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H.R. 3478, AND H.R. 745

HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

ON

H.R. 3478
THE COLORADO UTE SETTLEMENT ACT AMENDMENTS OF 1998

H.R. 745
A BILL TO DEAUTHORIZE THE ANIMAS-LA PLATA FEDERAL RECLAMATION PROJECT

JULY 28, 1998, WASHINGTON, DC

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HEARING ON H.R. 3478, THE COLORADO UTE SETTLEMENT ACT AMENDMENTS OF 1998 AND H.R. 745, A BILL TO DEAUTHORIZE THE ANIMAS-LA PLATA FEDERAL RECLAMATION PROJECT

TUESDAY, JULY 28, 1998

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON WATER AND POWER,
COMMITTEE ON RESOURCES,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:04 p.m., in room 1334, Longworth House Office Building, Hon. John T. Doolittle (chairman of the Subcommittee) presiding.

STATEMENT OF HON. JOHN T. DOOLITTLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. DOOLITTLE. The Subcommittee on Water and Power will come to order.

Today, the Subcommittee will hear from witnesses regarding the Animas-La Plata Federal Reclamation Project. As many of you are aware, in 1996, Colorado Governor Roy Romer and Lieutenant Governor Gail Schoettler began discussions with its supporters and opponents. The original authorized Animas-La Plata Project, H.R. 3478, introduced by Mr. McInnis is based upon those negotiations.

This bill is a modified Animas-LaPlata Project that includes a 260,000-acre feet reservoir, a pumping plant, and inlet conduit. H.R. 745, offered by Ranking Minority Member Mr. DeFazio, would deauthorize the project. One major difference from the original authorized project is a change in the anticipated diversion of water from the Animas River. In 1996, the biological opinion was issued that determined that additional water would be needed to accommodate the environmental concerns in the Animas River. With this information, the change in the allowable depletion was negotiated and project beneficiaries agreed to reduce the annual water depletion to approximately 57,000 acre feet.

Additionally, Mr. McInnis' bill addresses the construction of the selection of the original component of the project. It does not deauthorize any of the 1986 Animas-La Plata Project, as H.R. 745 does. It is anticipated that even if H.R. 3478 became law and the reservoir pumping plant and inlet conduit are built, both Indian and non-Indian stakeholders will need additional financial assistance to complete the original authorized Animas-La Plata Project.

Although the costs for the project have been reduced, this phased approach leaves open the question of where the money will come from for any future phase that may be needed to complete the original authorized project. Those future issues must be addressed for the project to deliver water to the majority of the intended beneficiaries. Other possibilities involving in the sale of water may affect those questions.

While there is no question about the need to settle the Indian water rights issues and improve the water systems in the affected communities, it is essential to identify the appropriate funding mechanisms to resolve those problems. I'm looking forward today to hearing from our witnesses regarding their ideas and how to remedy these water supply issues, as well as how to most appropriately fund the construction of the entire authorized project or as such components are deemed essential. I'll also be interested in each party's view of what would happen after construction. Why the original plan shouldn't be followed and which compromises they see as critical.

We'll recognize Mr. DeFazio for his comments when he arrives.

I think in the interest of time, we'll begin with Mr. McInnis and Mr. Petri, who's just arriving. Then when Governor Romer—oh, he'll be on the first panel.

Let me just say, because of the extraordinary situation we have today with the services for the slain officers, it is my intent to take the Members first on this panel. It's my understanding it'll be a quorum call near 2:30. We'll recess and go over for the memorial services. Those are expected to be about one-half hour, beginning at 3 p.m. Then we'll reconvene immediately following that. So it's anticipated, if they stick to schedule, we might be able to back here and reconvene by about 3:45 p.m. Otherwise, it will 4 o'clock.

So, Mr. McInnis, we're pleased to have you here and recognize you for your testimony.

STATEMENT OF HON. SCOTT McINNIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. MCINNIS. Thank you, Mr. Chairman. Mr. Chairman, I might note that there have been comments that we need to settle the Indian water rights issue. I should bring to the attention of the Committee we have settled the Indian water rights issue on a number of occasions. But continually the United States Government—primarily through its elected bodies and some of the more radical environmental groups, in my opinion—have pulled the U.S. Government from the agreement that they've made. In other words, they have breached the settlement that was made.

I do thank you and the members of the Subcommittee. I'll point out one other thing, Mr. Chairman. The poster that you see up here, that is the full Animas-La Plata Project. Working with the Lieutenant Governor and Governor of the State of Colorado—both Democrats—and coming up with some type of reduced or light Animas-La Plata, we came up with S.R. 1771. You'll see what S.R. 1771 contains that the full Animas-La Plata—or what's excluded from the full Animas-La Plata.

I appreciated the opportunity to come over here today, Mr. Chairman, before the Committee on behalf of H.R. 3478, which is

a bill to amend the Colorado Ute Water Rights Settlement Act to provide for a final distribution of the claims of the Colorado Ute Indian Tribes.

I introduced this legislation on March 17, 1998. More importantly, I would like to commend you on your continued involvement on this issue, as we work to satisfy the terms of the Colorado Ute Water Rights Settlement Act. As you know today's hearing is the first crucial step that must be taken to ensure that the Federal Government does not fail once again to fulfill the commitment that they made to the Ute tribe. I, along with the State of Colorado, the Southern Ute Indian Tribe, the Ute Mountain Ute Indian Tribe, the Animas-La Plata Water Conservancy District, the Southwestern Water Conservation District will represent the Colorado component of the project and testify in support of this bill.

Mr. Chairman, H.R. 3478 focuses on the three main requirements necessary to fulfill our Nation's obligations to the Ute Tribes. First, it calls for a storage reservoir to be built to hold the promised water. Second, the bill provides the conveyance needed to transport the water to the reservoir. Finally, the legislation would guarantee the Ute Tribe the water in that reservoir. These three items are the minimum needed to fulfill the obligation the United States has contractually made with the Ute Indian Tribe.

This agreement was signed back in the sixties—the 1860's. The Treaty of 1868 promised the Ute Indian Tribes a permanent, reliable source of water. In 1988, another agreement, the Colorado Ute Indian Water Rights Settlement Act, reaffirmed those rights.

I would note, Mr. Chairman, I was in the State legislature on the Agriculture Committee, chairman of the Agriculture Committee for a number of years, when we made that agreement. I should also note there was not one environmental group, not one outside party, who objected to that agreement; everyone agreed to it.

Under H.R. 3478, the outstanding water rights on Animas-La Plata Rivers of the Ute Mountain Ute and the Southern Indian Tribes would be resolved by the construction of three facilities—the Durango pumping plant, the inlet conduit, and the Ridge Basin Reservoir. The facilities were approved by the United States Fish and Wildlife Service under the Endangered Species Act. Additionally, the tribes would receive 33,050 acre feet of the 57,100 acre feet depletion approved by Fish and Wildlife for use from the these three facilities.

H.R. 3478 would also provide much-needed water for a dry-year supply from the New Mexico cities of Farmington, Aztec, and Bloomfield. The new proposal eliminates the pre-existing water quality concerns because the legislation would no longer require the construction of all of phase 1 of the original project. More importantly, H.R. 3478 would ensure that this important settlement could be achieved consistent with the requirements of the Endangered Species Act.

Finally, the 1988 Act called for a larger project than is before us now which had a price tag of $681 million. H.R. 3478 is expected to be $400 million less.

Mr. Chairman, H.R. 3478 is the result of discussions between the project supporters and opponents that were initiated by the State of Colorado and the Secretary of Interior Babbitt. Both sides of the

dispute regarding the Animas-La Plata were asked to develop an alternative they believe met the purposes of the ALP. Last summer, both sides came forth with their proposals. The two Ute Tribes have formally rejected the project opponents' proposal to provide the tribes with money rather than water.

Additionally, the State of Colorado and local water users have also strongly opposed that concept. Furthermore, the tribal leadership has rejected the concept of buying existing State water rights, primarily because of the uncertainty and inflexibility of the resulting water supply, as well as the difficulties that would arise over management and taxation of the purchased resources.

As the Subcommittee is aware, it has always been the tribal objective to obtain a firm supply of water to meet their present and future needs without displacing the uses of their non-Indian neighbors. Congress recognized this in 1988 by stating that only a storage facility can accomplish that goal.

Simply put, Mr. Chairman, a scaled-down version of the Animas-La Plata Project has been altered to address concerns raised about the original project. The Ute Tribes have accepted this proposal even though it is significantly less than what they were first offered. The tribes are not accepting a smaller offer because it meets all their needs. The Utes are willing to accept this deal for a very simple reason—the tribes need water. They need water.

The Ute Indians are hoping they can rely on the Animas-La Plata Project for the water needs and they are hoping they can rely on the government that promised them the water in the 1860's to follow-through on delivering this water. Opponents of this project have said that they cannot agree with a project that does not have to complete the usual environmental studies and requirements. I completely agree with them. An undertaking of this magnitude will make a big impact and the environmental aspects of it should be studied. It is good, then, that so much work has been done on the environmental situation. The Bureau of Reclamation has already spent $20 million on environmental studies. Fish and Wildlife is determined that a depletion amount of 57,100 acre feet will not endanger native fish.

I believe that any further demands for environmental work at this point are clearly and merely stalling tactics. There are many reasons to support this project. I think the best reason is not because a larger project was already authorized by Congress, not because it's 10 years overdue, not even because it may save the country over $400 million. The best reason, Mr. Chairman, is simply this project should be supported is because it is the duty and the Treaty obligation of the United States to the Ute Indian Tribes.

I thank you for your time, Mr. Chairman.

[The prepared statement of Mr. McInnis follows:]

STATEMENT OF HON. SCOTT MCINNIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. Chairman, I thank you and the members of the Subcommittee on Water and Power for holding this hearing. I appreciate the opportunity to testify before the Subcommittee on behalf of H.R. 3478, a bill to amend the Colorado Ute Indian Water Rights Settlement Act to provide for a final settlement of the claims of the Colorado Ute Indian Tribes. I introduced this legislation on March 17, 1998. More importantly I would like to commend you on your continued involvement in this process as we work to satisfy the terms of the Colorado Ute Indian Water Rights

Settlement Act. As you know, today's hearing is the first crucial step that must be taken to ensure that the Federal Government does not fail to fulfill the commitment we have made to the Ute tribes.

I, along with, the State of Colorado, the Southern Ute Indian Tribe, the Ute Mountain Ute Indian Tribe, the Animas-La Plata Water Conservancy District, and the Southwestern Water Conservation District, will represent the Colorado component of the project and testify in support of H.R. 3478.

Mr. Chairman, H.R. 3478 focuses on the three main requirements necessary to fulfill our nation's obligation to the Ute Tribes. First, it calls for a storage reservoir to be built to hold the promised water. Second, the bill provides the conveyance needed to transport water to the reservoir. Finally, the legislation would guarantee the Ute tribes the water in that reservoir. These three items are the minimum needed to fulfil the obligation the United States has with the Ute Indian Tribe. This agreement was signed back in the 60's—the 1860's. The treaty of 1868 promised the Ute Indian Tribes a permanent, reliable source of water. In 1988, another agreement, the Colorado Ute Indian Water Rights Settlement Act, reaffirmed these rights.

Under H.R. 3478, the outstanding water rights on the Animas and La Plata Rivers of the Ute Mountain Ute and Southern Ute Indian Tribes would be resolved by the construction of the three facilities, the Durango Pumping Plant, the inlet conduit, and Ridges Basin Reservoir, these facilities were approved by the United States Fish and Wildlife Service under the Endangered Species Act, 16 U.S.C. 1531 et seq. Additionally, the Tribes would receive 33,050 acre feet of the 57,100 acre feet of depletion approved by the Fish and Wildlife Service for use from these three facilities. H.R. 3478 would also provide much needed water for dry year supplies for the New Mexico cities of Farmington, Aztec and Bloomfield. The new proposal eliminates the pre-existing water quality concerns because the legislation would no longer require the construction of all of Phase I of the original Project. More importantly, H.R. 3478 would ensure that this important settlement could be achieved consistent with the requirements of the Endangered Species Act. Finally, the 1988 Act, called for a larger project than is before us now, which had a price tag of about $681 million, H.R. 3748 is expected to be $400 million less.

