Attachment A - Part 2

1988 Settlement Act

Public Law 100-585
100th Congress

An Act

To facilitate and implement the settlement of Colorado Ute Indian reserved water rights claims in southwest Colorado, and for other purposes.

Nov. 3, 1988
[H.R. 2642]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Colorado Ute Indian Water Rights Settlement Act of 1988.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Colorado Ute Indian Water Rights Settlement Act of 1988".

SEC. 2. FINDINGS.

The Congress finds that—

(1) The Federal reserved water rights claims of the Ute Mountain Ute Indian Tribe and the Southern Ute Indian Tribe are the subject of existing and prospective lawsuits involving the United States, the State of Colorado, and numerous parties in southwestern Colorado.

(2) These lawsuits will prove expensive and time consuming to the Indian and non-Indian communities of southwestern Colorado.

(3) The major parties to the lawsuits and others interested in the settlement of the water rights claims of the Ute Mountain Ute Indian Tribe and the Southern Ute Indian Tribe have worked diligently to settle these claims, resulting in the June 30, 1986, Binding Agreement for Animas-La Plata Project Cost Sharing which was executed in compliance with the cost sharing requirements of chapter IV of Public Law 99-88 (99 Stat. 293), and the December 10, 1986, Colorado Ute Indian Water Rights Final Settlement Agreement.

(4) The Ute Mountain Ute Indian Tribe and the Southern Ute Indian Tribe, by resolution of their respective tribal councils, which are the duly recognized governing bodies of each Tribe, have approved the December 10, 1986, Agreement and sought Federal implementation of its terms.

(5) This Act is required to implement portions of the above two agreements.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) The term "Agreement" means the Colorado Ute Indian Water Rights Final Settlement Agreement dated December 10, 1986, among the State of Colorado, the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, the United States, and other participating parties.

(2) The term "Animas-La Plata Project" means the Animas-La Plata Project, Colorado and New Mexico, a participating project under the Act of April 11, 1956 (70 Stat. 105; 43 U.S.C. 620; commonly referred to as the "Colorado River Storage

Project Act") and the Colorado River Basin Project Act (82 Stat. 885; 43 U.S.C. 1501 et seq.).

(3) The term "Dolores Project" means the Dolores Project, Colorado, a participating project under the Act of April 11, 1956 (70 Stat. 105; 43 U.S.C. 620; commonly referred to as the "Colorado River Storage Project Act"), the Colorado River Basin Project Act (82 Stat. 885; 43 U.S.C. 1501 et seq.), and as further authorized by the Colorado River Basin Salinity Control Act (98 Stat. 2933; 43 U.S.C. 1591).

(4) The term "final consent decree" means the consent decree contemplated to be entered after the date of enactment of this Act in the District Court, Water Division No. 7, State of Colorado, which will implement certain provisions of the Agreement.

(5) The term "Secretary" means the Secretary of the Interior.

(6) The terms "Tribe" and "Tribes" mean the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, or both Tribes, as the context may require.

(7) The term "water year" means a year commencing on October 1 each year and running through the following September 30.

SEC. 4. PROVISION OF WATER TO TRIBES.

(a) WATER FROM THE ANIMAS-LA PLATA AND DOLORES PROJECTS.—The Secretary is authorized to supply water to the Tribes from the Animas-La Plata and Dolores Projects in accordance with the Agreement: *Provided,* That nothing in this subsection or in the authorized purposes of the projects may be construed to permit or prohibit the sale, exchange, lease, use, or other disposal of such water by the Tribes. Any such sale, exchange, lease, use, or other disposal of water from these projects shall be governed solely by the other provisions of this Act and the Agreement as modified pursuant to section 11 of this Act.

(b) APPLICATION OF FEDERAL RECLAMATION LAWS.—Except as provided in section 5 of this Act, the water supplied to the Tribes from the Animas-La Plata Project and the Dolores Project shall be subject to Federal reclamation laws only to the extent needed to effectuate the terms and conditions contained in Article III, section A, subsections 1 and 2 and Article III, section B of subsection 1 of the Agreement.

