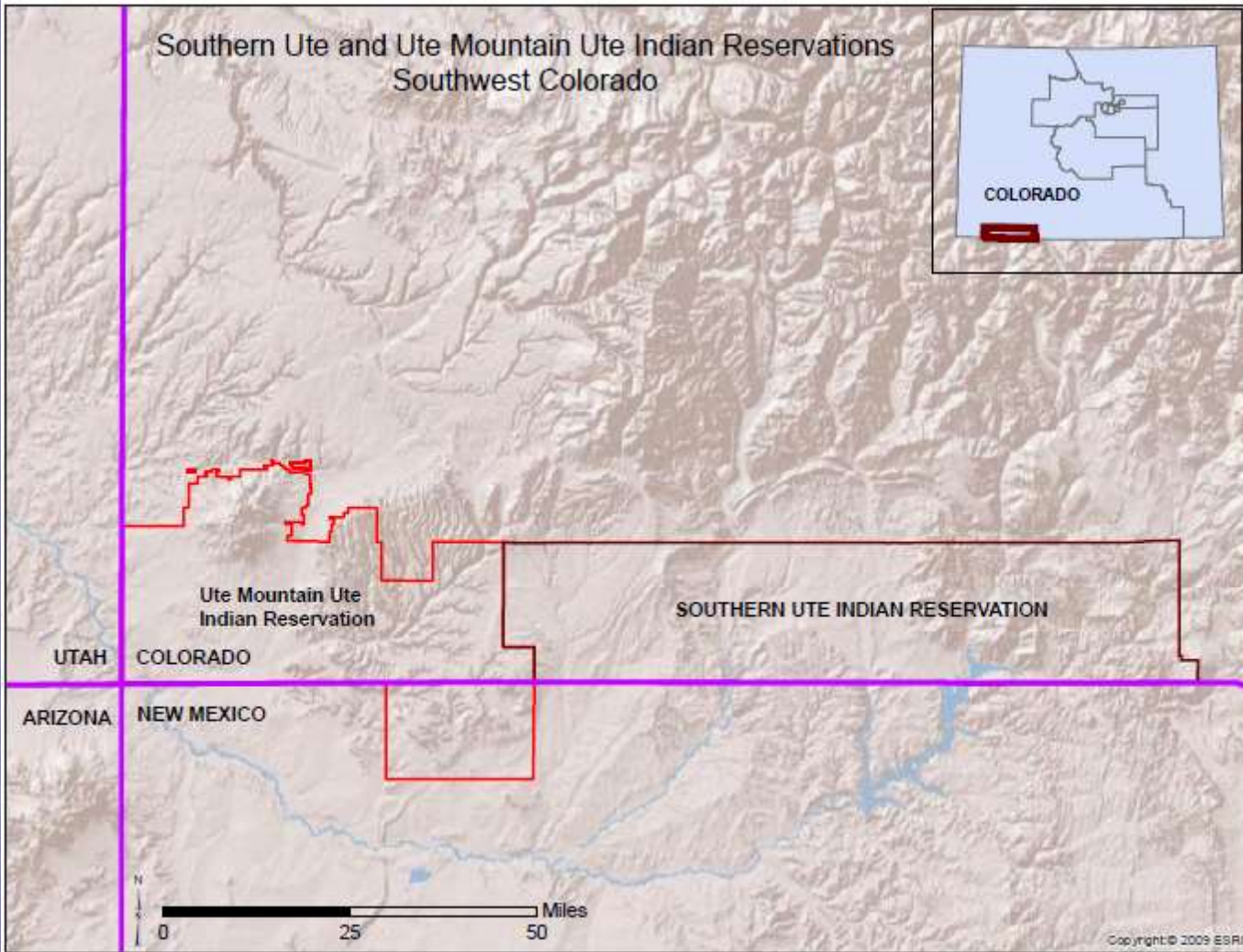
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Southern Ute and Ute Mountain Ute Indian Reservations Southwest Colorado



The Keys to Success

- Perseverance
- Good Tribal Leaders
- Good Partners
- Fear of Failure
- ALP -- common goal



A few common enemies help as well.

Two Negotiations

- The Colorado Ute Indian Water Rights Settlement Act of 1988, 102 Stat. 2973.
- The Colorado Ute Indian Water Rights Settlement Act Amendments of 2000, enacted as Title III of Pub. L. No. 106-554, 114 Stat. 2763, 2763A-258 to -266 (codified as a note to 22 U.S.C. § 2452).

