JOURNAL OF THE WESTERN SLOPE

VOLUME 9, NUMBER 3 **SUMMER 1994**

MESA STATE COLLEGE

JOURNAL OF THE WESTERN SLOPE is published quarterly by two student organizations at Mesa State College: the Mesa State College Historical Society and the Alpha-Gamma-Epsilon Chapter of Phi Alpha Theta. Annual subscriptions are $10. (Single copies are available by contacting the editors of the Journal.) Retailers are encouraged to write for prices. Address subscriptions and orders for back issues to:

Mesa State College
Journal of the Western Slope
P.O. Box 2647
Grand Junction, CO 81502

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THE COVER: The drawing of the Animas River and Chief Ignacio is by Russell W. Jones, a graduating senior from the University of Texas at Arlington School of Architecture. Born and raised in Durango, he is well acquainted with the regional history.

Contents

Author's Note

This article, like the subject it addresses, is a work in progress. Indian water rights and the Animas-LaPlata Project are extremely complex issues. The more research I do on the subject, the more I discover research that needs to be done. I believe, however, that the material presented here is a fair and accurate narration of the project and the history leading up to the present day situation. I will continue to follow the project as it evolves, while at the same time continuing my research into the history of this project.

Whose Water is it Anyway? Bureaucrats, the Animas-LaPlata Project, and the Colorado Utes

by Leslie Karp

Between 1868 and 1911, the Ute Indians of Colorado, through treaty negotiations with the United States government, saw their once vast and productive hunting grounds reduced to a barren and arid reservation in southwestern Colorado that measured approximately one hundred miles from east to west and forty-five miles from north to south. Exactly one hundred years after signing the first land cession treaty, the Kit Carson Treaty of 1868, the Ute Mountain and Southern Utes entered into another agreement with the United States government, one that promised to bring water to their thirsty lands. The legislative mechanism for fulfilling this promise was the Colorado River Basin Project Act of 1968, which included a provision for construction of a water storage and delivery system known as the Animas-LaPlata Project.

The treaty history of the Ute Indians of Colorado chronicling the piecemeal loss of ancestral hunting lands is representative of the treaty history of most of the American Indian tribes in the United States. One aspect of those negotiations that was not specifically dealt with in any of the treaties and has developed into a major conflict between American Indians and non-Indians in the twentieth century is Indian water rights.

More than half of the nation's 241 federal Indian reservations

and nearly 75% of the nation's reservation Indians are located in the arid and semiarid west.[1] When this is taken into consideration, it is clear why the issue of Indian water rights has come to be of paramount interest, not only for the reservation Indians, but for those non-Indian water users who live adjacent to the reservations, since water is an essential commodity for economic development in the West.

The treaties between the Indians and the United States government following the Indian wars of the nineteenth century did not address the issue of water in any specific way, despite the fact that these reservations were created with the intent of turning the roving plains Indians into settled farmers and ranchers.[2] In addition to dealing with the government through treaties, the tribes were also confronted with legislation like the Dawes Act of 1887. As land became ever more scarce, the government employed new tactics to free up land, including land held by American Indians. The Dawes Act of 1887 dissolved community-owned tribal lands and granted allotments to individual families and awarded citizenship to those accepting allotments. The Act authorized the government to sell unalloted lands and set aside the profits for Indian education. The idea was once again promoted that the Indians would surely acquire white peoples' values and learn to manage their property. This was made exceedingly difficult on the arid lands allotted to many.

Unfortunately for the new reservation and land-allotted Indian farmers, the land they were now settled on lacked a sufficient quantity of water. The newly confined Indians had to learn to deal with the lack of water on their reservations, a problem that had already been encountered and addressed by the settlers who were moving onto the newly vacated Indian lands in ever greater numbers. To deal with questions regarding water rights, the early settlers established the doctrine of prior appropriation.[3] In other words, those who first used the water for beneficiary purposes and continued to use it from a given stream, lake, or river had authority over that water and its benefits.

Not until 1906 was the prior appropriation doctrine contested by an American Indian tribe. In that year the United States brought suit on behalf of the Indians living on the Fort Belknap Indian Res-

ervation in Montana.[4] This suit ultimately led to the 1908 decision, *Winters v. United States*, in which the U. S. Supreme Court ruled that water bordering and running through Indian reservations belonged to the Indians. The court further ruled that the Indian reservations had first rights to the water on and bordering their reservation land, regardless of whether the water was being used or not. *Winters v. United States* thus enunciated a new and controversial water doctrine: the reserved rights doctrine, which became the cornerstone of Indian water rights policy.[5] The Supreme Court took the view that Indian reservations were made up of land that the Indians had chosen not to cede to the United States during treaty negotiations. It therefore stood that since the Indians had not ceded but had reserved those lands for themselves and their use, they had also reserved the water that went with the land.[6] The court also reasoned at the time that the date the water had been reserved for Indian use was the date the treaty had been entered into. Therefore, the only time that prior appropriation doctrine would apply was if the use of the water by non-Indians predated the treaty.[7]

Water rights scholar Norris Hundley points out that there are two views that can be taken when considering the doctrine of reserved rights. The first view is that the Indians themselves reserved the water on the reservation lands. This appears to be the view taken by the Supreme Court in the Winters case when it stated that the tribes had chosen not to cede these lands. Any water on those lands not ceded would also still belong to the tribes. The second view is that the federal government reserved the water for the Indians.[8] This view can be seen in the decision by the court in the Winters case to uphold prior appropriations predating treaties. If the first view is taken, the Indians have rights to all water and its benefits as far back as the beginning of time. The second view holds that the Indian rights date back only as far as the creation of the reservation by the federal government.[9] When the decision is interpreted in this way, it is obvious that the court's ruling was not conclusive regarding all matters. This ambiguity is an issue, especially for Indians whose reservations were created late in the century, thereby increasing the possibility that non-Indian water users will have prior appropriation rights.