Mr. Chairman, H.R. 3478 is the result of discussions between project supporters and opponents that were initiated by the State of Colorado and Secretary of the Interior Babbitt. Both sides of the dispute regarding Animas La Plata (ALP) were asked to develop an alternative that they believed met the purpose of the ALP. Last summer, both sides came forward with their proposals. The two Ute tribes have formally rejected the project opponents' proposal to provide the tribes with money rather than wet water. Additionally, the State of Colorado and local water users have also strongly opposed that concept. Furthermore, the tribal leadership has rejected the concept of buying existing state water rights, primarily because of the uncertainty and inflexibility of the resulting water supply, as well as the difficulties that would arise over the management and taxation of the purchased resources. As the Subcommittee is aware, it has always been the tribal objective to obtain a firm supply of water to meet their present and future needs without displacing the uses of their non-Indian Neighbors. Congress recognized this in 1988 by stating that, *only a storage facility can accomplish that goal.*

Simply put, the scaled down version of the Animas La Plata Project has been altered to address concerns raised about the original project. The Ute Tribes have accepted this proposal even though it is significantly less than what they were first offered. The Tribes are not accepting a smaller offer because it meets all their needs. The Utes are willing to accept this deal for a very simple reason: *The Tribes need water*. The Ute Indians are hoping they can rely on the Animas La Plata Project for their water needs, and they are hoping they can rely on the Government, that promised them that water, to follow through on delivering the water.

Opponents of this project have said they cannot agree with a project that does not have to complete the usual environmental studies and requirements. I agree with them. An undertaking of this magnitude will make a big impact, and the environmental aspects of it should be studied. It is good, then, that so much work has been done on the environmental situation. The Bureau of Reclamation has itself spent about $20 million on environmental studies and the Fish and Wildlife Service has determined that the depletion amount of 57,100 acre feet will not endanger native fish. I believe, that any further demands for environmental work, at this point, are merely stalling tactics.

There are many reasons to support this project. I think the best reason is not because a larger project was already authorized by Congress, not because it is ten years overdue, and not even because it may save the country over $400 million. The best reason is simply that this project should be supported because it is the duty

and treaty obligation of the United States to the Ute Indian Tribes. Thank you Mr. Chairman.

Mr. DOOLITTLE. Thank you. The Chair will recognize our Ranking Member for the purposes of making his opening statement.

STATEMENT OF HON. PETER A. DeFAZIO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. DEFAZIO. Thank you, Mr. Chairman. I regret that I was delayed a few minutes in arriving. This really is—although this is called "Animas-La Plata Lite" by some, we're really revisiting many of the defects of the original Animas-La Plata Project. In fact, the original Animas-La Plata Project would still be authorized, as should be Mr. McInnis' bill should be passed. In fact, it has a special provision for—in H.R. 3478 for section 4(b) providing the State of Colorado's uncommitted cost share dollars can be used to build the full project.

The bill suffers from the degree of consistency with the Committee's usual action which is waiving environmental laws—Endangered Species Act, Clean Water Act—as we've done recently with all water projects on the Committee. And would, therefore, be subject to the same threat of veto by the President should it go through the House and the Senate in this form—as a number of other bills which this Committee has taken up in recent weeks—which is unfortunate to waste everyone's time in that manner.

Further, of course, the ongoing allegation is that what we want to do is a project to meet the rights of the tribes here. This has the same problem as the original Animas-La Plata and that it's going to deliver water pumped uphill but not to the reservation. You know, it's not clear whether that water would or could ever be delivered to the reservation. I'm committed, as is Commissioner Martinez, who I believe we'll hear from later and others, that we meet our Treaty obligations. That we deliver water—real water—to the tribe for their use. But I would suggest that rushing forward with H.R. 3478, at this point and time, is not going to meet the deadlines—the very real deadlines that loom. That is, under the original agreement, the tribe has until 2005 to return to court to obtain its settlement through the courts for each Treaty rights.

If this project were started on October 1st, Bureau of Rec isn't—certainly isn't prepared to do that—but if all environmental laws were waived; if this Committee did sanction this project; and if for some reason the White House didn't veto—the President—the project would be anticipated to be completed about 2010. Again, with no certain delivery to the tribes. I believe the tribes would, in all probability, then refile in—before the end of 2005—and we'd be right back where we started pending litigation except for a few hundred million dollars that the Federal taxpayers would be laying out for Animas-La Plata Lite. So I will oppose legislation should it move and would support the White House and its threats of a veto. I thank the chairman for his indulgence.

[The prepared statement of Peter DeFazio follows:]

STATEMENT OF HON. PETER A. DEFAZIO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. Chairman:

H.R. 3478 suffers from a host of defects. It is an effort to rush a large water project into construction without adequate cost-benefit analysis or environmental review. We don't even have a reliable estimate of the cost of this new and unstudied project. The bill waives environmental laws, including the Endangered Species Act and the Clean Water Act. It creates an unprecedented new subsidy for non-Indian water users. And not only does it fail to deliver a single drop of water to the Indian tribes it is supposed to benefit, the Bureau of Reclamation questions whether the facilities included in H.R. 3478 would even be able to function independently.

Let's not be deceived by talk of something called Animas-La Plata Lite. H.R. 3478 is all about building the original Animas-La Plata project. The bill's supporters make that perfectly clear by their refusal to consider deauthorizing those portions of the original project that go beyond the scope of A-LP Lite. H.R. 3478 spells it out in section 4(b) by providing that the State of Colorado's uncommitted cost-share dollars can be used to build the full project.

I heartily endorse and support the position taken by Commissioner Martinez and the Bureau. We all share a desire to satisfy the legitimate water rights claims of the Ute Indians. Let's be clear that much has already been done towards that end. The Bureau has completed construction of the Dolores Project to enable delivery of water to the Ute Mountain Ute Reservation. More than $60 million in development funds have been provided to the two Tribes. Final consent decrees have been entered into on all rivers where the Tribes claim water in order to supply agreed upon quantities of water to the two Tribes.

I share Commissioner Martinez's support for delivering additional wet water for the Tribes' use. A-LP Lite doesn't do that. At a minimum, this new proposal needs to undergo the same kind of study and review that my Republican colleagues would insist upon for any other large expenditure of public funds. There is absolutely no justification for rushing this into law before that review is complete.

Mr. DOOLITTLE. Thank you. Mr. Redmond, you're recognized for your testimony.

STATEMENT OF HON. BILL REDMOND, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. REDMOND. Thank you, Mr. Chairman, for holding this hearing—for giving me the opportunity to show my support for H.R. 3478, the Animas-La Plata Water Project.

As you know, the Animas-La Plata Project has been controversial work-in-progress for over four decades. In spite of what you just heard, that we're rushing forward, I think 150 years is long enough for us to keep our word. As Members of Congress who do not represent districts in the West, who do not understand the situation with water that we have in the four corners area of New Mexico, Colorado, Utah, and Arizona—this is one of the most significant areas—one of the most significant projects for the four corners area. But one of the largest tribal populations in America, I want you to understand why this project is necessary.

I don't know how many of your are from the Southwest, but as you probably know, it's dry in the Southwest. Water is not a small matter where we live. Here in Washington, DC, which is built over swamp, and Virginia and Maryland, you don't have to go far to find a stream, or a river, or a lake, or an ocean. In New Mexico, you could drive hundreds of miles without seeing a drop of water. When a community in the Southwest begins to grow and expand like the communities in Farmington and the San Juan area, support for those communities is dependent on a water supply.

When a tribe, or tribes, in the remote area of the four corners such as the Ute Mountain Ute Tribe and the Southern Ute Tribe are still carrying their water in buckets from the rivers to their homes—a water supply plan is necessary. These two issues are the reason that I support H.R. 3478 to authorize the funding and con-

struction of the Animas-La Plata Water Project. After 40 years of discussions about its importance, in 1986 Congress passed the Colorado Ute Indian Water Rights Settlement Act which was designated to resolve all the water rights claims of the two Colorado Ute Indian Tribes in a way to provide the tribes with water they deserve and need—and the surrounding communities in Colorado and New Mexico, the water that they want to help their communities, as well.

In 1986, the statute was the culmination of the efforts that began in the 1930's. For over 4 years, the State of New Mexico and the communities in the northwest corner of the State have supported Animas-La Plata Project, due to the recognized need for the dependable water supply. I was only 2 years old when the Native Americans in the Southwest were carrying their waters in buckets. I'm now 44 years old and they're still carrying their waters in buckets to their homes.

For over 40 years, at a cost of over $53 million, the government has studied, and studied, and studied, and studied the planning and the environmental impacts of the Animas-La Plata. The environmental concerns have been addressed over and over again to meet the constant updated regulatory standards mandated by the National Environmental Policy Act, the Clean Water Act, and the Endangered Species Act.

Because of the cost concerns associated with the Federal Government's share of implementation, the project has been scaled back by over $400 million. H.R. 3478 settles tribal claims, in spite of what was previously stated; addresses water quality concerns; significantly reduces the cost of the project; provides protection for existing water right holders in New Mexico; and allows the State of New Mexico and the Northwest corner to adequately develop water supplies to meet the needs of their arid communities.

I appreciate your interest in this legislation and I'm willing to work with you and the interested parties to resolve any further concerns you may have. Thank you, Mr. Chairman.

[The prepared statement of Mr. Redmond follows:]

STATEMENT OF HON. BILL REDMOND, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Thank you Mr. Chairman for holding this hearing and for giving me the opportunity to show my support for H.R. 3478 and the Animas La Plata Water Project. As you all know, the Animas La Plata project has been a controversial work in progress for over four decades. As the Member of Congress who not only represents the Northwest corner of New Mexico where this project will have the most impact, but one of the largest tribal populations in America I want you to understand why this project is necessary.

I don't know how many of you are from the Southwest but as you probably know it's dry out there. Water is no small matter. Here, in Washington, DC which is built over a swamp, and in Virginia and Maryland, you don't have to go far to find a stream, a river, a lake or the ocean. In New Mexico, you could drive hundreds of miles without seeing a drop of water.

When a community in the southwest begins to grow and expand, like the communities in the Farmington/San Juan County area, support for those communities is dependent on a water supply plan. When a tribe or tribes in the remote four corners area, such as the Ute Mountain Ute Tribe, and the Southern Ute Tribe are still carrying their water in buckets from the rivers to their homes, a water supply plan necessary. These two issues are the reason I support H.R. 3478 to authorize the funding and construction of the Animas La Plata Water Project, after over 40 years of discussion about it's importance.

In 1986, Congress passed the Colorado Ute Indian Water Rights Settlement Act, which was designed to resolve all of the water rights claims of the two Colorado Ute Indian Tribes in a way that provided the tribes with the water they deserved and and needed, and the surrounding communities, in Colorado and New Mexico, the water they wanted to help support their communities needs as well. This 1986 statute was the culmination of efforts that begin in the 1930s.

For over 40 years the State of New Mexico and the communities in the Northwest Corner of the State have supported the Animas La Plata Project, due to the recognized need for a dependable water supply. When I was two years old, there were Native Americans in the Southwest who were carrying water in buckets to their homes. I am 44 years old and they are still carrying this water in buckets to their homes.

For over 40 years, at a cost of $53 million, the government has studied the planning and environmental impacts of the Animas La Plata. Environmental concerns have been addressed over and over again to meet the constantly updated regulatory standards mandated by the National Environmental Policy Act, the Clean Water Act, and the Endangered Species Act.