SEC. 5. DISPOSAL OF WATER.

(a) INDIAN INTERCOURSE ACT.—The provisions of section 2116 of the Revised Statutes (25 U.S.C. 177) shall not apply to any water rights confirmed in the Agreement and the final consent decree: *Provided,* That nothing in this subsection shall be considered to amend, construe, supersede, or preempt any State law, Federal law, interstate compact, or international treaty that pertains to the Colorado River or its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.

Courts, U.S.

(b) RESTRICTION ON DISPOSAL OF WATERS INTO LOWER COLORADO RIVER BASIN.—None of the waters from the Animas-La Plata or Dolores Projects may be sold, exchanged, leased, used, or otherwise disposed of into or in the Lower Colorado River Basin unless water within the Colorado River Basin held by non-Federal, non-Indian holders of that water pursuant to any water rights could be so sold,

exchanged, leased, used, or otherwise disposed of under State law, Federal law, interstate compacts, or international treaty pursuant to a final, nonappealable order of a Federal court or pursuant to an agreement of the seven States signatory to the Colorado River Compact.

(c) USE OF WATER RIGHTS.—(1) The use of the rights referred to in subsection (a) within the State of Colorado shall be governed solely as provided in the Agreement as modified pursuant to section 11 of this Act and this subsection. The Agreement is hereby modified to provide that a Tribe may voluntarily elect to sell, exchange, lease, use, or otherwise dispose of any portion of a water right confirmed in the Agreement and final consent decree off its reservation. If either the Southern Ute Indian Tribe or the Ute Mountain Ute Indian Tribe so elects, and as a condition precedent to such sale, exchange, lease, use, or other disposition, that portion of the Tribe's water right shall be changed to a Colorado State water right, but be such a State water right only during the use of that right off the reservation, and shall be fully subject to State laws, Federal laws, interstate compacts, and international treaties applicable to the Colorado River and its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters. Contracts.

(2) The characterizations in the Agreement of any water rights which may be used off the reservation of the respective Tribe as either "project reserved water right" or "nonproject reserved water right" are hereby expressly disapproved and any claim to water rights so characterized shall be extinguished when the final consent decree is entered.

(d) RULES OF CONSTRUCTION.—Nothing in this Act or in the Agreement shall—

(1) constitute authority for the sale, exchange, lease, use, or other disposal of any Federal reserved water right off the reservations;

(2) constitute authority for the sale, exchange, lease, use, or other disposal of any water held pursuant to a Colorado State water right, or of any Colorado State water right, outside the State of Colorado; or

(3) be deemed a congressional determination that any holders of water rights do or do not have authority under existing law to sell, exchange, lease, use, or otherwise dispose of such water or water rights outside the State of Colorado.

SEC. 6. REPAYMENT OF PROJECT COSTS. Contracts.

(a) MUNICIPAL AND INDUSTRIAL WATER.—(1) The Secretary shall defer, without interest, the repayment of the construction costs allocable to each Tribe's municipal and industrial water allocation from the Animas-La Plata and Dolores Projects until water is first used either by the Tribe or pursuant to a water use contract with the Tribe. Until such water is first used either by a Tribe or pursuant to a water use contract with the Tribe, the Secretary shall bear the annual operation, maintenance, and replacement costs allocable to the Tribe's municipal and industrial water allocation from the Animas-La Plata and Dolores Projects, which costs shall not be reimbursable by the Tribe.

(2) As an increment of such water is first used by a Tribe or is first used pursuant to the terms of a water use contract with the Tribe, repayment of that increment's pro rata share of such allocable construction costs shall commence by the Tribe and the Tribe shall commence bearing that increment's pro rata share of the allocable annual operation, maintenance, and replacement costs.