Besides the two rather conflicting views of the date of reserved water, the Winters decision added some other confusing aspects to the already muddled issue of Indian water rights. The decision did not specify the quantity of an Indian water right, nor did it adequately address the issue of the legitimate uses of the water. Did the Indians have a right only to irrigation water or to all water? Was the quantity of water to be reserved on the basis of the needs of the present, the future, or both? Can the Indian tribes sell the water on their reservations to off-reservation parties? All these questions were in part a result of the Winters decision, and unfortunately, most of these questions remain unanswered today.[10]

Since the 1908 Winters decision, the Supreme Court has attempted to deal with these disturbing issues only three times. In 1939 in *United States v. Powers*, the issue of the Indian reservations selling water was addressed. In the Powers case the court ruled that water was included in allotments of land and that the Indians had the right to sell the water on their allotted land. It did not, however, address the issue of whether the water could be sold separately from the land. In June of 1986 in *Cappaert v. United States*, the court ruled that the reserved right of Indian water extended to the ground water of the reservation as well as the surface water.[11] Perhaps the most important of these three court decisions was made in 1963 in *Arizona v. California*. This case involved the question of priority date of water rights. The decision established that the priority date of water rights was determined by the date that the reservation was established either by treaty, Executive Order, or an Act of Congress. *Arizona v. California* also addressed the issue of trying to ascertain a formula for quantifying the amount of an Indian reserved water right, the "practicably irrigable acreage" measure.[12] The problems that have emerged due to this concept are many.[13]

When the amount of reserved water rights of a reservation is calculated by the irrigable acreage measure, the number of people on the reservation and their wishes are not considered. The measure is a rural nineteenth century standard and many Indians of the twentieth century resent being subjected to a rural criterion that has all but vanished,[14] since the measure does not take into account the water that is needed by many tribes to enable them to make use of

the industrial resources they have found on their reservations within the last century.

Additional difficulties for the Indians in obtaining their water rights have surfaced in the last twenty years. For example, the 1976 case *Colorado River Water Conservation District v. United States* dealt with an interpretation of the 1952 McCarran Amendment in relation to Indian water rights. The 1952 McCarran Amendment waived federal sovereign immunity in certain types of water rights cases, and provided that in general stream-adjudication proceedings the United States government would be joined by state tribunals.[15] Prior to the 1976 case, the McCarran amendment applied only to non-Indian water issues and the jurisdiction of the federal courts in Indian water rights cases had not been questioned. In what would turn out to be a significant setback for Indian water rights, the Supreme Court ruled in *Colorado River Water Conservation District v. United States* that certain states did have jurisdiction to quantify the Indian entitlement rights.[16] Further judicial action that compromised Indian water rights decisions was handed down in 1988 by the Wyoming Supreme Court. Another example can be found in the case concerning the Shoshone and Arapahoe tribes of the Wind River Reservation, the *General Adjudication of All Rights to Use Water in the Bighorn River System*. In that case the Wyoming court ruled that the practicably irrigable acreage measure was the sole measure of tribal water rights; that tribal water could be reserved only for agricultural and domestic maintenance, minerals development, or wildlife protection; that tribes were prohibited from selling their water to non-Indians outside the reservation; and that ground water under the reservation belonged to the state, not the tribe, and was subject to state regulation. This ruling ran counter to the 1976 United State Supreme Court decision in *Cappaert v. United States*, at least as far as Wyoming Indians were concerned.[17]

In a larger and even more ominous sense the decision made by the Wyoming Supreme Court is representative of a trend concerning Indian water rights: the general abandonment of the federal government's responsibility for Indian water rights, with the federal government increasingly inclined to let the individual states make rulings in Indian water rights issues. Complications have resulted

since there are no standards to make judgements in water rights cases and each state has its own, often politically motivated needs and agendas. Persons seeking political office are necessarily concerned with meeting the needs of the majority of their constituents, and the Indian population does not make up a majority in any state.

This relatively recent shift from federal to state courts as the primary decision makers in Indian water rights has forced American Indians to seek other means for meeting their water rights needs. One of the new options is negotiation rather than litigation. This is the legal avenue that the Southern Ute and Ute Mountain Ute Indians have attempted to use in gaining their water rights.

It is against this legal backdrop that the Colorado Utes struggled to solve the water shortage problem on their arid reservations.

In 1895 two thirds of the Ute Tribe refused to be allotted land under the Dawes Act and were moved to the western half of the reservation with the promise that they would be given a system of irrigation with which to reclaim the desert. In 1899 G. B. Pray, a special government agent, made a report on the condition of the Ute reservation. The agency, then located at Navajo Springs, suffered from severe water shortage. Pray said the place was misnamed as it was more a seepage than a spring. He further recommended that the agency be moved to the Mancos River so that a more dependable source of water would be accessible to the agency.[18] United States government agent Joseph O. Smith found in 1900 that the Ute Mountain Utes had received no assistance for development of their water resources. This was the case even though in 1897 Congress had appropriated $150,000 for the purpose of furnishing the Ute Mountain Utes with water.[19]

In the 1897 Indian Appropriations Act, the Secretary of the Interior was ordered to negotiate with the Montezuma Valley Canal Company in order for the government to secure rights in the supply of water to a portion of the Southern Ute reservation for irrigation and domestic purposes.[20] (Despite this Act, it remained necessary for the Utes to continue to haul drinking water from Cortez into the 1990s). Again in 1905 Congress provided that the Secretary of the Interior should proceed to secure water and water rights for the Ute