Because of the cost concerns associated with the Federal Government share of implementation, the project has been scaled back by over $400 million.

H.R. 3478 settles tribal claims, addresses water quality concerns, significantly reduces the costs of the project, provides protection for existing water rights holders in New Mexico, and allows the State of New Mexico and the Northwest corner to adequately develop water supplies to meet the needs of their arid communities.

I appreciate your interest in this legislation and am willing to work with you and the interested parties to resolve any further concerns you may have.

Mr. DOOLITTLE. Thank you. Mr. Petri is recognized.

STATEMENT OF HON. THOMAS E. PETRI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. PETRI. Thank you, Mr. Chairman. I appreciate the opportunity to come before your Committee today on a matter of concern to the taxpayers of the United States. Building the Animas-La Plata Water Project is not economically or environmentally sound and does not deliver water to the members of the Ute Tribes on their reservations. That's why I decided to become an original cosponsor of H.R. 745 which would deauthorize the project and direct the Secretary of the Interior to enter into negotiations with the tribes to find alternatives to fulfill their outstanding water rights claims.

In contrast, H.R. 3478, the Colorado Ute Water Rights Settlement Act, amendments of 1998—also known as Animas-La Lite—makes no substantial changes in the original project. As has been pointed out, it simply reauthorizes phase 1, stage A, of the original plan.

The Animas-La Plata Water Project was originally authorized in 1968 in the hey-day of mammoth water projects out West. However, Congress and the Federal Government soon abandoned this plan because it was a waste of money to build it. For 30 years, the proponents of the project have never been able to convince Congress otherwise. Moreover, the budgetary and environmental landscape has changed since this project was originally authorized making its prospects even darker than they were initially.

The reality is that under today's budget constraints and desire to preserve the beauty of our natural resources, this project is unlikely ever to be built. The proponents know that this is true and have attempted to keep the project alive by attaching it to the Ute Tribe's water claims. It's time to deauthorize this unjustified project once and for all.

Alternative proposals to satisfy the Ute Tribe's water claims have been developed and are now being looked at by the Federal Government. H.R. 745 requires the Secretary of the Interior to look at the full range of alternatives to deliver water to the tribes. On the other hand, H.R. 3478 attempts to obligate the Secretary to begin construction, entirely prematurely on one of these proposals—that is Animas-La Plata Lite. The Bureau of Reclamation has not conducted an analysis of the feasibility or viability of this proposal. There is no reliable cost estimate, no benefit cost ratio, and no definite plan report. We've never approached water resource development with such a complete lack of planning in the history of this Congress. This is no time to start.

Mr. Chairman, I'd like to emphasize that many provisions of H.R. 3478 are highly controversial and I'm sure that many members will have great concern and skepticism if it's advanced by the House Resources Committee. H.R. 3473 does not deauthorize any portion of the original Animas-La Plata Project. On the contrary, it exempts major components of the project including a pumping station, and Ridges Basin Reservoir, from environmental laws and standard budget and economic requirements.

Of particular concern is the new financing scheme found in H.R. 3478. This legislation would cap repayment of capital costs from municipal and industrial water at $29 million for non-Indian project beneficiaries regardless of any cost overruns that may occur. It would also release the tribes from any capital repayment obligations, as well as any portion of the operation and maintenance costs of the project. All remaining costs, whatever they may ultimately be, would be borne by the Federal taxpayers. The bill would have Congress give a blank check for this demonstrably uneconomic project.

This is completely the reverse of the policy set in the original 1988 Colorado Ute Indian Water Rights Settlement Act which was predicated on full repayment with interest of all the capital costs from municipal and industrial water development. This new financing method violates at least five current Federal laws. This bill also increases the Federal cost share for the conceived project from 63 percent to a minimum of 90 percent of the cost for developing an outrageously expensive water supply for communities that cannot demonstrate a need for the water and clearly are unwilling to pay for it themselves.

If I were to propose that the Federal taxpayer subsidize 90 percent of the cost of developing municipal water in my State, I'd be surprised if Members of this chamber would support such a proposal. In general, it's been the policy of the Federal Congress not to subsidize municipal and industrial water development which is fundamentally a non-Federal responsibility.

Finally, H.R. 3478 also proposes a highly controversial waiver of environmental laws as they relate to this project. This is generally referred to as sufficiency language. It waives the National Environmental Policy Act, the Federal Water Pollution Control Act, and the Endangered Species Act.

Mr. Chairman, H.R. 3478 is not a genuine alternative solution to the Animas-La Plata Water Project conflict. It's simply Phase 1, Stage A of the original project. It's not really new at all and there-

fore it perpetuates all the problems with the original project—while introducing new ones, including a dramatic decrease in local cost share, introduction of a new class of Federal subsidies, and highly controversial sufficiency language.

This bill and the Animas-La Plata Project will not deliver water to the Ute Mountain Ute and the Southern Ute reservations. It's time to stop holding the Ute Tribes' legitimate water rights claims hostage in order that non-Indian interests might finally construct their great boondoggle pork project paid for by the Federal Government. The Animas-La Plata project should be deauthorized without further delay. Again, I would thank Members of the Committee for inviting me today and for your attention.

[The prepared statement of Mr. Petri follows:]

STATEMENT OF HON. THOMAS E. PETRI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. Chairman I appreciate the opportunity to come before the Committee today to share my views on a matter of concern to me and, I believe, to the taxpayers of the United States. Building the Animas-La Plata water project is not economically or environmentally sound and it does not deliver wet water to members of the Ute Tribes on their reservations. That is why I decided to become an original cosponsor of H.R. 745, which would deauthorize the Animas-La Plata project and direct the Secretary to enter into negotiations with the Tribes to find alternatives to fulfill their outstanding water rights claims. In contrast, H.R. 3478, the Colorado Ute Settlement Act Amendments of 1998, also known as ALP-Lite, makes no substantial changes in the original ALP project. It simply reauthorizes Phase I, Stage A, of the original plan.

The Animas-La Plata water project was originally authorized in 1968 in the heyday of mammoth water projects out West. However, Congress and the Federal Government soon abandoned this plan because it simply was a waste of money to build it. For thirty years now the proponents of the project have never been able to convince Congress otherwise. Moreover, the fiscal and environmental landscape has changed since this project was originally authorized, making its prospects even darker than they were initially. The reality is that under today's fiscal constraints and desire to preserve the beauty of our natural resources this project is unlikely ever to be built. The proponents know that this is true and have attempted to keep the project alive by attaching it to the Ute Tribes water claims. It's time to deauthorize this unjustified project once and for all.

Alternative proposals to satisfy the Ute Tribes water claims have been developed and are now being looked at by the Federal Government. H.R. 745 requires the Secretary to look at the full range of alternatives to deliver water to the Tribes. On the other hand, H.R. 3478 attempts to obligate the Secretary of the Interior to begin construction, entirely prematurely, on one of these proposals—that is, ALP-Lite. The Bureau of Reclamation has not conducted an analysis of the feasibility or viability of this proposal. There is no reliable cost estimate, no benefit/cost ratio and no definite plan report. We have never approached water resources development with such a complete lack of planning in the history of this Congress, and this is no time to start.

Mr. Chairman, I would like to emphasize to you that many provisions of H.R. 3478 are highly controversial and I am sure that many Members will have great concern and skepticism if it is advanced in any way by the House Resources Committee. H.R. 3478 does not deauthorize any portion of the original ALP. On the contrary, it exempts major components of the project, including a pumping station and Ridges Basin Reservoir, from environmental laws and standard fiscal and economic requirements.

Of particular concern is the new financing scheme found in H.R. 3478. This legislation would cap repayment of capital costs for municipal and industrial water at $13 million dollars for non-indian project beneficiaries, regardless of any cost overruns that may occur. It would also release the Tribes from any capital repayment obligations, as well as any portion of the operation and maintenance costs of the project. All remaining costs, whatever they may ultimately be, would be borne by the Federal taxpayer. H.R. 3478 would have Congress give a blank check for this demonstrably uneconomical project. This is completely the reverse of the policy set in the original 1988 Colorado Ute Indian Water Rights Settlement Act, which was

predicated on full repayment, with interest, of all the capital costs for municipal and industrial water development. This new financing method violates at least 5 current Federal laws.

This bill also increases the Federal cost share for the conceived project from 63 percent to a minimum of *90 percent* of the cost for developing an outrageously expensive water supply for communities that cannot demonstrate a need for the water and clearly are unwilling to pay for it. If I were to propose that the Federal taxpayer subsidize 90 percent of the costs of developing municipal water in my state, I would be surprised if Members in this chamber would support such a proposal. In general, it has been the policy of the Congress not to subsidize municipal and industrial water development, which is fundamentally a non-Federal responsibility.

Finally, H.R. 3478 also proposes a highly controversial waiver of environmental laws as they relate to this project in the form of what is generally referred to as "sufficiency language," waiving the National Environmental Policy Act, the Federal Water Pollution Control Act and the Endangered Species Act.

Mr. Chairman, H.R. 3478 is not a genuine alternative solution to the Animas-La Plata water project conflict. It is simply Phase I, Stage A, of the original project. It is not really new at all and therefore it perpetuates all of the problems with the original project while introducing new ones, including a dramatic decrease in the local cost share, introduction of a new class of Federal subsidies and highly controversial sufficiency language.

Mr. Chairman, this bill and the Animas-La Plata project will not deliver water to the Ute Mountain Ute and the Southern Ute reservations. It is time to stop holding the Ute Tribes' legitimate water rights claims hostage in order that non-indian interests might finally construct their great boondoggle pork project paid for by the Federal Government. The Animas-La Plata water project ought to be deauthorized without further delay.

Again, I thank the Chair and the Committee for the opportunity to express my concerns. Thank you for your time.

Mr. DOOLITTLE. Thank you very much. The plan will now be to recess the Subcommittee. Then at approximately 3:45 p.m. or as soon as we reconvene after the conclusion of the memorial services, we will reassemble here and hear from the members of panel one. So the Subcommittee will stand in recess.

[Recess.]

Mr. DOOLITTLE. The Subcommittee will reconvene to hear testimony from our witnesses. We'll begin with panel one.

Let me ask our witnesses—it's customary that the witnesses take the oath. So if you'd please rise and raise you right hands.

[Witnesses sworn.]

Mr. DOOLITTLE. Thank you. Let the record reflect each answered in the affirmative.

Gentlemen, we're very pleased to have you here. I'm confident that some of my colleagues will drift in, but we have a long witness list and you have been patient to wait this long while as it is. So I think we'll begin.

Our first witness is the Honorable Roy Romer, Governor of the State of Colorado. Governor Romer.

STATEMENT OF HON. ROY ROMER, GOVERNOR OF THE STATE OF COLORADO

Governor ROMER. Thank you, Congressman. I know we began the second part of it right after the memorial service. I just want to recognize, as a Governor, who lives in a capital building daily, the risk that all of you public officials run and the risk that those officers run. I just want to pay tribute to those two gentlemen and their families before I make further comments.

My name is Roy Romer. I'm Governor of Colorado. I'm pleased to have the opportunity to share my comments on H.R. 3478 that

would authorize the construction of a smaller Animas-La Plata Project in southwestern Colorado. For the record, I've submitted a copy of the full text of my remarks to the Committee. I'd like to take a moment to highlight my views.

Mr. Chairman, this is my third term as Governor. I'm in my 12th year. I was first elected in 1986, the same year the State of Colorado signed an agreement with the Southern Ute and the Ute Mountain Ute Indian Tribes settling a longstanding, difficult controversy regarding the tribes' water rights. I've been working to get the tribes the water they deserve since my first day in office. I regret to say that, after 12 years, we're still trying to get that job done.