**Southern Ute Estimated Existing and Full Use Diversions
Based on Consent Decree Information**

Basin	Existing Use Diversion	Future Diversion	Total Diversion
San Juan	162	5,567	5,729
Piedra	60	6,460	6,521
Pine	39,385	35,764	75,149
Florida	2,621	1,982	4,603
Animas	1,530	40,715	42,244
LaPlata	115	2,728	2,843
Mancos	1	0	1
TOTAL	43,874	93,216	137,090

Use	Existing Use Diversion	Future Diversion	Total Diversion
Stock Ponds	177	0	177
Irrigation	41,300	59,036	100,336
Domestic Wells	1,227	0	1,227
Stock Wells	63	0	63
Stock Springs	105	0	105
Catchment Basins	2	0	2
Municipal	1,000	34,050	35,050
Oil and Gas	0	118	118
Road Construction	0	12	12
TOTAL	43,874	93,216	137,090

Administration

- Hybrid administration on the ground
- Off-reservation uses are “changed” to “state rights”
- Tribal marketing of water did not preempt State, Federal or international law, or interstate compact re: Colorado River
- Tribal ALP water treated like any other project allocation for purposes of out of state or out of Basin use.

Animas-La Plata Project

- Authorized in 1968
- Definite Plan Report completed in 1979
- EIS completed in 1980
- Section 7 approval under ESA
- Congressional cost share requirement imposed in 1985

What happened?

- New Section 7 consultation under ESA resulting the San Juan Recovery Program and greatly reduced depletions
- New Draft EIS (1996) – never completed
- Tribes and others sued Interior and EPA for failure to complete the EIS
- Unsuccessful state process to reach accord with Project critics
- Another EIS completed in 2000

The SJRRIP Purposes and Goals

- Protect and recover the two endangered fish in the San Juan River; and
- Allow water development to proceed.

Section 7 Consultation cont.

- Reasonable and prudent alternative (“RPA”) for ALP:
- Contribute funding for 7 years research.
- Mimic natural hydrograph.
- Establish SJRRIP
- Project depletions limited to 57,100 af
- The RPA had to be completed for ALP to move forward.



The 2000 Settlement Act Amendments

- Applied only to the Animas and La Plata Rivers.
- Required Court approval of change.
- No settlement agreement -- terms only in the legislation.

The 2000 Settlement Act Amendments

- Eliminated irrigation components of the Project.
- Limited ALP depletions to the 57,100 afy approved under ESA Section 7.
- Added a pipeline for delivery of Navajo Nation water supplies
- Included \$40 million tribal resource fund with \$30 million to be spent in partnership with surrounding communities.

ALP Depletions and Reservoir Supply

	Water Depletion	Percent	Reservoir Supply	Percent
SUIT	16,525	30.55%	38,109	40.10%
ALPWCD	2,600	4.74%	2,919	3.07%
SJWC	10,400	18.96%	3,025	3.18%
LCD	780	1.42%	1,560	1.64%
Colorado	5,230	9.51%	10,440	10.99%
Navajo	2,340	4.27%	869	0.91%
UMUT	16,525	30.55%	38,108	40.10%
Total	54,400	100%	95,030	100%



Ridges Basin Dam

Constructed by Weeminuche Construction Authority (Ute Mountain Ute Tribe). Concrete and other batched material provided by Sky Ute Sand and Gravel (Southern Ute Indian Tribe).



Ridges Basin Reservoir

Post-legislation: Parties obtained diligence determinations for ALP decrees. Revised 1991 Consent Decrees to reflect 2000 Amendments.



Ridges Basin Pumping Plant

Post Legislation: Project beneficiaries negotiated OM&R Agreement among themselves and established a non-profit association to operate the Project.



Durango Pumping Plant

Post legislation: Project beneficiaries negotiated a contract with the Bureau of Reclamation to transfer OM&R responsibility.



Ridges Basin Dam

Post legislation: Parties and DOI obtained funding to build the Project.



Ridges Basin Reservoir

Storage Capacity – 123, 541 acre feet

Active Storage – 93,541 acre feet

INTAKE STRUCTURE

- Tribe funded over 50% of the cost.
- Working with UMUT, LPWWA and LDWA to design and construct a pipeline.
- Critical next step in moving water to the west part of the Tribe's reservation.



Colorado Ute Settlement Act Amendments of 2000 Litigation

- 1. ALP Diligence 1995 -2001
 - Granted by Water Division 7

- 2. ALP Diligence 2001- 2007
 - Filed August 31, 2007
 - Granted January 16, 2008

- 3. Modification of 1991 Consent Decrees
 - Granted by Water Division 7

- 4. ALP Diligence 2008-2014
 - Litigation Pending

Tribe's Water Resources Division participates in many forums

- Regional discussions relating to Wild and Scenic River designations;
- Southwest Colorado Roundtable;
- State level process related to water banking;
- National Forest Management Plans; and
- Creative approaches to instream flows.

Additional Information Sources

- Bureau of Reclamation website:
<http://www.usbr.gov/us/progact/animas/index.html>
- S. McElroy, *History Repeats Itself – A Response to Opponents of the Colorado Ute Indian Water Rights Settlement Act of 1988* 2 U. Denver Water Law Rev. 244 (1999).