Mountain section of the reservation. This appropriation was intended toirrigate ten thousand acres, but the appropriation accomplished nothing.[21]

In the 1920s the government began a review of its American Indian policies. As a result, between 1926 and 1928 the Institute for Governmental Research, the Brookings Institute, conducted a comprehensive survey of social and economic conditions on Indian reservations. Between 1929 and 1933, the Senate Committee on Indian Affairs held hearings all over the United States as a result of the Brookings Institute surveys. Senator Burton Wheeler of Montana and Senator Lynn Frazier of North Dakota held hearings at Ignacio, Colorado during May of 1931. These hearings were to determine the conditions of the Southern and Ute Mountain Ute reservations.[22] Also in 1931, G. E. E. Lindquist, one of twelve members of the United States Board of Indian Commissioners, was sent to assess the seriousness of the water situation on the Ute reservations. He found that the water situation at Towaoc, on the Ute Mountain Reservation where the subagency was located, was acute and had apparently always been so.[23] In 1941 the school, hospital, and subagency at Towaoc were officially closed due to lack of water.[24]

Despite the obvious lack of water on the Ute reservations, there was little attempt at water resource development before the early 1950s. Domestic water for the Ute Mountain Utes continued to be hauled many miles to hogans scattered throughout the reservation. Due to the seasonal fluctuations of water supplies, the Utes roamed from place to place looking for better grazing lands and water supplies.[25] Finally in 1968 it seemed as though the Utes might have some success in getting the much-needed water to their reservations.

In 1968, the Animas-La Plata Project was approved by Congress as part of the Colorado River Basin Project Act. It was only one of many projects for western water development in the River Basin Project, including the nearby Dolores Project. At last, the Utes felt that at least a portion of their Winters reserved water rights might be fulfilled.[26] However, as first conceived and proposed, any benefit that the Southern Ute and Ute Mountain Ute tribes might receive appeared to be simply a nice coincidence.

The real ambition of the project was to supply non-Indians

with more water. This became more apparent as time passed. In 1966 the earlier plan for Animas-LaPlata was revised to meet increasing needs for municipal and industrial water. To accomplish this it was necessary to decrease the amount of water intended for irrigation use. More than half of the land marked for decreased irrigation belonged to the Utes. The 1962 proposal provided the Utes with irrigation service to 17,200 acres. The modified proposal of 1966 provided the Utes with irrigation service to only 7,520 acres. The Department of the Interior was quick to point out that under the new proposal the Ute tribes would receive 53,500 acre feet of municipal water which they could use to develop natural resources on their reservations.[27] Exactly where the cash-poor tribes were to find the financial resources to develop their natural resources did not appear to be a concern of the department. Despite this less than encouraging beginning, it was still felt by the Ute Indians that this agreement would at least in part satisfy some of their water rights claims. Then came the 1968 Colorado River Basin Act.

Four years of complete inactivity, which followed the 1968 Act, prompted the return of frustration and disillusionment felt by the Ute Indians concerning their water rights. In 1972 the Southern Ute tribe began legal action to quantify their reserved water rights claims.[28] In 1976 when the Supreme Court declared that the proper forum was the state court, the claims were refiled in district court, but since the Utes were still clinging to the notion that the Animas-La Plata Project would be built, the claims were not actively pursued by either tribe.[29]

In 1983 the House of Representatives included $1.3 million in the Water Resource Appropriations Act, for the construction of the Animas-La Plata Project, raising hopes that Animas-LaPlata finally would be built. However, although the measure was approved by the Senate Appropriations Committee, it never came to a vote in the full Senate.[30]

Having received no satisfaction from the government either in action on construction of the Animas-La Plata Project or in litigation procedures, the Ute Indians began to consider negotiation with the government as their best chance to actually receive "wet" water.[31] The positive feeling for the negotiated settlement avenue was

brought about by the seemingly successful negotiations of the AK-Chin Community and the Papago Indian Tribe, both of Arizona. These two tribes had successfully negotiated water rights with the government and non-Indian water users. There was significant difference between these negotiations and the Ute negotiations, however. The Arizona tribes negotiated for their rights in water projects that were already partially completed as opposed to the Animas-LaPlata Project, which existed only on paper.