(b) AGRICULTURAL IRRIGATION WATER.—(1) The Secretary shall defer, without interest, the repayment of the construction costs

within the capability of the land to repay, which are allocable to each Tribe's agricultural irrigation water allocation from the Animas-La Plata and Dolores Projects in accordance with the Act of July 1, 1932 (25 U.S.C. 386a; commonly referred to as the "Leavitt Act"), and section 4 of the Act of April 11, 1956 (70 Stat. 107; 43 U.S.C. 620c; commonly referred to as the "Colorado River Storage Project Act"). Such allocated construction costs which are beyond the capability of the land to repay shall be repaid as provided in subsection (g) of this section. Until such water is first used either by a Tribe or pursuant to a water use contract with the Tribe, the Secretary shall bear the annual operation, maintenance, and replacement costs allocable to the Tribe's agricultural irrigation allocation from the Animas-La Plata Project, which costs shall not be reimbursable by the Tribe.

(2) As an increment of such water is first used by a Tribe or is first used pursuant to the terms of a water use contract with the Tribe, the Tribe shall commence bearing that increment's pro rata share of the allocable annual operation, maintenance, and replacement costs. During any period in which water is used by a tribal lessee on land owned by non-Indians, the Tribe shall bear that increment's pro rata share of the allocated agricultural irrigation construction costs within the capability of the land to repay as established in subsection (b)(1).

Agriculture and agricultural commodities.

(c) ANNUAL COSTS WITH RESPECT TO RIDGES BASIN PUMPING PLANT.—(1) The Secretary shall bear any increased annual operation, maintenance, and replacement costs to Animas-La Plata Project water users occasioned by a decision of either Tribe not to take delivery of its Animas-La Plata Project water allocations from Ridges Basin Pumping Plant through the Long Hollow Tunnel and the Dry Side Canal pursuant to Article III, section A, subsection 2.i and Article III, section B, subsection 1.i of the Agreement until such water is first used either by a Tribe or pursuant to a water use contract with the Tribe. Such costs shall not be reimbursable by the Tribe.

(2) As an increment of its water from the Animas-La Plata Project is first used by a Tribe or is first used pursuant to the terms of a water use contract with the Tribe, the Tribe shall commence bearing that increment's pro rata share of such increased annual operation, maintenance, and replacement costs, if any.

(d) SECRETARIAL DEFERRAL.—The Secretary may further defer all or a part of the tribal construction cost obligations and bear all or a part of the tribal operation, maintenance, and replacement obligations described in this section in the event a Tribe demonstrates that it is unable to satisfy those obligations in whole or in part from the gross revenues which could be generated from a water use contract for the use of its water either from the Dolores or the Animas-La Plata Projects or from the Tribe's own use of such water.

(e) USE OF WATER.—For the purpose of this section, use of water shall be deemed to occur in any water year in which a Tribe actually uses water or during the term of any water use contract. A water use contract pursuant to which the only income to a Tribe is in the nature of a standby charge is deemed not to be a use of water for the purposes of this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated such funds as may be necessary for the Secretary to pay the annual operation, maintenance, and replacement costs as provided in this section.

(g) COSTS IN EXCESS OF ABILITY OF THE IRRIGATORS TO REPAY.—The portion of the costs of the Animas-La Plata Project in excess of the ability of the irrigators to repay shall be repaid from the Upper Colorado River Basin Fund pursuant to the Colorado River Storage Project Act and the Colorado River Basin Project Act.

(h) DEFERRAL OF CERTAIN CONSTRUCTION COSTS.—Repayment of the portion of the construction costs of the Florida Project which have been allocated to the 563 acre-feet of agricultural irrigation water for which the Southern Ute Tribe is responsible shall be deferred by the Secretary pursuant to the Act of July 1, 1932 (25 U.S.C. 386a; 47 Stat. 564) as provided in section 4(d) of the Act of April 11, 1956 (43 U.S.C. 620c; 70 Stat. 107), and the Florida Water Conservancy District's current repayment obligation shall not change.

