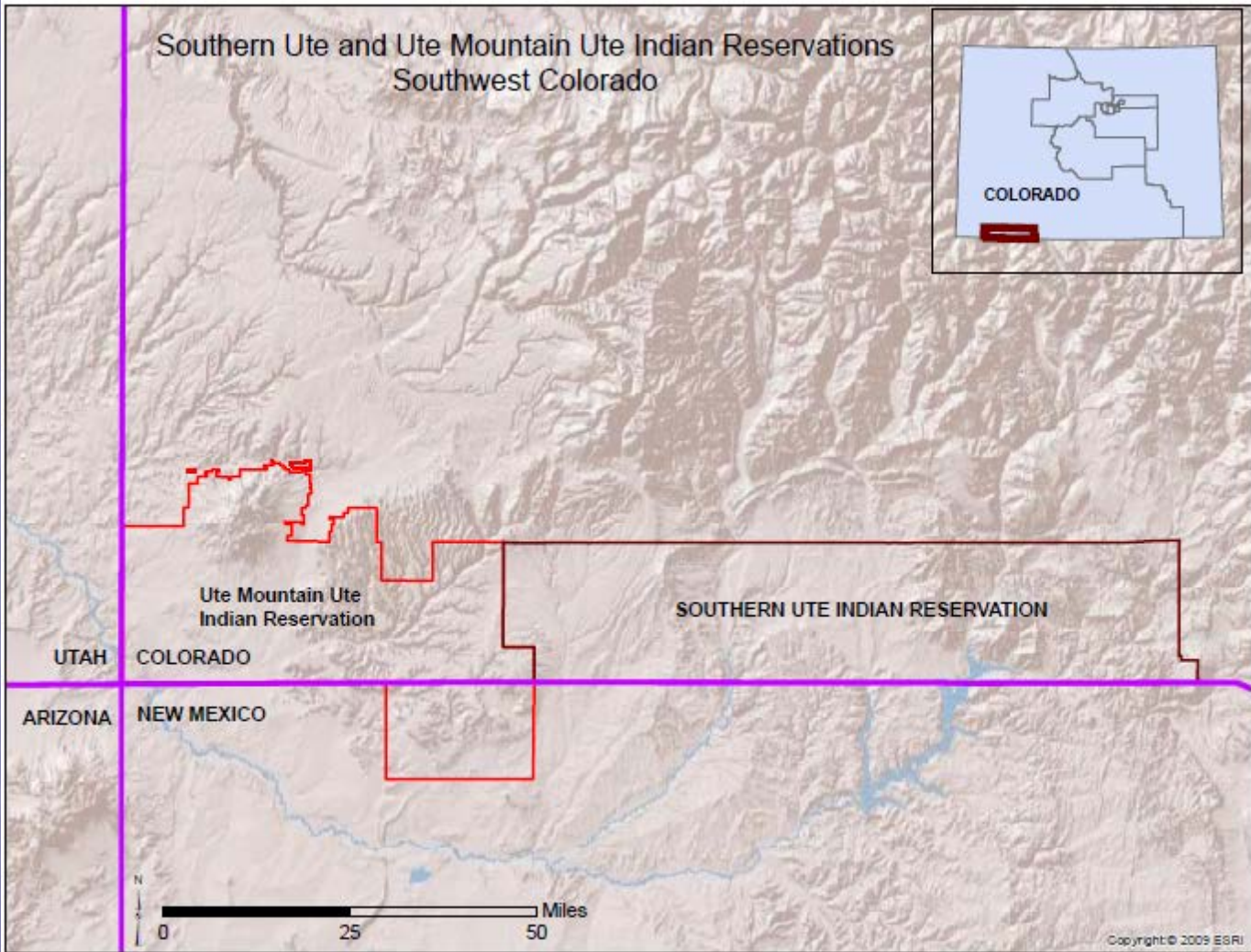


# COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1988

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# Southern Ute and Ute Mountain Ute Indian Reservations Southwest Colorado



# History of the Colorado Ute Indian Water Rights Settlement

- The Colorado Ute Indian Water Rights Settlement Act of 1988, 102 Stat. 2973.
  - In 1985, the two Colorado Ute Tribes, the United States, the State of Colorado and the major water users in the area began negotiations.
  - Affirmed December 1986 Settlement Agreement.
  - Authorized the use of the Indian Self-Determination Act in the construction of ALP.