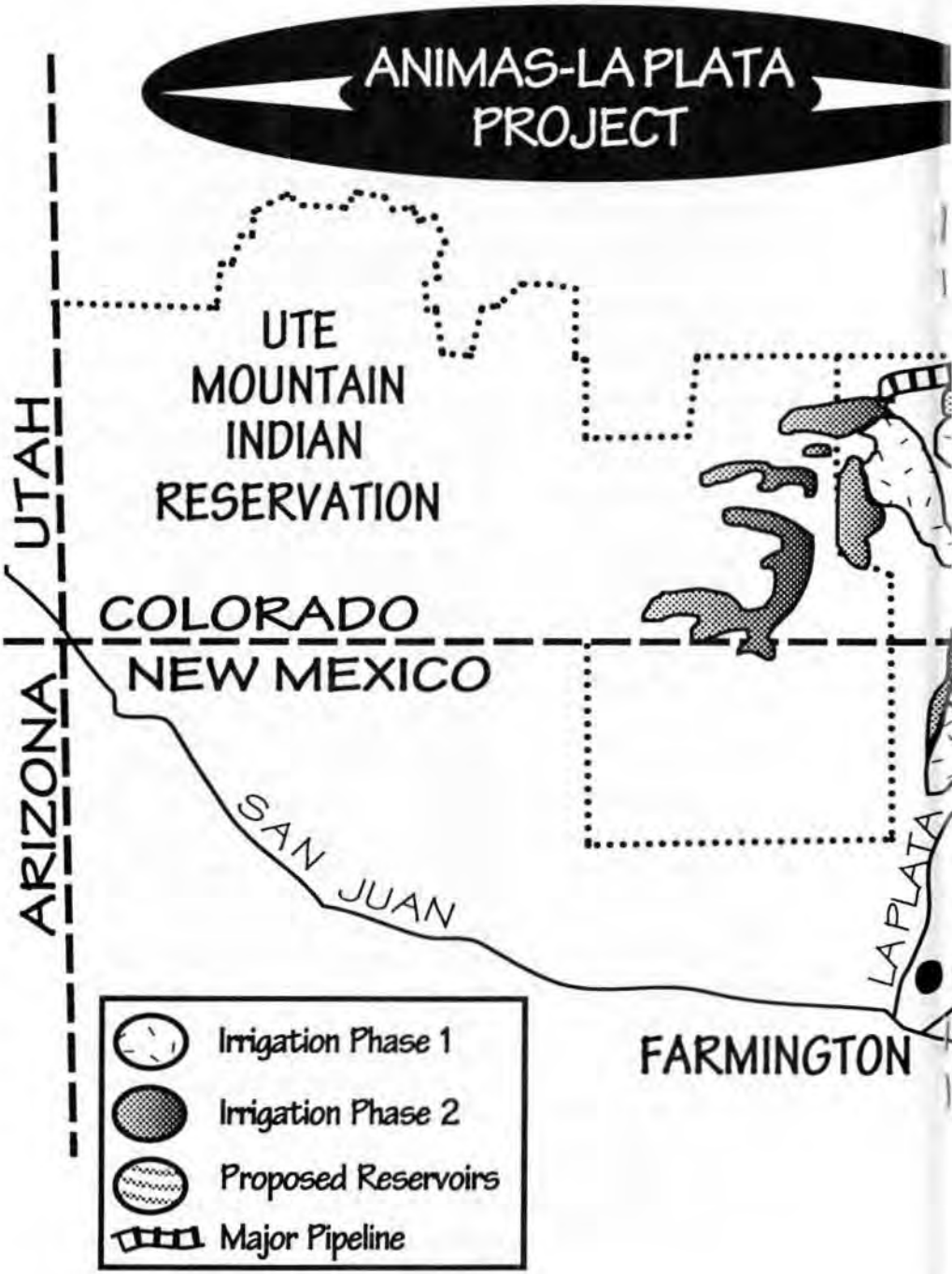
An additional incentive to negotiate came as a result of the Reagan administration's decision in 1984 to control federal water storage project expenditures by making them subject to equal cost sharing by the federal government and the participating state. To receive an appropriation for the initial construction of the Animas-La Plata Project, it was now necessary for Colorado, New Mexico, and the beneficiaries of the project to reach and enter into a cost-sharing agreement with the Secretary of the Interior no later than June 30, 1986.[32] Colorado Governor Richard Lamm was instrumental in getting these negotiations under way in 1985, but upon learning that the potential cost to the State of Colorado would be high due to protracted litigation of Indian reserved water, the governor recognized the need to pursue a more satisfactory alternative.[33]

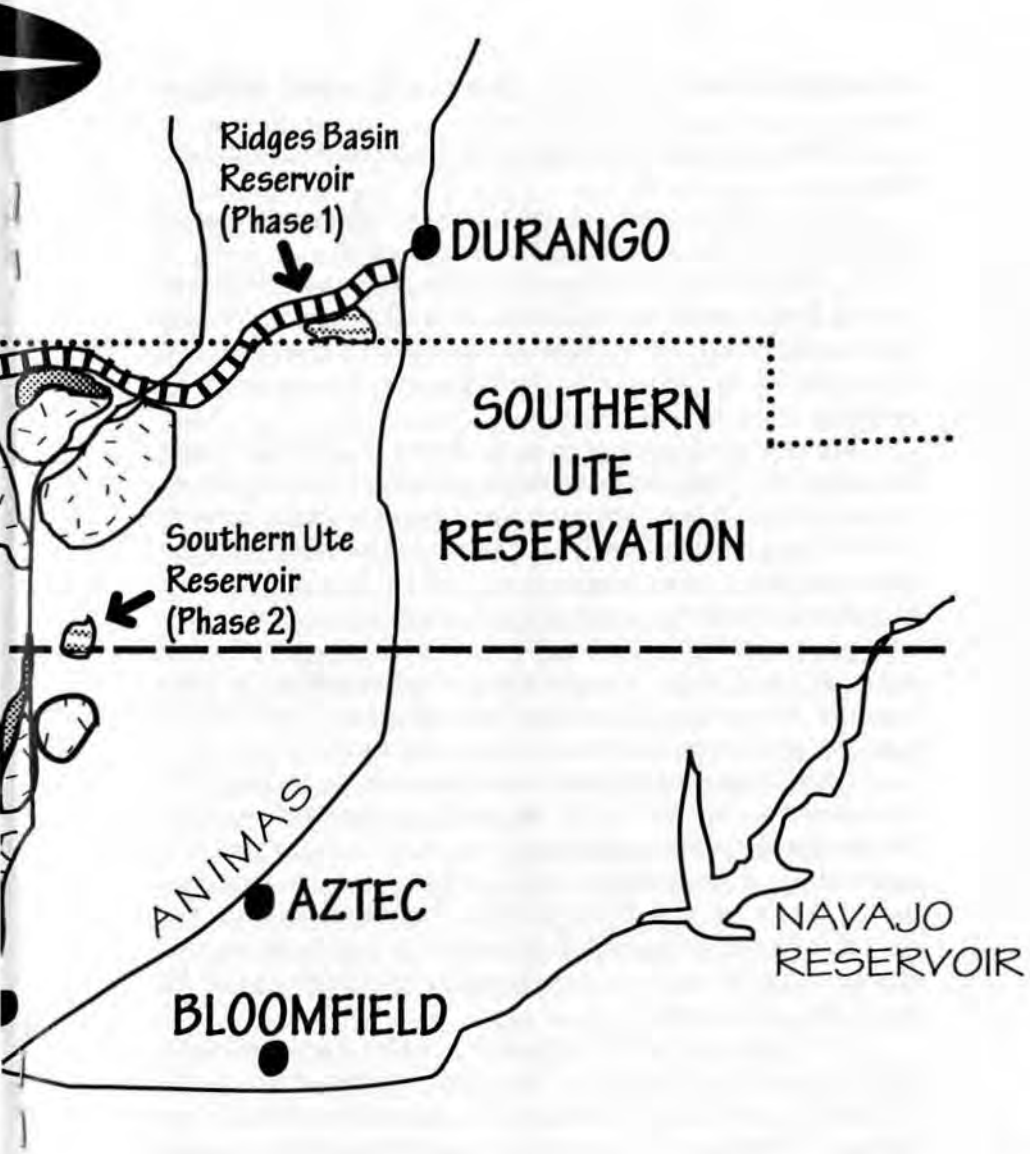
Nevertheless, these efforts to negotiate a settlement bore fruit: the 1988 Ute Water Settlement Agreement. As enacted into law, this agreement included both a settlement of the Ute Tribes claims and a cost sharing agreement for Animas-La Plata and the completion of the Dolores Project. The local share of cost sharing would be thirty-eight percent, which when compared to similar settlements was high. The agreement also called for the establishment of a fund for the development of tribal water resources.[34] The agreement contained six major components:

1. The tribes were to receive specified amounts of water from Animas-La Plata and Dolores with additional rights to certain quantities of water from various streams that pass through their reservations.

2. The manner in which the water rights would be used and administered was prescribed.

3. In exchange for these rights the tribes waived all their re-


ANIMAS-LA PLATA PROJECT
UTE MOUNTAIN INDIAN RESERVATION
UTAH
COLORADO
NEW MEXICO
ARIZONA
SAN JUAN
LA PLATA
FARMINGTON
Irrigation Phase 1
Irrigation Phase 2
Proposed Reservoirs
Major Pipeline


Ridges Basin
Reservoir
(Phase 1)
DURANGO
SOUTHERN
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RESERVATION
Southern Ute
Reservoir
(Phase 2)
ANIMAS
AZTEC
BLOOMFIELD
NAVAJO
RESERVOIR

served rights claims and any breach of trust claims against the United States.

4. $60 million was to be placed in development funds for the tribes.

5. Non-federal parties would contribute substantial sums of money to the financing of the settlement agreement.

6. Repayment of certain costs of the Animas-La Plata and Dolores Projects which were allocable to the tribes were to be deferred and the tribes' share of operation and maintenance costs were to be borne by the United States until the water was put to use by the tribes.[35]

The agreement appeared to be the answer to everyone's water problems. The Indians would be able to get wet water to their reservations and non-Indian water users would get additional water with the added assurance that the Indians would not be taking away the water non-Indians were already using in future litigation. The only major contention the agreement failed to address in a concrete way was that concerning the tribes' right to sell or lease water off reservation and out of state. The negotiating committee essentially chose to pass by this aspect and hope that the problem could be dealt with on a state government basis as situations warranted.

The agreement immediately ran into trouble. In May of 1988 the *Denver Post* reported that the House Appropriations Committee for federal water projects had adopted the leanest budget in years. It approved only $1.9 million of the $7.8 million needed to keep Animas-La Plata on its twelve year schedule. Supporters, however, felt lucky that the project escaped the mandate eliminating all new water projects for the next year, even though actual construction on the project had yet to begin.[36]

Other obstacles quickly appeared. California water interests opposed the measure because of the vague language dealing with the Indians' rights to lease and sell water outside the state,[37] and Senator Bill Bradley of New Jersey, whose attention had been caught by environmental groups opposed to the project, put a hold on the legislation and sent proposed amendments to then Congressman Ben Nighthorse Campbell, a resident of the Southern Ute Reservation at Ignacio, Colorado, who was a major backer of the settlement agree-

ment. The amendments proposed by Bradley had the potential to kill the bill. Bradley's proposals included language stating that the entire allotment of water for the Indians be designated as a federal reserved water right. This would invalidate the agreement reached that off-reservation water use would be treated as a state matter. Bradley also wanted guarantees that no project water would be used to grow surplus crops, that no federal money should be spent for Phase Two of the project, that no federal money should be spent if Colorado fell behind on its cost sharing, and that power revenues used to help pay for the project be paid to the federal government on a thirty year straight amortization plan. The original plan called for a fifty year payoff with low payments in the early years and balloon payments later.[38] Despite these obstacles, backers of the agreement were able to prevail and the Ute Water Settlement Agreement Act was passed by Congress and signed by President Reagan.

Senator Bradley's opposition was only the beginning of the problems that the settlement had to overcome. In May of 1990, on the eve of ground breaking for the Animas-La Plata Project, the Colorado State Fish and Wildlife Department issued a Jeopardy Opinion. The opinion stated that the Animas-La Plata Project would likely jeopardize the Squawfish, an endangered fish whose habitat was in the river system affected by the project.[39] Construction on the project was halted before it began.