SEC. 7. TRIBAL DEVELOPMENT FUNDS.

Appropriation authorization.

(a) ESTABLISHMENT.—There is hereby authorized to be appropriated the total amount of $49,500,000 for three annual installment payments to the Tribal Development Funds which the Secretary is authorized and directed to establish for each Tribe. Subject to appropriation, and within 60 days of availability of the appropriation to the Secretary, the Secretary shall allocate and make payment to the Tribal Development Funds as follows:

(1) To the Southern Ute Tribal Development Fund, in the first year, $7,500,000; in the two succeeding years, $5,000,000 and $5,000,000, respectively.

(2) To the Ute Mountain Ute Tribal Development Fund, in the first year, $12,000,000; in the two succeeding years, $10,000,000 and $10,000,000, respectively.

(b) ADJUSTMENT.—To the extent that any portion of such amount is contributed after the period described above or in amounts less than described above, the Tribes shall, subject to appropriation Acts, receive, in addition to the full contribution to the Tribal Development Funds, an adjustment representing the interest income as determined by the Secretary in his sole discretion that would have been earned on any unpaid amount had that amount been placed in the fund as set forth in section 7(a).

Securities.

(c) TRIBAL DEVELOPMENT.—(1) The Secretary shall, in the absence of an approved tribal investment plan provided for in paragraph (2), invest the moneys in each Tribal Development Fund in accordance with the Act entitled "An Act to authorize the deposit and investment of Indian funds" approved June 24, 1938 (25 U.S.C. 162a). Separate accounts shall be maintained for each Tribe's development fund. The Secretary shall disburse, at the request of a Tribe, the principal and income in its development fund, or any part thereof, in accordance with an economic development plan approved under paragraph (3).

(2) Each Tribe may submit a tribal investment plan for all or part of its Tribal Development Fund as an alternative to the investment provided for in paragraph (1). The Secretary shall approve such investment plan within 60 days of its submission if the Secretary finds the plan to be reasonable and sound. If the Secretary does not approve such investment plan, the Secretary shall set forth in writing and with particularity the reasons for such disapproval. If such investment plan is approved by the Secretary, the Tribal Development Fund shall be disbursed to the Tribe to be invested by the Tribe in accordance with the approved investment plan. The

Secretary may take such steps as he deems necessary to monitor compliance with the approved investment plan. The United States shall not be responsible for the review, approval, or audit of any individual investment under the plan. The United States shall not be directly or indirectly liable with respect to any such investment, including any act or omission of the Tribe in managing or investing such funds. The principal and income from tribal investments under an approved investment plan shall be subject to the provisions of this section and shall be expended in accordance with an economic development plan approved under paragraph (3).

(3) Each Tribe shall submit an economic development plan for all or any portion of its Tribal Development Fund to the Secretary. The Secretary shall approve such plan within 60 days of its submission if the Secretary finds that it is reasonably related to the economic development of the Tribe. If the Secretary does not approve such plan, the Secretary shall, at the time of decision, set forth in writing and with particularity the reasons for such disapproval. Each Tribe may alter the economic development plan, subject to the approval of the Secretary as set forth in this subsection. The Secretary shall not be directly or indirectly liable for any claim or cause of action arising from the approval of an economic development plan or from the use and expenditure by the Tribe of the principal of the funds and income accruing to the funds, or any portion thereof, following the approval by the Secretary of an economic development plan.

(d) PER CAPITA DISTRIBUTIONS.—Under no circumstances shall any part of the principal of the funds, or of the income accruing to such funds, or the revenue from any water use contract, be distributed to any member of either Tribe on a per capita basis.

(e) LIMITATION ON SETTING ASIDE FINAL CONSENT DECREE.—Neither the Tribes nor the United States shall have the right to set aside the final consent decree solely because subsection (c) is not satisfied or implemented.