I'm here to express my support for H.R. 3478. In my opinion, this bill represents our best vehicle for satisfying our obligations to the Ute Tribes for water. As you know, this bill is a result of years of efforts, negotiations, and compromise. The project was first authorized by Congress in 1968. Following the authorization, the Ute Tribes began to assert their widely recognized right to water in the streams and rivers that flow through the reservations based on the Reserved Water Rights Doctrine.

Given the scarcity of water in the region and the possible disruption that the establishment of Indian water claims would have posed for the existing non-Indian water right holders, Colorado sat down with the tribes in the mid-1980's to settle the tribes' claims. The result was a 1986 Settlement Agreement. This agreement establishes the tribes' water rights and sorts out non-Indian water claims. It was signed by all parties—the State, the tribes, non-Indian users, municipalities, and the United States Department of Interior, and the United States Department of Justice. It's a very important agreement.

It allows us to resolve possible water conflicts, preserve the social, and economic well-being of the area, and avoids decades of expensive litigation. Most importantly, it acknowledges our obligation to provide water to the tribes. In order to fulfill the obligations for water outlined in this agreement, the agreement calls for the construction of the Animas-La Plata Project, a project that would store water and make it available to the tribes and other users. It was authorized in 1968.

Congress formalized this agreement in the 1988 Settlement Act. Now this Congress is still considering legislation on the project. We still have not satisfied our obligations to the tribes. Under the agreement, the tribes have the right to go to court and to assert their claims if they do not believe that progress is being made. That risk is real and its troubling.

Now, I understand that this delay has been brought about because opponents of the project have raised environmental and fiscal concerns. It was in recognition of this and the threat of lengthy and costly litigation that the Lieutenant Governor Gail Schoettler, of Colorado, and I brought all sides of this issue together in an effort to discuss compromises and consensus on all alternatives. That process was a difficult one. It took many hours of discussion, public input, and months of negotiation. However, we did succeed in narrowing the debate to two alternatives.

One of the alternatives, the so-called Animas-La Plata Lite proposal, involves the creation of a much smaller project at less cost and less environmental impact.

The other alternative, called the Animas River Citizens' Coalition proposal, would set aside about $100 million—$110 million for the tribes to purchase land and water rights in the area instead of building a reservoir. It also includes adding more storage capacity of existing water projects in the region.

Now last year, I publicly expressed support of the Animas-La Plata Lite alternative for the following reasons. First, it satisfies our obligation to the tribes for water. Animas-La Plata Lite is the only alternative that tribes will accept and will satisfy that obligation.

Second, it includes everyone—tribes and non-Indians alike. We must have a solution for the entire region. One that will not disrupt the long-established water development and economic activities in the area. The 1986 Settlement Agreement was created and signed just for that reason—to resolve everybody's rights in light of the tribal claims. It is thus critically important to include non-Indian water users. ALP Lite accomplishes this goal.

Third, it is less costly and poses less environmental impacts than the original project. ALP Lite reduces the cost by $400 million. Since it is a smaller project, it avoids many of the environmental impacts that were of concern to the United States Environmental Protection Agency and the U.S. Fish and Wildlife Service.

Fourth, it avoids a complete renegotiation of that 1986 Settlement Agreement. As I have said, the Settlement Agreement was the result of hard-fought compromises with the tribes and other water rights holders. Renegotiating this agreement would take many years and at enormous expense to the taxpayers.

Since the signing of the agreement in 1986, funds have been set aside and expended to implement its provisions with the sole exception of the construction of the Animas-La Plata Project. The ALP Lite alternative will complete the last commitment made in the Settlement Agreement.

Fifth, it avoids further delay. We've been at this for decades. We have negotiated, compromised and studied this project extensively. It's time to get off the dime and get on with satisfying our obligations to the tribe. ALP Lite will get us there.

Now, H.R. 3478 adheres to these principles. As a result, passage of this bill will accomplish our goals. I urge you to support it.

Let me say the Interior Department can, in my view, play a very helpful role in this controversy. They were represented in our discussions concerning the Animas-La Plata Lite alternative. They could help us by taking the two alternatives developed in this negotiation process; plug them into the appropriate environmental processes; select Animas-La Plata Lite as the preferred alternative; and quickly come out with a decision. In my view, either Interior should work with the product that we have developed and come to a decision; or Congress should direct Interior on how to resolve this issue by passing H.R. 3478.

It's the only way we're going to get this resolved, short of going to court for years to come. Now H.R. 3478 and Senate bill 1771—the companion Senate bill—can serve as the framework for further

discussions to address Interior's concern. But one thing is certain, we cannot start from square one again. Too much time has been lost and we've already discussed plenty of alternatives. These bills represent the product of difficult compromises and should not be rejected.

In closing, I have noted that Secretary Babbitt has asked his counsel, David Hayes, to meet with the tribes and their neighbors to see if an agreement can be reached on amendments to this legislation. I would ask Mr. Hayes to come to Colorado, meet with me and the other signators of the Settlement Agreement, but this must be more than just more talk or more process. Mr. Hayes should come and must come with a portfolio to speak for the administration. We need some decisions to be made here. I would hope he would come with a clear proposal, and I would ask him to come with a clear proposal for amendments to the legislation that will satisfy the administration's concern.

Finally, I think we must meet in August, if this Congress should pass this legislation—with or without the administration's support—to finally honor commitments under the Settlement Agreement. Thank you, Mr. Chairman.

[The prepared statement of Governor Romer may be found at end of hearing.]

Mr. DOOLITTLE. Thank you.

Our next witness is Mr. Thomas Turney. Mr. Turney is the State engineer for the State of New Mexico. Mr. Turney.

STATEMENT OF THOMAS C. TURNEY, STATE ENGINEER, STATE OF NEW MEXICO

Mr. TURNEY. Mr. Chairman, members of the Committee, I thank you for letting me testify this afternoon. I also brought a statement with me from the Governor of the State of Mexico. He sends his apologies but he cannot be here this afternoon. We would like to have his statement entered into the record.

[The prepared statement of Mr. Johnson may be found at end of hearing.]

Mr. TURNEY. Today, I'd like to speak on behalf of H.R. 3478 which means changes to the authorized ALP project. At the same time, would like to speak against H.R. 745 which speaks of deauthorization.

The reconciled Animas-La Plata Project would provide two basic components of New Mexico's plans for development of its water resources in northwestern New Mexico. The reconciled project generally settles the claims of two Colorado Ute Indian Tribes to waters of the Animas-La Plata Rivers. This is an important aspect of the project because it provides certainty to the New Mexico water users on these two rivers so that, in fact, they will have water available to them under their State water rights.

Secondly, the reconciled project will provide a more dependable water supply for both Indian and non-Indian communities in northwest New Mexico. Northwest New Mexico is growing and it's very important to provide an adequate water supply for this area's future. The need for a dependable water supply for this area has long been recognized. Although the majority of communities in the State of New Mexico get their water from wells, communities in this par-

ticular area must get their water from river waters. Ground water in the area generally contains very high level of contaminants and is unusable. The Animas River has historically run dry or very near.

Raw water storage is necessary to supply water to communities when the river runs low. The Animas-La Plata Project is designed to provide a water supply during low-flow conditions for both Indians and non-Indians in New Mexico—a goal which the State of New Mexico very much supports.

H.R. 3478 is a compromise bill negotiated by Indians and non-Indians. It addresses many concerns previously expressed by New Mexico, including final settlement of Colorado Ute Indian Water Rights claims, a much needed municipal and industrial water supply for the area; a reduction in project costs; a habitat for endangered species; protection of senior water rights; and does not lessen water qualities. Negotiations are ongoing to further refine this bill to include language to provide for a pipeline to carry project water from Farmington to the Navajo community of Shiprock.

The State assigned approximately 50,000 acre feet of water to the Department of Interior for development at this project about 40 years ago. Subsequently, an interstate compact was developed to establish equal priority of project water rights between Colorado and New Mexico. Congress approved the Colorado Ute Indian Water Rights Settlement in the late 1980's. This Act provides for final settlement of the Colorado Ute Indian Water Rights claims on the Animas-La Plata Rivers. The construction of the ALP Project is the cornerstone of this settlement.

It is neither timely nor appropriate to consider deauthorization. It is true that the project is controversial. However, H.R. 3478 has been introduced as a compromise by Indians and non-Indians in northwest New Mexico and southwest Colorado. Deauthorization will cause several major problems for New Mexico. If the Colorado Ute Indian claims are not settled and the Ute Indians return to court, New Mexico will be forced to intervene. To protect New Mexico water users on the Animas-La Plata Rivers, New Mexico will be forced to challenge every PIA and other claims that the Ute Indians might advance.

Based on similar cases in New Mexico where one ongoing Indian water right cases has been argued for a little over 32 years. We would anticipate that this case will last for decades. There will be no doubt that our intervention is going to cause strained relations between New Mexico and the Colorado Ute Tribes in the State of Colorado. Due to the lack of certainty of future water availability, such a prolonged action could significantly impair land transfers and existence of future development in New Mexico. Deauthorization will terminate the Animas-La Plata interstate compact exposing New Mexico users to suffer shortages caused by junior appropriators in Colorado.

Deauthorization will not stop the need of New Mexico communities for a raw water storage. To meet summertime demands, storage will continue to be needed. Although Navajo Reservoir is available on the nearby San Juan River flow recommendations recently proposed for the recovery of an endangered species will probably preclude the use of this storage for New Mexico communities. Al-

ternate storage sites are generally not available, potentially necessitating the development of multiple reservoirs. The cost of these reservoirs may be many times the amount that money New Mexicans will pay under the reconciled project.

Deauthorization is going to hurt our ongoing negotiations with the Navajo nations. In 1996, the State of New Mexico entered into an agreement with 22 Indian pueblos and tribes. These disagreements set forth principles of government to government negotiation proceeding before litigation. This agreement has led to negotiations between the Navajo nation and New Mexico to determine if a negotiated settlement of Navajo water claims is feasible. The reconciled project will include a proposal to construct a transmission line from Farmington to provide treated project water to the Navajo community of Shiprock.

For public health and safety reasons, this pipeline is extremely important to the Shiprock area whose population has swelled in recent years. Final settlement of the Navajo claims in the San Juan basin is extremely important, not only to northwestern New Mexico but it will provide certain communities along the river to receive their water from the San Juan trans-mountain diversion. This deauthorization could potentially significantly impact major population centers in New Mexico.

New Mexico strongly opposes deauthorization of the Animas-La Plata Federal Reclamation Project. Instead, New Mexico supports a reconciled project that provides wet water to New Mexico and provides for final settlement of Ute Indian claims. Thank you for the opportunity to testify.

[The prepared statement of Mr. Turney may be found at end of hearing.]

Mr. DOOLITTLE. Thank you.

Our next witness is Mr. Eluid Martinez, the Commissioner of the Bureau of Reclamation. Mr. Martinez.

STATEMENT OF ELUID MARTINEZ, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Mr. MARTINEZ. Mr. Chairman, members of the Subcommittee, thank you for the invitation to present the administration's view on H.R. 745, an Act to deauthorize the Animas-La Plata Project and H.R. 3748, the Colorado Ute Settlement Act of 1998. My written statement has been submitted for the record, and if acceptable I'll summarize that statement.

The administration fully supports providing wet water to the Colorado Ute Indian Tribes as part of the final settlement to their water rights. In providing the water to the tribes, we need to also consider how the possible solutions would affect the municipal and industrial water supplies of the regional communities, while protecting the area's natural resources. Mr. Chairman, the administration does not support the approaches included in the two measures before the Subcommittee today.

They charge H.R. 745 would deauthorize the Animas-La Plata Project—a participating project under the Colorado River Storage Project Act of 1956. If enacted, this bill would direct the Secretary of Interior to promptly seek to enter into negotiations with the Ute Indian Tribes to satisfy, in a manner consistent with all Federal

laws, the water rights interests of those tribes that were intended to be satisfied with water supplied from the Animas-La Plata Project.