The Animas-La Plata Project entered 1992 as it had 1991—stalled—in spite of having received the go-ahead in October of 1991 after the various parties involved agreed to implement a program to recover the endangered Squawfish. Environmental groups said that the project had changed enough due to the new program, and that new environmental studies from the Bureau of Reclamation were warranted. Adding further pressure to the already tense situation was a negotiated federal Indian Water Rights Agreement made final December 19, 1991 stating that the first phase of the Animas-La Plata Project must be completed by the year 2000. If this was not done, the 1988 settlement would be negated and the tribes would have the option of returning to court to litigate their rights.[40]

Each time the Bureau of Reclamation attempted to begin work on Phase One of the project, it was immediately met with equally

strong opposition from environmental groups, especially the Sierra Club. When the Southern and Ute Mountain Utes threatened to go to court if the 1988 construction schedule was not maintained, the Bureau of Reclamation decided to move ahead with the archaeology contract work in 1992. A five year, $7.7 million contract was awarded to Northern Arizona University to begin the archaeological work in Ridges Basin. It was anticipated that this contract would set off a new barrage of court challenges from environmental groups, and it did. Drew Caputo, attorney for the Sierra Club Legal Defense Fund, charged that the awarding of the archaeological contract was illegal.[41] The Sierra Club filed a lawsuit seeking an injunction to prevent further archaeological work until the revised environmental impact statement was completed.[42]

In October of 1992 another suit was filed by environmental groups opposed to the Animas-La Plata Project that alleged the Department of the Interior was violating the Freedom of Information Act by refusing to release its answers to questions about the project posed by the federal office of Management and Budget.[43] Also in October of 1992, the federal government approved an agreement that would activate the San Juan River Basin Recovery Implementation Program for the protection of the endangered Squawfish.[44]

In November of 1992 the Sierra Club Legal Defense fund billed the Bureau of Reclamation for $178,000 for costs and legal fees incurred fighting the Animas-La Plata Project. Federal laws allow attorneys to recover fees from government defendants who lose the lawsuit. The Defense fund won a series of victories in suits filed against the project, including an injunction to stop the archaeological digging while the environmental studies were still being conducted.[45]

In December of 1992 a public hearing was held by the federal government in Denver on the Animas-LaPlata Project. At the hearing the project was endorsed by Colorado's top water officials, but condemned by most other speakers. Dire predictions of up to 34,000 acres of Southwestern farmland drying up were made by Colorado state engineer Hal Simpson. This would occur if the project was killed and the Utes were unable to secure the water to which they had first legal claim and that at present was being used almost ex-

clusively by non-Indian irrigators. Among criticisms of the project were the prohibitive cost issues, environmental issues, and the damage to ninety-two percent of the river trips taken down the Animas River.[46] Yet another stumbling block encountered at the end of the year was the passage in Colorado of Amendment One, the tax and spending limitation measure. With the passage of this amendment the possibility of local funds being raised to match federal funds became increasingly doubtful.

As 1992 reached an end, despite all the obstacles, the Department of the Interior released documents in December maintaining that the Animas-La Plata Project should be built. One Bureau official claimed that Indian water rights and demand for water, rather than economics, were what continued to drive the project.[47] This thinking, the so-called "Indian Blanket Strategy," focusing on the benefits to Indian tribes rather than non-Indian benefits, has become more prevalent in the West as water projects have become less popular due to environmental and financial concerns.

With the Clinton administration taking office at the beginning of 1993, supporters of the project feared they might have yet another problem to face. It was not yet known whether the new administration, with its heightened environmental concerns, would support the project. Senator Campbell was relieved to be told by Secretary of the Interior Bruce Babbitt that the new administration would support full funding for the project.[48] Despite the reassurance, Senator Campbell pledged to oppose any Clinton nominees to the Interior Department who would not back the building of the Animas-LaPlata Project.[49] By July of 1993, with frustration still the norm, the Ute Mountain and Southern Utes were ready to propose taking over the environmental studies in the hope of speeding up the stalled process. It is provided in the 1988 agreement that the Indians can use the funds allotted for the studies to hire the necessary experts to do them.[50] In the meantime, the opposition of environmental groups has not abated. The Sierra Club continued to monitor carefully every move made by the backers of the Animas-La Plata Project.

The Animas-La Plata Project is ostensibly to take care of the water rights of the Southern and Ute Mountain Ute Indians. Basically, since the inception of the project in 1968, the Ute Indians

have been waiting on the United States government to make good on its promises. The Utes entered into a pact with non-Indian water users and the United States in the hope that they would actually receive badly needed water on their reservations. As of 1990 most American Indian tribes, unlike the Utes, have chosen to stay in court rather than negotiate, for two reasons. They justifiably mistrust the ability and willingness of non-Indian governments to keep promises made in settlement agreement negotiations. Second, either the threat or reality of litigation is the Indians' primary source of power. The longer they are able to stall non-Indian water interests, the better settlement they might make.[51]

Although it may safely be said that in the beginning the majority of the Ute Indians were behind the Animas-La Plata Project, this seems to be changing. While the project continues to have the full support of Southern Ute Tribal Chairman Leonard Burch, opposition in the tribe has recently become more vocal. The principle opponent is Ray Frost, who won a seat on the tribal council in 1993. He was a supporter of the project in the beginning, but has since changed his mind. He believes that the benefits of the project have eroded over time. He points out that initially the tribes would have been allowed to sell and lease water, but the clause was deleted as the bill made its way through Congress. Another of Frost's objections is the way the project is broken into two phases with the federal government paying for Phase One and local users paying for Phase Two. Phase One calls for no delivery systems of the water to the Ute reservations. In Phase One 65,700 acre-feet of water is scheduled to be delivered to farmers. Only 2,600 acre-feet will be delivered to Southern Ute farmlands.[52] Non-Indian farmers will be able to irrigate 21,000 acres of new land under Phase One and provide supplemental irrigation to 14,000 acres.[53] Given these numbers, it is easy to understand why Ray Frost and other Ute Indians have criticisms about the project.