SEC. 8. WAIVER OF CLAIMS.

(a) GENERAL AUTHORITY.—The Tribes are authorized to waive and release claims concerning or related to water rights as described in the Agreement.

(b) CONDITION ON PERFORMANCE BY SECRETARY.—Performance by the Secretary of his obligations under this Act and payment of the moneys authorized to be paid to the Tribes by this Act shall be required only when the Tribes execute a waiver and release as provided in the Agreement.

SEC. 9. ADMINISTRATION.

In exercising his authority to administer water rights on the Ute Mountain Ute and Southern Ute Indian Reservations, the Secretary, on behalf of the United States, shall comply with the administrative procedures governing the water rights confirmed in the Agreement and the Final Consent Decree to the extent provided in Article IV of the Agreement.

SEC. 10. INDIAN SELF-DETERMINATION ACT.

(a) IN GENERAL.—The design and construction functions of the Bureau of Reclamation with respect to the Dolores and Animas-La Plata Projects shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act (88 Stat. 2203; 25

U.S.C. 450 et seq.) to the same extent as if such functions were performed by the Bureau of Indian Affairs.

(b) APPLICATION.—This section shall not apply if the application of this section would detrimentally affect the construction schedules of the Dolores and Animas-La Plata Projects.

SEC. 11. MODIFICATION OF AGREEMENT; RULE OF CONSTRUCTION.

(a) MODIFICATION.—The Agreement shall be deemed to have been modified to conform to this Act.

(b) RULE OF CONSTRUCTION.—The Agreement shall be construed in a manner consistent with this Act. This Act is intended solely to permit settlement of existing and prospective litigation among the signatory parties to the Agreement. This Act is the result of a voluntary compromise agreement between the Southern Ute Indian Tribe, the Ute Mountain Ute Indian Tribe, the State of Colorado, local water districts and municipalities, and the United States. Accordingly, no provision of this Act, the Agreement, or the final consent decree shall be construed as altering or affecting the determination of any questions relating to the reserved water rights belonging to other Indian tribes.

SEC. 12. INDIVIDUAL MEMBERS OF TRIBES.

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

SEC. 13. EFFECTIVE DATE.

(a) Sections 4(b), 5, and 6 of this Act shall take effect on the date on which the final consent decree contemplated by the Agreement is entered by the District Court, Water Division No. 7, State of Colorado. Any moneys appropriated under section 7 of this Act shall be placed into the Ute Mountain Ute and Southern Ute Tribal Development Funds in the Treasury of the United States together with other parties' contributions to the Tribal Development Funds, but shall not be available for disbursement pursuant to section 7 until such time as the final consent decree is entered. If the final consent decree is not entered by December 31, 1991, the moneys so deposited shall be returned, together with a ratable share of accrued interest, to the respective contributors and the Ute Mountain Ute and Southern Ute Tribal Development Funds shall be terminated and the Agreement may be voided by any party to the Agreement. Upon such termination, the amount contributed thereto by the United States shall be deposited in the general fund of the Treasury.

(b) No provision of this Act shall be of any force or effect if the final consent decree is not executed and approved by the court.

SEC. 14. VOIDING OF AGREEMENT.

The United States shall not exercise its right to void the Agreement pursuant to Article VI, section C, subsection 2 thereof.

Approved November 3, 1988.

LEGISLATIVE HISTORY—H.R. 2642 (S. 1415):

HOUSE REPORTS: No. 100-932 (Comm. on Interior and Insular Affairs).
SENATE REPORTS: No. 100-555 accompanying S. 1415 (Select Comm. on Indian Affairs and Comm. on Energy and Natural Resources).
CONGRESSIONAL RECORD, Vol. 134 (1988):
Oct. 3, considered and passed House.
Oct. 14, considered and passed Senate.

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