It should be noted that the H.R. 745 does not provide for an alternative to the original Animas-La Plata Project. While the administration agrees that there is limited support for the original Animas-La Plata Project, we are not prepared to recommend complete deauthorization. Instead, the administration believes it is important to focus on the priority of delivering wet water to the tribes and to address the deauthorization issue with the tribes and other affected parties.

Mr. Chairman, with respect to H.R. 3748, this bill would amend the Colorado Ute Indian Water Rights Settlement Act of 1988. The administration does not support the approach included in this legislation for the reasons detailed in my written statement. Mr. Chairman, the question is where do we go from here? On July 20, 1998, Secretary Babbitt wrote to the tribes to assure them where the administration stands with respect to their water rights. That letter, in part states "We, the administration fully support providing wet water—water beneficially usable to the tribes to the Colorado Ute Indian Tribes as part of the final settlement of your claims. We need to consider how the possible solutions would affect the municipal-industrial water supplies of the regions' communities and protect the area's natural resources."

Mr. Chairman, the administration fully understands and respects the significance of the tribe's efforts and those of the Governor and the Lieutenant Governor, and other parties in the Romer-Schoettler process that helped to focus the issues surrounding this project. The administration is prepared to enter into a good faith dialogue with the tribes to identify the best mutually acceptable means to enable the tribes to obtain wet water for their present and future use. I place emphasis on the fact that at the same time, we need to consider how possible solutions would affect the municipal-industrial water supplies of the region and the natural environment of the area.

However, in identifying an acceptable means, the administration believes that full consideration should be given to all alternatives, including appropriately sized storage that would satisfy the tribe's water rights. In undertaking that consideration, however, the full impact disclosure alternative analysis and the public involvement aspects of the National Environmental Policy Act should not be circumvented, nor should NEPA procedural requirements be segmented.

Mr. Chairman, Mr. David Hayes, counselor to the Secretary of Interior, and who has been named by the administration as the leader to engage in a dialogue with the tribes, has forwarded a letter yesterday to the tribal chairperson seeking initiation of discussions. He has also extended letters of invitation to the other 1988 water settlement parties because of his expectation that they will need to participate in discussions pertaining to potential revisions of the Settlement Act.

Mr. Chairman, this concludes my summary of remarks. I would be pleased to answer any questions you might have. Thank you.

[The prepared statement of Mr. Martinez may be found at end of hearing.]

Mr. DOOLITTLE. Well, thank you. Commissioner, I recall in a previous career, you were the State engineer of New Mexico, were you not?

Mr. MARTINEZ. Yes, Mr. Chairman.

Mr. DOOLITTLE. Well, were you involved in all of this controversy back with Governor Romer or where do you fit in in this?

Mr. MARTINEZ. Chairman, I've been involved in New Mexico water issues and controversy since 1971.

Mr. DOOLITTLE. That's remarkable.

[Laughter.]

Mr. MARTINEZ. I fully understand the implications of this project.

Mr. DOOLITTLE. Cal, I think you and I need some more of that wet water they want to get out there in New Mexico and Colorado.

[Laughter.]

Well, let me ask you, Commissioner, do you have or does the administration have amendments to Mr. McInnis' bill that would satisfy the administration's concerns?

Mr. MARTINEZ. Mr. Chairman, my written comments have specific—statement has specific concerns. The administration is committed to working quickly to try to work with the tribes and other folks in this area to bring something to the Congress that we would find acceptable.

Mr. DOOLITTLE. What role does the counselor in charge of Indian water rights settlement negotiations—what role do you think he seeks to play in this project?

Mr. MARTINEZ. The intent is to have Mr. Hayes speak for the administration on these issues.

Mr. DOOLITTLE. How does this project compare to other water rights settlement negotiations within the Department of the Interior?

Mr. MARTINEZ. Other Indian water rights settlements also contain components for water delivery projects.

Mr. DOOLITTLE. Well, I was pleased to hear you reaffirm the administration's commitment for storage. Governor, you're to be commended for your persistent and long-term role in trying to bring this settlement all about. It's a rather remarkable settlement it seems to me. It's unfortunate that it's lasted so long. Apparently, it's up to us to complete the final piece of this extensive and complex agreement.

Governor ROMER. Let me reply. I listened to Congressman DeFazio's comments earlier this morning. Look, we have a problem here. We need a solution to the problem. The problem is that we have an obligation to deliver water to the Indians. I think that this can be solved. We need to solve it. We ought to solve it right now.

Secondly, I think an essential ingredient in that solution is for the administration to come to the table and say this is what we propose. That has not been the case yet and I think that Commissioner Martinez and the Secretary of Interior have indicated that Mr. Hayes is coming with authority to speak for the administration. If that's the case, that's a very helpful step.

Third, we just need to get at the table. I think the elements of the solution are we need to deliver on the obligation to the tribe.

We need to take care of the non-Indian water user. We need to do it in a responsible, environmental way. We need to do it without further delay. I think that—I would hope that the momentum that I sense from the administration can carry us to a solution very quickly.

Mr. DOOLITTLE. Well, that sounded encouraging. So let us hope that we see some positive developments here. Let me just ask a technical question about this—maybe I overlooked in the reading I did. But you have this reservoir that you're going to pump water into it. What's going to be the vertical lift from the river up to the reservoir?

Mr. MARTINEZ. I understand somewhere around 500 hundred feet.

Mr. DOOLITTLE. About 100 feet?

Mr. MARTINEZ. Five hundred.

Mr. DOOLITTLE. Five hundred feet. Well, if we can get our administration to act quickly, is it you sense, Commissioner, that this gentleman's going to get really engaged and help bring this to a conclusion fairly fast?

Mr. MARTINEZ. It would be my hope that we move sooner than later, and surely within the next month to try and bring some focus to this issue.

Mr. DOOLITTLE. Well, that would be excellent. This proposal has been criticized for lack of environmental compliance or documentation. Is there something, in you opinion, further that needs to be done in this regard? Mr. McInnis said that they've spent $20 million studying this thing.

Mr. MARTINEZ. Mr. Chairman, I'll reserve judgment on that. But one thing that I would say is that we sure don't want to get hung up by the courts. Whatever proposal I think the administration moves forward with, we ought to make sure it complies and provides a deep analysis and full due process so we don't get hung up in the court system.

Mr. DOOLITTLE. Do you have any specific suggestions about how the language in the bill could be modified in the environmental area to improve it?

Mr. MARTINEZ. I think that, with respect to the legislation, the concern we have is the sufficiency language.

Mr. DOOLITTLE. Well, is there any other substitute that you would suggest? It sounds like a great deal of time and money has been studying it. I would suppose the proponents don't want to have another open-ended study on it. Is there some compromise language that could be arrived at here?

Mr. MARTINEZ. With respect to the H.R. 3478?

Mr. DOOLITTLE. Yes.

Mr. MARTINEZ. To the extent that the only issue was, the only concern that the administration has with H.R. 3478 would be NEPA analysis, I think we could come together with some language. However, that's not the only issue that the administration has raised with concerns to H.R. 3478. We have issues having to do with deauthorization, appropriate deauthorization of the project, cost sharing, and other issues.

Mr. DOOLITTLE. So you're also seeking, then, specific deauthorization of certain components of the project.

Mr. MARTINEZ. What we're saying is that some of those might be appropriate.

Mr. DOOLITTLE. Well, I'll recognize Mr. DeFazio for his questions.

Mr. DEFAZIO. I thank the chairman. To any of the participants, is Animas-La Plata Lite identical to Phase 1(a) of the Animas-La Plata?

Mr. MARTINEZ. As I recall, phase 1(a) was primarily an M&I delivery.

Mr. DEFAZIO. Yes.

Mr. MARTINEZ. Phase 1(a) also included a reservoir sized to enable water to be developed and used for irrigation purposes.

Mr. DEFAZIO. So the environmental analyses that were done, and the cost analyses that were done for phase 1(a) are not applicable to Animas-La Plata Lite? I mean, it's not the same project?

Mr. MARTINEZ. To the extent that water is taken from the river at different times of the year and is used for M&I purposes and return flow's assumption may differ from what was considered in 19—the supplemental—environmentally backed statement, it's a different project. It would require a different analysis.

Mr. DEFAZIO. OK. So we don't have an economic analysis for the project proposed to deauthorize in the bill before us?

Mr. MARTINEZ. No. The Bureau of Reclamation has not done an analysis.

Mr. DEFAZIO. OK. So you lack both an environmental and an economic cost analysis. I guess—turning then to Governor Romer for a moment. I congratulate you in your efforts in getting involved in this very difficult decision. As I understand the Romer-Schoettler process, there was some agreement, was there not, that any alternative should comply with all Federal laws?

Governor ROMER. I think that's correct, but I don't remember the exact language of that agreement. But let me tell you the concept that was in our minds. There is an existing environmental process. We felt that, whatever we came up, if we could get the administration's approval, we could have that ongoing environmental process; consider that as the preferred alternative that where you could continue to do the work that needs to be done, but you don't need to go back to square one.

Congressman, I have a very strong environmental record. I do not want to have the environment damaged by this project. But this is a contentious issue. Sometimes environmental processes and litigation involved in them are used, in my judgment, not for the purpose of saving environment but for the purpose of killing a project. I simply would like to have this decision made. Let me suggest to you, if we can get an agreement on what this is, and if the administration will come to the table and say, you know, this is where we are—I think that we can take that agreement and satisfy all of the existing environmental law by including it in the existing process and just enlarging whatever investigation needs to be made based upon changes.

Mr. DEFAZIO. Well, I'm puzzled as to the consistency of the statement. Then do you support the sufficiency language in Mr. McInnis' bill which says, this is deemed sufficient to meet all environmental laws, no matter what analysis has gone forward previously, even though it's different than and was applied as first

stage? Do you support that then? I mean, having that language in there?

Governor ROMER. I support this——

Mr. DEFAZIO. Or do you support doing the appropriate process?

Governor ROMER. I support this bill with that language in it. Now, let me explain, Congressman.

Mr. DEFAZIO. All right.

Governor ROMER. I was very troubled by this. Let me tell you, I did that because there was no alternative. I was dealing with somebody that wouldn't give me an answer. I'm the Governor of Colorado. I've got an obligation to deliver on that agreement to the tribe. When I can't get an answer, I'll use whatever weapon I got to use. The weapon I chose to use is I agreed to sufficiency language in this bill.

Mr. DEFAZIO. OK. So——

Governor ROMER. It's not the best way to go.

Mr. DEFAZIO. No, in fact——

Governor ROMER. But let me tell you that it's better——

Mr. DEFAZIO. Reclaiming my time, Governor, if I could—I don't have time for filibuster, here. So, you support basically finding a project which hasn't been evaluated by the Federal Government for its environmental problems or benefits. You just support deeming it to have met that myriad of Federal laws, without the public having any right to further appeal litigation from whatever perspective, and, you know, you find that to be consistent.

Governor ROMER. No. That's not a fair characterization of my views.

Mr. DEFAZIO. Well, what is the result of——

Governor ROMER. You're making an unfair characterization——

Mr. DEFAZIO. I'm very familiar, Governor, if I could, I'm very familiar with sufficiency language. I one time in my congressional career supported it and it was a bad thing to do. I learned that. It was nowhere near as big a deal as this project in terms of its environmental impacts—the one time I supported it. So it's really hard to say I'm a 100 percent environmentalist. I'm a strong environmentalist. In this case, I don't know what the impacts are. The government, the Federal Government, doesn't know what the impacts are, but I know that this would satisfy those Federal laws and environmental requirements. It's just not consistent.

I see my time has expired. Perhaps on the next round, we can get back to that.

Governor ROMER. Can I reply to your statement?

Mr. DEFAZIO. It's up to the chairman. My time has expired.

Mr. DOOLITTLE. Please, go ahead.