In addition, the Sierra Club continues to oppose the project. Suing the Bureau of Reclamation over the Animas-La Plata Project, the Defense Fund and some of its clients hired Jeris Danielson, a former State Water Engineer, to identify some alternatives to the project that would be cheaper and more environmentally consider-

ate.[54] Some of the options that Danielson has developed include: providing more water to the Ute Mountain Utes from the Dolores Project, building a small dam on the Mancos or La Plata Rivers to provide new water to both Southern and Ute Mountain Utes, expanding Durango's water supply by using excess water from the nearby Florida project, and employing additional water conservation programs in the Durango area.[55]

Yet another option that has been placed before the tribes by Bureau of Reclamation Commissioner Daniel Beard is for the Utes to go ahead and build the $643 million project on their own under authority of the federal Indian Self-Determination and Education Assistance Act (House Resolution 93-638).[56] In August of 1993, Sam Maynes, the Southern Ute tribe's attorney for the past twenty-five years, advised the tribe to consider becoming actively involved in the development of the Animas-LaPlata Project. When the Southern Ute and Ute Mountain Ute tribes decided early in 1994 to take on the environmental impact studies that were originally the responsibility of the Bureau of Reclamation, the tribes were also required to assume the burden of any lawsuits filed in the future by environmental groups. Maynes implied that the tribes becoming involved in the lawsuits might actually be in the project's favor as suing an Indian tribe over water rights would not receive the same public support that suing a federal agency like the Bureau of Reclamation would.[57]

In the meantime, the delay tactics of opponents continued. The Four Corners Action Coalition, based in Durango and made up of rafters, farmers, Southern Ute tribal members, environmentalists, and many others, sent a delegation to Washington, D. C. to ask the Clinton administration to block funding for the Animas-La Plata project in 1994. However, in February of 1994, President Clinton proposed the allocation of almost $10 million for the continuation of the Animas-LaPlata and Dolores Projects. The allocation would be used to substantially complete the Dolores Project and finance more of the preconstruction work on the Animas-LaPlata, such as recovery of endangered species and environmental impact studies.[58] It must be kept in mind, however, that every year construction of the project is delayed the cost goes up by $40 million and brings the

deadline of January 1, 2000 that much closer.[59] If the opposition is successful in delaying the project until it is no longer feasible, they will have accomplished their goal. In mid-1994, it appeared as if the delay tactics of the opposition might be successful. The U.S. Inspector General issued a report that called for the Bureau of Reclamation to solicit Congressional consent to restructure the project, limiting it to those parts that are financially feasible or that are required under the Ute Indian Water Rights Settlement Act.[60] When considering only the financial advisability of continuing with the Animas-LaPlata Project, there is little to recommend its completion, since there is small chance that the Bureau of Reclamation will be able to supply irrigation water from the project to farmers at a financially feasible rate. As the Bureau works on revising its economic analysis of Animas-LaPlata, the Ute Mountain and Southern Utes will still not have any water on their reservations and will be forced to again consider the advisability of going back to court to attempt to receive their water rights through litigation or renegotiation with the federal government..

Renegotiation is one of the options offered by Southern Ute tribal members who oppose the project. The Animas-LaPlata Project was one of the key issues of the 1993 Tribal Chairman/Council election. Led by council member Ray Frost, the opposition attacked the policies of the present tribal council, in particular those of Tribal Chairman Leonard Burch. Burch has been Tribal Chairman of the Southern Ute Tribe for an unprecedented twenty years and is, and always has been, a firm defender of the Animas LaPlata Project. The tribal election of 1993 revealed there are at least some members of the Southern Ute tribe who do not feel the way about the project that Burch does. Tribal members running against Burch for the position of chairman and for other council seats used the Uintah Ute tribe's renegotiated water settlement with Utah as an example of what they felt might be accomplished for them if given the opportunity to renegotiate their water settlement with the federal government or the state. According to an open letter written by Ray Frost in the October 29, 1993 *Southern Ute Drum*, the Uintah Ute tribe of Utah was able to negotiate a more than equitable settlement of their water rights with the Central Utah Project (CUP). There are a

number of elements of the CUP that Frost identifies as desirable: The Utah Utes' water is quantified; payment for the tribes' water is guaranteed by the Federal Government for fifty years; $45 million is provided for a farming and feedlot operation and upgrading of current irrigation systems; $20.5 million for fish and wildlife betterment; $5 million to fix and enlarge a leaky reservoir; transfer of three hundred fifteen acres of significant wildlife lands to the Utah tribe; minimum stream flow guarantees for significant reservation streams; and a Utah tribal development fund of $125 million with interest on any payments that are delayed. Frost posed the question of what the Southern Ute Tribe might be able to gain if it elected to release the federal government from its $640 million dollar commitment to build Animas-LaPlata.

Frost concluded the letter by urging his fellow tribal members to at least think about alternatives to Animas-LaPlata and noted that he had the support of Guy Pinnecoose, Jr. and Arlene Millich, candidates for Tribal Chairman and Tribal Councilwoman.[61] Although Leonard Burch ultimately prevailed and remained as Council Chairman, it was necessary for him to defeat Ray Pinnecoose, Jr. in a special runoff election as neither candidate was able to gain a majority vote in the regular election. Though the old guard endured, the closeness of the results seemed to indicate growing dissent concerning policies of the council, not the least of which would be the Animas-LaPlata Project.

Some opponents of the Animas-La Plata Project suggest that the only reason the project is still alive after all these years is because it is one of the few times in the West that whites and American Indians have been working toward a common goal.[62] In other words, if the Ute Indians would settle for something else, the project would simply disappear. Although there may be some truth in that supposition, large non-Indian water interests also are at stake and must be considered as a factor in the project's longevity. Traditionally, the big water projects that are located in the West have been built due to backing from non-Indian water interests. The fact that the Animas-La Plata Project has not been built indicates that it simply does not have enough powerful support from non-Indian interests.