# The 1988 Colorado Ute Indian Water Rights Settlement Act

- The Animas-La Plata Project ("ALP") was a key component.



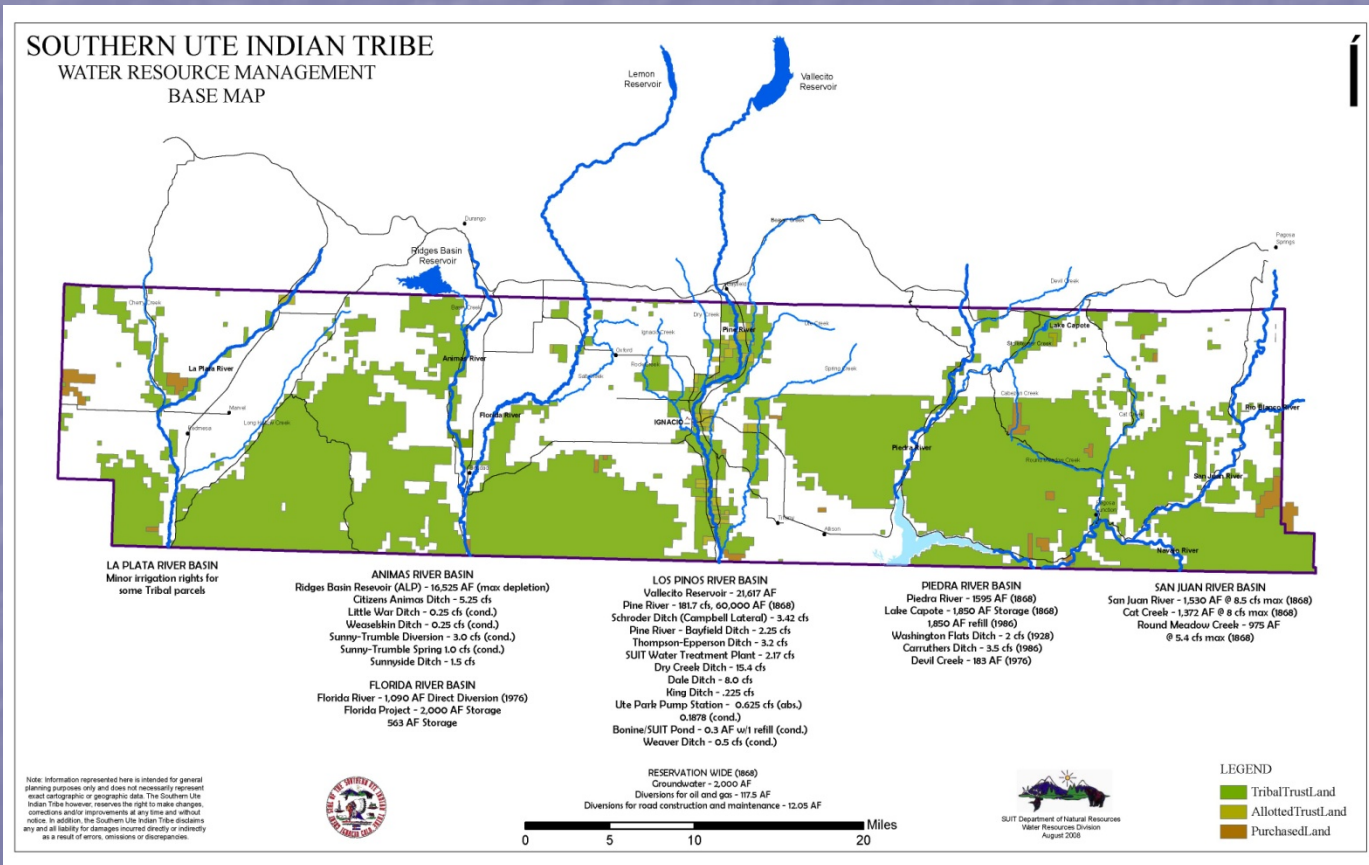
# Significant Water Supplies for the Ute Tribes

## TRIBAL ALLOCATIONS UNDER 1991 CONSENT DECREES\*

	<b>Annual Water Supply from A-LP Project</b>	<b>Deemed Annual Consumptive Use/ Depletion</b>
<b>Ute Mountain Ute Tribe</b>	6,000 AF M&I	6,000 AF
	26,300 AF Irrigation	21,066 AF
<b>Total</b>	<b>32,300 AF</b>	<b>27,066 AF</b>
<b>Southern Ute Indian Tribe</b>	26,500 AF M&I	23,982 AF
	3,400 AF Irrigation	2,679 AF
<b>Total</b>	<b>29,900 AF</b>	<b>26,661 AF</b>

\*See 1991 Consent Decrees at ¶¶6.A.i. & iii.b, 7.A.i. & iii.b, 12.D; 12 (1986 Settlement Agreement) at III.A.2.b. & d.ii, B.1.b. & d.ii; 1988 Settlement Act at § 4; 6 (1996 FSFES) at II-22 (Table II-3), III-9.