Governor ROMER. OK. I want to reply, Congressman, because you characterized my position, I thought, in an inaccurate and unfair way. Let me describe why it's inaccurate and unfair.

I am for this solution. I think that there has been many years of work in terms of environmental impact.

Mr. DEFAZIO. But not on this alternative, Governor.

Governor ROMER. Congressman, let me finish.

Mr. DEFAZIO. We've done billions of years of environmental work in this country and it's a very frustrating process on billions of

projects. But every time you come up with a new idea and a new project, you got to do another one.

Governor ROMER. Got it.

Mr. DEFAZIO. Or you have to modify the ones that went previously. That you're not supporting that here. You're saying——

Governor ROMER. Excuse me.

Mr. DEFAZIO. This would fit into the work that's been done before. The work that was done before was not done on this alternative.

Governor ROMER. Yes. Let me tell you, Mr. Congressman, the alternative that we're talking about is a storage project. It's pumping water out of the river; it's the management of that project, and it has a limited quantity. Now, we already have done a very great amount of work. If there are some modifications that need to be made in this proposal in order to make it acceptable to the administration, first, we need to know what those modifications are.

Second, once we know what they are, then we can see whether or not we can use the existing process or whether we have to start another one.

Third, when I supported this bill, I did not have an alternative from the administration even to discuss. So, sir, I want to tell you I'm here as a strong environmentalist. But I'm also here saying we've screwed around 12 years without solving this problem. As Governor of Colorado, I've got 6 months to go. I don't want to leave this problem unsolved. I think you and I, and everybody involved in the National Government and in the State of Colorado and New Mexico ought to solve this problem. We owe it to the Indians. We owe it to those communities.

Mr. DEFAZIO. I think we should resolve the problem, too, Governor, but deeming it to have the environmental laws is, according to this administration, is veto bait—on any and all bills and projects, no matter how material. So that's a fatal flaw, among other flaws, in this legislation.

Mr. DOOLITTLE. Well, Commissioner, in other conversations we've had, you've been very gracious to offer to cooperate and try, and maybe with Mr. Hayes, we'll be able to move in this direction, but actually get the parties down and get sort of an expedited plan for moving this off dead center. I'm certain the sponsors of the bill aren't absolutely locked in concrete in every last detail of it. I'm sure, if they saw the opportunity to move ahead, there'd be some willingness to cooperate. But there's been so much work done, just as you yourself know since you were one of the key parties over the years; it seems like we need to have it resolved. We need to have some sort of environmental agreement that can come to a conclusion in a reasonable period of time and not drag out kind of open-ended.

I wondered if I might ask Mr. Turney a question? You talked about a pipeline, I guess, for the Navajo Nation. Could you tell us about that? Maybe the estimated cost of that, the length, and the construction time, et cetera?

Mr. TURNEY. Mr. Chairman, the pipeline would be run from Farmington to Shiprock. Shiprock is about 30 to 35 miles west of Farmington. The purpose of the pipeline would be to take treated water and move it from Farmington to Shiprock. For many, many

years the Navajo community of Shiprock has tried to take water directly from the river. But the water is simply too muddy by the time it gets down to Shiprock. There's some major arroyos that dump silt into the river. For this reason, surface water treatment is just extremely difficult.

The project to be built would, I'm sure, require further NEPA evaluation. I believe some preliminary numbers have been floated around about a 24-inch pipeline. There is an existing 16-inch pipeline today—so this new pipeline to be augmenting an existing pipeline. Probably the project would be in the neighborhood of, let's say, $25 to $30 million.

Mr. DOOLITTLE. Would that be built along the same right-of-way as the existing pipeline?

Mr. TURNEY. I presume so. As I recall the last pipeline, it took about one and one-half years to design it, and about a year to construct it. Because we're dealing with a slightly larger project, sized pipeline, it may take a little longer than that.

Mr. DOOLITTLE. All of you have worked very hard to retool this proposal which you call Animas-La Plata Lite—sounds like a term your opposition may have coined, but, anyway, you use it yourselves. Well, has it lessened the opposition in any way? Did you get some of the opponents to go along with this that wouldn't go along with the full Animas-La Plata? Or are we still facing the same types of opposition?

Governor ROMER. I will speak to that. In the course of the extensive conversation we had when the so-called Romer-Schoettler process—even though we did not come to an agreement, I thought that we found the kind of differences we had were narrowed. We all began to sense that there's a reality here, and that is that we've got to solve this problem. I think there was a recognition that you just can't solve this problem by putting money on the table and say, "Go buy water rights." This isn't a solution that's acceptable to the tribe. Therefore, I think there's a reality that all of us on both sides come to, saying the time is now, let's get it done, and let's find the proper way to do it.

Mr. MARTINEZ. Mr. Chairman?

Mr. DOOLITTLE. Yes, Commissioner.

Mr. MARTINEZ. If I might add to that, I think I at one time said that, based on my 30 years in this business, I find that if we try to deal with water issues based on consensus, we'll never get anything done. You can only go so far. I've yet to find any particular project out West where you're going to have a 100 percent concurrence. I think where we're at is the administration has extended an invitation to the tribes to enter into a dialogue to focus the issues and bring this to resolution, bring something to Congress that you can make a conscious decision on. That's why I committed to assist Mr. Hayes and the administration in this.

Mr. DOOLITTLE. Well, that sounds very encouraging.

I'll recognize Mr. DeFazio for his questions.

Mr. DEFAZIO. Well, following up on that with Mr. Martinez, then what sort of timeline would you have in mind for that?

Mr. MARTINEZ. I'm going to push it as quickly as possible. I would hope that we would have something within the timeframe that has been expressed today—30 to 60 days. But I can't speak

for the rest of the administration, because, as you know, on an issue like that we'd have to get administrative clearance. But I intend to move this thing quickly through the Bureau of Reclamation.

Mr. DEFAZIO. OK. So you believe 30 to 60 days of discussions with the principal tribes could reach—you could reach a point of resolution?

Mr. MARTINEZ. I would hope so.

Mr. DEFAZIO. OK. In those discussions, I would assume you deal with variances from the existing environmental laws. Then if you reach a conclusion with them, I assume there would be a substantial proposal.

Mr. MARTINEZ. Well, I don't think you can—you can get many answers from environmental laws. It would appear to me that you're going to have to comply with them. But that being said, there's been $21 million worth of environmental studies on this project that has a—you have a resource on which you can draw upon.

Mr. DEFAZIO. Have any of those ever been challenged legally? Let me reverse the question. Has any of the studies every withstood a legal challenge?

Mr. MARTINEZ. My history, particularly history with people on this issue, is it's impossible for me to ask for that. But I would assume that it's been challenged and I want recall that the—I'd like to correct the record—but I want to recall the last order entered by the judge on an issue like this had to do deal with cultural resources study and not the need for sufficiency.

Mr. DEFAZIO. Yes. Well, I understand that previous environmental assessments have been found to be inadequate by the courts. I don't know which all aspects of that.

Mr. MARTINEZ. But I'll provide an answer for the record.

[The information referred to may be found at end of hearing.]

Mr. DEFAZIO. There's another concern here which goes beyond the environment, which goes to local responsibility. I'm curious as to how the administration would look upon the reduction and the capping of local cost-sharing in the alternative. My understanding is, basically, according to the Bureau of Reclamations, we've seen phase 1 of Animas-La Plata. About 44 percent of Animas-La Plata Lite capped at 10 percent, that means a much larger additional burden in the initial project phase or, as we're told now, in the final—and initial project phase—since that's sort of the assumption here.

Although I have to get also to the question of, if we're going to—if we accepted this, would Arthur and others, Governor Romer, accept that we would deauthorize parts of the project that weren't consistent and went beyond? But to you, is that a problem with the administration?

Mr. MARTINEZ. Well, let me try and sort of put this in perspective. The original project estimated about $400—$754 million to construct what represented about 55 percent non-Federal cost-share. As I understand it, the M&I non-Federal cost-share was to be paid at 100 percent reimbursement with interest. Then you had the large component of irrigated agricultural costs. Then, of course, you have the Indian costs associated with a project, which were ir-

rigation costs which were deferred under the Levitt Act—the M&I costs which would be payable by the tribe at the time they put their water to use.

Under the new proposal, the proposal that is set forth in H.R. 3478, we would have a project of about $268 million, of which the Federal costs associated with the tribal expenses would be deferred—would be nonreimbursable. As I understand, the Federal—non-Federal costs would be capped at $29 million. So percentagewise the non-Federal costs are greater under this project. But again, it would be the administration's position that, as we move forward with a project that would involve non-Indian M&I uses or other uses, that those costs be payable pursuant to reclamation law. For M&I purposes, it would be 100 percent with interest on that portion that could be allocated to the M&I project.

Mr. DEFAZIO. OK. So then does 10 percent do that or not?

Mr. MARTINEZ. We'd have to do the analysis, but my first indication said it's not sufficient. It doesn't come up to it.

Mr. DEFAZIO. OK, Mr. Chairman.

Mr. DOOLITTLE. We'd like to thank the members of this panel. I'm sure we'll have some other questions and we will tender those in writing and hold the record open for your responses. We appreciate very much the time you've taken to get here and the expertise you've brought with you.

[The information referred to may be found at end of hearing.]

Mr. DOOLITTLE. We'll excuse the members of panel one and begin with the second panel and invite the members of the second panel to come forward.

Let me ask you, ladies and gentlemen, to please rise and raise you right hands.

[Witnesses sworn.]

Mr. DOOLITTLE. Let the record reflect that each answered in the affirmative.

We're very happy to have you here. We'll begin our testimony with Mr. Clement Frost, chairman of the Southern Ute Indian Tribe. Mr. Frost.

STATEMENT OF CLEMENT FROST, CHAIRMAN, SOUTHERN UTE INDIAN TRIBE; ACCOMPANIED BY LEONARD C. BURCH, PAST PRESIDENT AND COUNCIL MEMBER

Mr. FROST. Thank you, Mr. Chairman and Committee members.

First of all, in our traditional way, to you people we would like to pay tribute and honor to the two slain officers, the warriors of the Capitol Police Office. We hope that our Creator will grant the families peace and strength to deal with the loss of their loved ones.

My name is Clement Frost. I'm the chairman of the Southern Ute Indian Tribe. I appreciate the time given to me and my tribal people. I brought with me Mr. Leonard C. Burch, past chairman and now council member of the tribe. I'm here today to testify in support of H.R. 3478, the Colorado Ute Settlement Act Amendment from 1998.

On behalf of my people, the Southern Ute Indian Tribe, and our tribal council, I ask that Congress fulfill the promises that the United States has made to the Southern Ute Indian Tribe to pro-

vide water that the tribe needs now and in the future—wet water that guarantees the survival of our people and our land.

I'm also here today to oppose H.R. 745, the bill deauthorize the Animas-La Plata Project. In my thinking, H.R. 745 is a direct slap in the face and dishonor to my tribal people and my tribal leadership who have negotiated in good faith and have also compromised a compromise.

H.R. 745 breaks the agreement that the United States made with the two Colorado Ute Tribes that was signed into law by President Reagan in 1988. It also violates the United States trust responsibility to the two Colorado Ute Tribes. Those who support that legislation have very short memories. I can promise that if Congress were to disauthorize the ALP and demand that the tribe return to the negotiating table, my tribe would return to court. That's a promise I can fulfill. We would sue the United States for its breach of the 1986 agreement and we would seek to establish our rights through litigation.

Why would any tribe negotiate with the United States if the Congress is going to back out of any authorized agreement just because it doesn't like it anymore? The Southern Ute Tribe has been more than willing to work to address the problem that have delayed the construction of the Animas-La Plata. Because the water is important to my people, we will not walk away from the promises that were made in the 1988 Settlement Act. We believe the right way to address the issue is facing the ALP is H.R. 3748. The right way is not pretend that the 1988 Settlement Act was never passed.