Hardly anyone today would argue with the statement that American Indians received unfair treatment from the federal government when they entered into treaties. Sadly, the long-delayed Animas-LaPlata Project, and the promise of water on the arid Colorado Ute reservations, increasingly appears to be a continuation of the unfair treatment to which American Indians historically have been subjected. Despite enormous patience, litigation and negotiation, the project remains stalled, and with it the likelihood that nineteenth century promise-making and promise-breaking by the government of the United States in dealing with American Indians will continue to the end of the twentieth century.

NOTES

[1]Norris Hundley, Jr., "The Dark and Bloody Ground of Indian Water Rights: Confusion Elevated to Principle", *The Western Historical Quarterly* (October 1978): 456.
[2]Ibid., 458.
[3]Ibid., 459-460.
[4]Committee on Energy and Natural Resources, *Indian Reserved Water Rights* (Washington, D.C.: GOP, 1985), 280.
[5]Hundley, Jr., "The Dark and Bloody Ground," 464-465.
[6]Sharon O'Brien, *American Indian Tribal Governments*, (Norman:University of Oklahoma Press, 1989), 282.
[7]Ibid.
[8]Hundley, Jr., "The Dark and Bloody Ground," 465.
[9]Ibid., 469.
[10]Committee on Energy and Natural Resources, *Indian Water Rights*, 392-395.
[11]Hundley, Jr., "The Dark and Bloody Ground," 475-476.
[12]Committee on Energy and Natural Resources, *Indian Water Rights*, 282.
[13]Lloyd Burton, *American Indian Water Rights and the Limits of Law*, (Lawrence: University Press of Kansas, 1991), 40.
[14]Hundley, Jr., "The Dark and Bloody Ground," 476-477.
[15]Burton, *American Indian Water Rights*, 27.
[16]Ibid., 36.
[17]8bid., 37.
[18]Ibid.
[19]Robert W. Delaney, *The Ute Mountain Utes*, (Albuquerque: University of New Mexico Press, 1989), 79.
[20]Ibid., 76.
[21]Charles J. Kappler, *Indian Affairs Laws and Treaties*, vol. III, *Laws*. (Washington, D. C.: GPO, 1913), 157.
[22]Delaney, *The Ute Mountain Utes*, 91.
[23]Jan Pettit, *Utes: The Mountain People*, (Boulder: Johnson Publishing Co., 1990), 150.
[24]Delaney, *The Ute Mountain Utes*, 97.
[25]Geological Survey Water Supply Paper 1576-G, *Geology and Availability of the Ground Water on the Ute Mountain Indian Reservation, Colorado and New Mexico*, (Washington, D. C.: GOP, 1966), G51.
[26]The Dolores project is another part of the larger Colorado River Basin Project. It is a smaller project than the Animas-LaPlata and has been partially completed. McPhee Dam has been erected on the Dolores River as part of the Dolores project; the proposed project, however, is still uncompleted.
[27] Secretary of the Interior. Letter from the Secretary of the Interior Transmitting a report on the Animas-LaPlata project, Colorado-New Mexico, Pursuant to the Provisions of 53 STAT. 1187. 89th Congress, 2d Session, 1966, 4-5.
[28]Committee on Energy and Natural Resources, *Workshop on Indian Reserved Water Rights*, (Washington, D. C.: GOP, 1984), 193.
[29]Frank E. (Sam) Maynes, "Final Settlement Agreement: Colorado Ute Indian Water Rights", Submitted to the Editorial Board of *Colorado Water Congress*

Newsletter, (Durango, 1987), 2.
[30]Committee on Energy and Natural Resources, *Workshop on Indian Reserved Water Rights*, 193.
[31]The term "wet water" refers to actual water being delivered to the reservations, rather than "paper water" that the Indians might receive from the courts through litigation.
[32]Maynes, "Final Settlement Agreement", 3.
[33]Ibid., 4.
[34]Congress, Senate, *Committee on Indian Affiars and the Committee on Energy and Natural Resources, Colorado Ute Water Settlement Bill*, 100th Cong., 1st sess., 3 December 1987, 22.
[35]Ibid., 26.
[36]*Denver Post*, 12 May 1988.
[37]*Denver Post*, 10 September 1988.
[38]*Denver Post*, 9 October 1988.
[39]Grand Junction *Daily Sentinel*, 10 September 1992 (Hereinafter, *Sentinel*).
[40]*Sentinel*, 3 January 1992.
[41]*Sentinel*, 10 June 1992.
[42]Ibid.
[43]*Sentinel*, 24 October 1992.
[44]*Sentinel*, 30 October 1992.
[45]*Sentinel*, 15 October 1992.
[46]*Denver Post*, 3 December 1992.
[47]*Sentinel*, 12 December 1992.
[48]*Sentinel*, 8 March 1993.
[49]*Denver Post*, 14 May 1993.
[50]*Sentinel*, 1 July 1993.
[51]Burton, *American Indian Water Rights*, 126.
[52]Steve Hinchman, "Animas-La Plata: The Last Big Dam in the West", *High Country News*, 22 March 1993, 14.
[53]*Sentinel*, 10 September 1992.
[54]Hinchman, "Animas-La Plata", 12.
[55]Ibid., 13.
[56]*Sentinel*, 6 August 1993.
[57]*Southern Ute Drum*, 20 August 1993.
[58]*Denver Post*, 10 February 1994.
[59]Hinchman, "Animas La-Plata", 14.
[60]*Sentinel*, 2 August 1994.
[61]*Southern Ute Drum*, 29 October 1993.
[62]Hinchman, "Animas-LaPlata", 14.

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