# The Settlement Act recognized tribal water rights for all surface streams and tributary groundwater on the Reservation.



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

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

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

# 1991 Consent Decrees

- Settlement became final upon entry of consent decrees
- Colorado Water Court entered consent decrees on all 11 streams in 1991
- Settlement final on all streams except the Animas and La Plata Rivers
- On the Animas and La Plata Rivers, settlement contingent on the construction of certain of the ALP facilities



# ALP

- Highly controversial
- Significant environmental concerns despite the completed and unchallenged environmental documentation
- Cost concerns – especially as related to the irrigation component

# Section 7 consultation

- In 1991, the Service issued a biological opinion on ALP.
- BO found that ALP would likely jeopardize the continued existence of two endangered fish.

## 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 SJRRIP Purposes and Goals

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

# Continued Settlement Negotiations

- ALP Lite – Romer/Schoettler Process (1996)
- ALP Ultra-Lite – Administration Proposal (1998)
- Refined version of ALP Ultra-Lite (2000)

# Settlement Act Amendments of 2000.

- Applied only to the Animas and La Plata Rivers.
- Required Court approval of change
- Eliminated irrigation components of the Project.
- Limited ALP depletions to the amounts approved under ESA Section 7.

## Animas-La Plata Project Allocations

### *Colorado:*

	<u>Supply (AF) (Water Diverted)</u>	<u>Depletions (AF) (Water Consumed)</u>
Southern Ute Indian Tribe	33,050	16,525
Ute Mountain Ute Tribe	33,050	16,525
State of Colorado	10,460	5,230
Animas-La Plata	5,200	2,600
<i>Subtotal:</i>	81,760	40,880

### *New Mexico:*

	<u>Supply (AF) (Water Diverted)</u>	<u>Depletions (AF) (Water Consumed)</u>
San Juan Water Commission	20,800	10,400
Navajo Nation	4,680	2,340
La Plata Conservancy District	1,560	780
<i>Subtotal:</i>	27,040	13,520

### *Project:*

	<u>Supply (AF) (Water Diverted)</u>	<u>Depletions (AF) (Water Consumed)</u>
Evaporation	2,700	2,700
<i>Project Totals:</i>	<hr/> 111,500	<hr/> 57,100



## **Lake Nighthorse**

Post-legislation: Revised 1991 Consent Decrees to reflect 2000 Amendments.

2001: Construction began

2011: Reservoir filled.





## **Durango 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**

Project beneficiaries negotiated a contract with the Reclamation to transfer responsibility for OM&R and Reclamation subsequently transferred responsibility for OM&R to the Project beneficiaries.

# 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.



# Other Components of 1988 Settlement

- Certain reserved water rights with a March 2, 1868 priority were subordinated to all rights prior to January 1, 1976
- Tribe accepted Florida Project water for certain parcels in lieu of its reserved water rights claims
- No delivery agreements for some of the water

# Environmental Baseline – SJRRIP Hydrology Model

- Service uses model in Section 7 consultations.
- Did not include tribal reserved water rights until there was an agency action to develop the right.
- Senior Indian water rights were ignored when the Service was taking into account the effects of a proposed action.

# Environmental Baseline – cont.

- Result = Indian tribe would bear a greater burden of insuring their proposed project was not likely to jeopardize the endangered fish
- Service now intends to include all congressionally approved tribal settlement water in the environmental baseline.
- Service intends to follow the guidance provided in the 2000 Report of the Working Group on the ESA and Indian Water Rights.

# 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.



# Conclusion

- The Tribe faced numerous struggles obtaining its water rights settlement.
- The Tribe continues to face numerous struggles with the challenges of managing its water and the hurdles of putting its water to use.
- Hopefully those of you here today understand the importance of working with the Tribe and finding water management solutions that will benefit everyone in the Colorado River Basin.