When the Ute band find a treaty established in a Ute reservation in 1868, the United States promised the Ute people that the reservation would be our permanent homeland that would support our people forever. The key to carrying out that promise is wet water—the fact that the tribal leadership has always known, but what the United States has sometimes forgotten.

Former Chairman Leonard C. Burch and former Chairman Chris A. Baker worked hard to have the Animas-La Plata Project built. They knew that the project is the best way for a tribe to get water needs for the future. The future of my people depends on making sure that the tribe has a reliable water supply that can be used for the continued future development of our homeland and our future generations.

The parties to the original settlement are here today to support modification to the 1988 Settlement Act. The foundation for the settlement is still the Animas-La Plata Project, but only a small portion of the project is required to complete the settlement. As a result of those modifications, the tribe knows that we will not receive all the benefits that we were promised in 1988. But the tribe will get a reliable supply of stored wet water that it can control for its own use. That's what we've always wanted. We know that construction of a stored reservoir is only the first step in putting water to use for the benefit of our people. We are confident that, with that supply, we can move forward into the next century.

I want to address the position of the administration. We have tried our best to work with the administration to carry out the 1988 settlement. So far, we have met with little success. Throughout the Romer-Schoettler process, the Federal agencies never ac-

knowledged the trust responsibility to our tribes or try to help find solutions that would remain true to the spirit of the 1988 Settlement Act. Now the administration wants to talk to us. We received a letter just 2 days ago saying its opposition to our proposal was misunderstood and that we need to talk of yet another alternative. We don't agree. We understand the need to talk, but we have many questions. Let the administration understand those representatives must talk with all parties.

In closing, I want to make three points. First, despite the changes of the settlement that had been proposed, we know that these compromises will not satisfy all our opponents. We hope that you understand the benefits of this settlement to the Southern Ute Tribe and recognize the importance of providing wet water to the Ute Tribes without taking water away from the non-Indian neighbors.

Second, I want to recognize the honor and integrity of our non-Indian neighbors who are the tribes' partners in the project. We appreciate their sacrifices to make this settlement work.

Finally, I want to ask you to remember the promises that were made in 1868 to the Ute Tribe and confirmed in 1988. Finally, to ask at the end, who among you will have the courage to fill the cup of empty promises and pass H.R. 3478? Thank you.

[The prepared statement of Mr. Frost may be found at end of hearing.]

Mr. DOOLITTLE. Thank you.

Our next witness will be Mrs. Judy Knight-Frank, chairwoman of the Ute Mountain Ute Indian Tribe. Mrs. Frank.

STATEMENT OF JUDY KNIGHT-FRANK, CHAIRMAN, THE UTE MOUNTAIN UTE TRIBE

Ms. KNIGHT-FRANK. Mr. Chairman, members of the Committee, my name is Judy Knight-Frank. I am the chairman of the Ute Mountain Ute Tribe which is located in Colorado, New Mexico, and Utah. With me today I have two of our members of the council—Rudy Hammond, the vice chairman, and Eddie Dutchie, Jr., who is the treasurer of the tribe. He is also the representative from the White Mesa Ute community.

I want to thank you for inviting me to testify in support of H.R. 3478 on behalf of my tribe. I especially want to thank Congressmen Scott McInnis and Bill Redmond for introducing this important bill which we hope will finally settle our water rights. This bill is essential to the tribe's future, so they may continue the economic self-sufficiency and tribal self-determination which we have worked so hard to achieve.

I would ask that my written statement be included as part of the record. I also have a letter from some tribal elders which I ask also be included in the record.

[The information referred to may be found at end of hearing.]

Ms. KNIGHT-FRANK. As the Committee is aware, H.R. 3478 seeks to amend the Colorado Ute Indian Water Rights Settlement Act of 1988. The Animas-La Plata Project was a key part of the 1988 Act. After a decade of delays in construction on ALP, the tribes went to the Secretary in August 1996 to ask for help. Secretary Babbitt told us he agreed that a new water storage facility was the only

way to settle the tribe's water rights without tearing apart the social and economic fabric of the area. He told us to ask Governor Romer to assist us with bringing all the parties together to come up with a consensus project.

We did this, and the process resulted in two alternatives—a reduced ALP and a proposal which would have the tribes buying land and water in the area. The tribes have formally rejected any money for land deal because it is environmentally and physically unworkable.

H.R. 3478 represents the tribe's efforts to answer environmental and fiscal questions about ALP. Our proposal reduces Federal costs of the project by two-thirds. The tribes are getting less water than promised before but are asking to pay less for it. All of the irrigation facilities have been removed from the project. As you will hear today, this answers New Mexico's concerns about water quality.

Finally, H.R. 3478 also provides the means to assure the successful recovery of endangered fish in the San Juan Basin. That program simply cannot continue without the support of the tribes and the construction of the three facilities identified in this bill.

A nearly identical bill, S. 1771, was introduced in the Senate Indian Affairs Committee in March. I presented testimony at a hearing on that bill on June 24.

As we were told to do, the tribe submitted its testimony on time, so the committee could prepare for the hearing. We had been told by administration officials that any opposition to S. 1771 would be weak. As with many other things told to American Indians, this was far from the truth. The administration, through the same designated representative present today, Commissioner Martinez, gave us its testimony only 2 hours before that hearing. They strongly opposed S. 1771, and only a few words have changed in their testimony today.

Secretary Babbitt wrote to me and told me that the administration is prepared to enter into a good faith dialogue with the tribe to solve our water rights. We have had over 10 years of the administration's good faith—and let me tell you, their good faith doesn't hold water. The entire time we negotiated with project opponents, the administration has sat on the sidelines. They knew what we were doing every step of the way. They knew what this bill looked like months before it was even introduced. Yet they never told us what they really thought until just before that—last month's hearing. Nothing has changed here today.

We find it completely unfair for the administration to refuse to support a project which does not contain delivery facilities when it was exactly that project feature which previously caused them so many concerns. It is also unfair for the administration to state that environmental laws will be violated by the project set out in this bill. We all know this is not the case, as these three features of the original project were studied extensively—now, in fact, the only features authorized by the U.S. Fish and Wildlife Service. The bill must contain a statement that 15-plus years of studies are sufficient or the United States together with the tribes may be in court for another 10 years.

Finally, the Commissioner's written statement explains that David Hayes, counselor to the Secretary, has contacted the tribes.

Well, Mr. Hayes allegedly faxed us a letter last night. This is not good enough. If Mr. Hayes is now the point person on our water settlement and ALP; I ask the administration and this Committee, where is David Hayes today? As far as the tribe engaging in a dialogue with Mr. Hayes, we will only consider doing so when the administration agrees. We are not starting over. We must focus on this bill. Based on past experience, we do not expect that to happen. I ask this honorable Committee to schedule this bill for markup and move it to the floor. Only then will the administration see that Congress is serious about not breaking anymore promises to the Indian tribes.

A promise has been made and a promise has been broken. For the administration to say there was no guarantee ALP would be built is simply not genuine. We have complied with every law and are now asking for even less. It's time for action.

I again thank you for your time and express my sadness at the loss we all sustained last Friday. Such violence affected our area recently, taking the life of a Cortez Colorado city police officer. Thank you.

[The prepared statement of Ms. Knight-Frank may be found at end of hearing.]

[The information referred to may be found at end of hearing.]
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Mr. DOOLITTLE. Thank you.

Our next witness will be Mr. Sage Douglas Remington of the Southern Ute Grassroots Organization. Mr. Remington.

STATEMENT OF SAGE DOUGLAS REMINGTON, SOUTHERN UTE GRASSROOTS ORGANIZATION

Mr. REMINGTON. "Mike-Ku." In the native Ute language, I thank you for this opportunity to testify on H.R. 3478 and H.R. 745. I am the spokesperson for the Southern Ute Grassroots Organization, which is a group of Southern Ute Tribal members who live on the Southern Ute reservation in Colorado, and who are in support of H.R. 745 and opposed to H.R. 3478.

I've been instructed by the SUGO Elder Council to present a cultural and spiritual perspective that is in conflict with the mainstream political and cultural value system. My colleagues, in opposition to ALP, will speak about the environmental, taxpayer, and economic concerns that we all share.

The roots of SUGO go back to 1989, when a group of concerned Southern Ute Tribal members formed the Committee For Better Tribal Government. The committee's principal concern was that the best interests of the majority of the Ute people were not properly being represented in the Animas-La Plata Reclamation Project. This group of Southern Ute tribal members gathered the necessary signatures to institute a recall for the tribal council. With some questionable maneuvering, the incumbents succeeded in disqualifying one recall vote, thus resulting in a tie. Under the tribal constitution, the tie preserved the status quo. Dissatisfied with ALP, abuses of power and lack of responsiveness by the tribal government did not fail—did not die after this failed recall attempt. The organizers of the Committee for Better Government proceeded to form the Southern Ute Grassroots Organization.

Our Ute people have maintained a connection with the land and water since they were loosely confederated bands of a people called the "Nuche." We believe that rocks, trees, the rivers, and the Earth are alive, and we have lost much of our land base through the violence, assault and legal manipulations that have separated the Utes from their land and water. The Utes share with other traditional tribal peoples three primary political principles—two, rather. All land, water, and other natural resources are communally owned by the tribe; private ownership of land, water, goods beyond those of the immediate household are unthinkable. And all tribal decisions are by consensus, in which every tribal member participates.

There has never been a general council meeting of the Ute people dedicated to discussions about the benefits of the Animas-La Plata Project. In general council meeting, every adult member of the tribe is permitted to speak, and discussion continues until consensus is reached. Questions and concerns about this project, the original ALP and ALP Lite have gone unanswered.

In December 1996, SUGO held a meeting with members of the Southern Ute tribal membership to discuss an alternative to Animas-La Plata project, and it was at this time that the Ute Legacy Land and Water Fund concept was developed. Ute tribal members who had land assignments and allotments were asked, "What would you like to see result from this project?" Their responses were unanimous. Ute tribal members wanted to restore the integrity of the traditional Ute land base with purchases of land and water rights on the reservation.

It is with a heavy heart that the Southern Ute Grassroots Organization must declare its support for H.R. 745, a bill that would deauthorize the old project. It is not the answer, but it is a possibility of the beginning of a new solution. This project was never clearly defined in terms of benefits to the Southern Ute tribal members. It can never be constructed as originally planned until the 1986 Settlement Agreement.

H.R. 745 directs the Secretary of Interior to negotiate an alternative that is consistent with all the Federal laws. An alternative to ALP should provide the full amount of water allocated to the tribes in the 1986 Settlement Agreement. ALP's a parody of the history of the American West. It's become a saga of lies—lies, half-truths, and myths.

ALP has its own mythology. Ute people do not haul water by the bucket. Ute people are not drinking dishwater on this very day with bugs and debris a part of the water.

I'm reminded of a scene that took place here in Washington, DC, on May 2, 1948. The Federal Government forced a strong-armed settlement on the Mandan, Hidatsa, Arikara Tribes to make way for the Garrison Dam on the Fort Berthold Indian Reservation in North Dakota. This picture illustrates the heavy heart of George Gillettee, chairman of the Fort Berthold Indian Tribal Business Council, as he is forced to sign an agreement for the dam. This is not how Indian water projects should continue to develop. The Southern Ute tribal membership must have a voice in the decision-making process of any ALP water project, and it can be done.

"Tuvus-Togoy-Ax."

[The prepared statement of Mr. Remington may be found at end of hearing.]

Mr. DOOLITTLE. Thank you.

Our next witness will be Mr. Jim Isgar, member of the Animas-La Plata Water Conservancy District. Mr. Isgar.

STATEMENT OF JIM ISGAR, MEMBER, THE ANIMAS-LA PLATA WATER CONSERVANCY DISTRICT

Mr. ISGAR. Good afternoon. My name is Jim Isgar. I'm a board member of the Animas-La Plata Water Conservancy District. I'm joined today by Charlie and Freda Blasingame, and Elbert and Nila Hamblin, La Plata River irrigators from New Mexico.

Let me thank the Committee for the opportunity to be here and for your support in the past. I am a farmer/rancher in La Plata County, Colorado, in Southwest Colorado, on private land that lies entirely within the boundaries of the Southern Ute reservation. My grandfather homesteaded on another part of the reservation near Ignacio.

Approximately 50 years ago, my father moved to our present location near the La Plata River. The soil is good, but the water supply was limited, but there was talk of a water project that would bring water from the Animas River to the La Plata Basin. My dad became involved in working on the water project, and finally, after 20 years in 1968, the Animas-La Plata Project was authorized by Congress.

My dad was here in Washington for the signing of that bill. I was 17 at the time. My dad told me that he would be too old to benefit from the water by the time the project was built, but that it would be a great thing for me. The project at that time included water for the Ute tribes. That amount became more quantified when it became necessary to resolve the Tribal Reserve Water Rights claims. It hinged on the building of the Animas-La Plata Project. The La Plata River only had a fraction of the water necessary for the current non-Indian irrigators. It was obvious to all involved that the only solution to the Tribal Settlement Act was storage. When the Water Rights Settlement Act was signed, we thought we were at last done.

Over the past 10 years, we have actively pursued the project; however, a variety of issues has slowed us down. We have been sued by the environmental community, the Fish and Wildlife Service has determined that the Colorado squawfish might be impacted by the project, and we've began a 7-year program to determine what that effect might be. Our involvement in that process resulted in the Fish and Wildlife Service allowing us to construct the three facilities that are included in this bill.

The Service also recognized the depletion of 57,100 acre feet could occur without adverse effect on the squawfish. In order to address as many of the environmental concerns as we could, we agreed to participate in Governor Romer's process. This is a frustrating process for irrigators because, after nearly 50 years of working on an irrigation project, it became obvious that in order to resolve the tribal claims and appease the environmental community, it would be necessary to give up the opportunity for a new irrigation water supply. We assumed it was a sacrifice of that mag-

nitude, that the opponents of the Indian Settlement would be satisfied and would allow the project to move forward in this very limited way. This has not been the case.

I have reviewed Commissioner Martinez's testimony. Let me tell you how it reads to a farmer/rancher from La Plata County. The administration is proposing to meet with us, but this is after we've had 2 years of meetings in which they've had nothing constructive to add. They are proposing more studies, after, and we've heard $20 million—I think, if you include the squawfish studies, closer to $40 million—in studies that have already been done. To me, it appears they are only trying to delay and avoid fulfilling their responsibilities under the Indian Settlement agreed to by Congress in 1988.

In conclusion, we would ask for your support for H.R. 3478. It represents a compromise that the tribes will accept. It represents a compromise that the non-Indians can reluctantly accept. Each facility proposed has received environmental scrutiny, and has been approved by the Fish and Wildlife Service, and it drastically reduces the Federal cost.

We would also ask you to oppose H.R. 745. It guarantees litigation, at a great expense to you and to me, and does nothing positive to resolve the water shortage.

Your support for positive resolution to these problems would be appreciated. We have to solve these Indian water claims. If we don't, I will lose the water I have now. I don't want to have to explain to my boys, who are now 17, and to my neighbors, why we don't have any water. Thank you.

[The prepared statement of Mr. Isgar may be found at end of hearing.]

Mr. DOOLITTLE. Thank you. Is this squawfish one of those types of fish that the Fish and Game Agencies were trying to eliminate a few years ago?

Mr. ISGAR. That's the one.

Mr. DOOLITTLE. And now it's become an endangered species and we're having to spend millions to save it, is that what you're telling me?

Mr. ISGAR. We're spending millions to study——

Mr. DOOLITTLE. Study it, right.

Mr. ISGAR. To see if this has an effect, if the project has an effect.

Mr. DOOLITTLE. But that's the reason the withdrawal has been dropped down to—what, 57,008 feet?

Mr. ISGAR. Fifty-seven thousand one hundred, from approximately 150,000, which effectively eliminated the irrigation from the project.

Mr. DOOLITTLE. Well, if it isn't an endangered species and it has an impact on it, it doesn't make any difference, does it?

Mr. ISGAR. Excuse me?

Mr. DOOLITTLE. If the squawfish were not an endangered species and the environmental analysis found the withdrawal had an impact on it, you could still make the larger withdrawal, couldn't you?

Mr. ISGAR. I would assume so.

Mr. DOOLITTLE. But, I thought I read somewhere that this was looked upon either as an endangered species or a threatened spe-

cies. Is that still undetermined as to whether it's threatened or not?

Mr. ISGAR. It's a listed species.

Mr. DOOLITTLE. OK, so we've got a listed. I thought that the history you gave of all of this was most interesting. Sounds like you didn't mitigate much of the opposition by going through all of these revisions, or the process that led to that short list over there on the righthand side of the chart as opposed to what's on the lefthand side of the chart.

Mr. ISGAR. Well, you know, as an irrigator, I currently farm and ranch on the La Plata River, and we have a limited water supply, and most of the water runs out quickly in 2 or 3 months in the spring. My irrigation water this year quit probably the first week in June, last month. It's not nearly enough for the current irrigators, but if we don't solve the Indian water claims, we could lose all the water we have now. And it wasn't an easy decision for us to eliminate the irrigation, especially as I've talked about, our family's 50-year involvement in building an irrigation project. But the reality was, if we didn't eliminate the irrigation features, we couldn't move forward.

Mr. DOOLITTLE. See, what I don't understand is, though, now you've eliminated the irrigation features, who of all those opposed to the irrigation features dropped their opposition because you got rid of the irrigation features?

Mr. ISGAR. We could ask them to stand up, I guess.

[Laughter.]

Mr. DOOLITTLE. I mean, that's what I was wondering. It sounds like we didn't drop any opposition. Might as well put the irrigation features back in.

Mr. ISGAR. Well, I don't know of anybody that dropped their opposition, unless they're all standing by me now, but.

Mr. DOOLITTLE. I didn't see anybody; nobody raised their hand.

Mr. ISGAR. I was afraid to look myself.

[Laughter.]

Mr. ISGAR. No, really, the reality was we gave up irrigation in order to move the project forward, and why did we do that? Because we feel like we have to solve Indian water claims, or we could potentially lose the irrigation water we have now.

Mr. DOOLITTLE. The odd thing about this, to me, sitting here listening to this, is that the Indian tribes are as supportive of this bill as are the non-Indian interests. And yet we still have this opposition. We have Mr. Remington representing one of the aspects of the opposition, although I'm sure that's not the only one.

But let me ask Mr. Remington: You've talked about the—I don't know if I'm pronouncing this correctly—the SUGO tribal council?

Mr. REMINGTON. No, the Southern Ute Grassroots Organization.

Mr. DOOLITTLE. No, but in that I thought you referred to something called the SUGO—I know, I'm sorry, I know you represent the Grassroots Organization, but you referred to something called the SUGO tribal council, didn't you?

Mr. REMINGTON. No, I didn't. The SUGO elder council.

Mr. DOOLITTLE. Oh, the SUGO elder council. Well, what's that?

Mr. REMINGTON. It is a group of tribal elders who give direction to myself and to other people within the organization to follow a

plan in how we're going to best define our strategy. There are four ex-tribal council members and one former tribal council chairman who is a member of the elder council.

Mr. DOOLITTLE. So we have expertise; we have the history in terms of how the project was developed, and we still feel that there are modifications that could be made to best address the water project that would be specifically for the Indians? While I admire the two tribes' magnitude in sharing their largess with the overall community, I think this project was defined as a Ute Indian water project, to settle Ute water claims, and we feel the solution should reflect that.

Let me ask Mrs. Frank or Mr. Frost: Does the SUGO elders council or the Southern Ute Grassroots Organization have some official recognition within your tribe?

Mr. FROST. The SUGO have none, none at all. They're not recognized as an organization that has any type of a power or authorization to act on behalf of the tribe, in order to sign agreements, in order to voice any opinion on behalf of the tribe. There are only five members that I know that belong to SUGO. You can count them on one hand. I believe the committee that he is referring to—we have a committee of elders that the tribal council puts together, that takes care of the rest of the elders and the handicapped to see that services are provided to them, that their needs are met as far as their home and health, and whatever needs that need to be brought. They are the council's right arm as far as given us information whether service is provided to those elders out there.

The elders have never signed or had any type of resolution pertaining to the council regarding the statements made by Mr. Remington. In fact, none of the—most of the Committee of Elders do not agree with the concept presented by Mr. Remington. Nor is Mr. Remington a traditional—recognized as a traditionalist or a spiritual leader of the tribe in mentioning some of the aspect that deals with traditional way of life.

Mr. DOOLITTLE. So, as far as you know, there's only five members of the Southern Ute Grassroots Organization?

Mr. FROST. That's all that I know who have been participate in fully. The rest that have attended meetings, their meetings, they have expressed—they're not SUGO, but they go there, interested tribal members to see what these members say. But they're counted as part of this group, and they don't appreciate that, being counted as part of this group.

Mr. DOOLITTLE. And how many members, would you say, are there of the Southern Ute Indian tribe?

Mr. FROST. I, as elected leader, and my tribal council members elected to this positions, we talk, are the voice of 1,370-plus tribal members.

Mr. DOOLITTLE. Thirteen hundred and seventy. OK. Well, thank you. My time is up, and I'll recognize Mr. DeFazio for his questions.

Mr. DEFAZIO. Thank you, Mr. Chairman.

Mr. Remington, since he didn't give you an opportunity, did you want to respond to any of that line of questioning?

Mr. REMINGTON. Thank you, yes, I would. I think that there are many people in this room and who have been a part of the Animas-

La Plata process, who have forgotten one basic tenet that governs all of us, and that is the issue of democracy.

Last year, Congressman McInnis during a congressional briefing, asked me, was I an elected official, and I told him, no, I wasn't, and nor did I ever pretend or purport to be. But I am a voter, and a taxpayer, and an American Indian, just as other people in the Southern Ute Grassroots Organization are.

Our definition of the people that belong—we're not a membership organization. We are an organization that helps facilitate changes that must take place on the reservation. Animas-La Plata is one of those problems. In addition, our membership, if we can call it that, we do not go, or prescribe, to a membership system as you would find in the dominant society. There are people who are representatives of families who come to the meetings, who then, in turn, go back to their respective collection of family members and distribute the news. So, membership, or representation at these meetings never really has been an issue.

I would think that Mr. Frost should probably look at his own tribal council general meetings and see how many people attend that. But, no, democracy does exist, even for American Indians, and we have a right to determine whether we want to make any opinions heard regarding issues that affect us on a local level, on the reservation level, in the county, or anywhere else. Thank you.

Mr. DEFAZIO. Thank you, Mr. Remington.

Mrs. Frank, or Mr. Frost—either or both—I did not intimately follow the Romer/Schoettler process, so I'm not certain whether the cap on cost-sharing came from that process, or was added in the legislative drafting process. I'm wondering if it was the tribes who initiated the cap on cost-sharing for non-Indian water users. I would assume it wouldn't have been your initiative, or obviously in supporting legislation, would have agreed to it.

I'm just wondering, did that come out of the Romer/Schoettler process or did that come in the legislative drafting process? Because the cap, if you go back to Animas-La Plata Project, and you look at phase 1(a), the Federal obligation would have been $92 million. If you look at the drafted legislative proposal, the Federal obligation goes up to $217 million, and it caps the other users' obligations.

Mr. ISRAEL. Congressman, my name is Dan Israel. I'm representing the Ute tribe.

Mr. DOOLITTLE. Let me just, sir, if you're going to testify, we'll have to swear you in. And that's fine; we're willing to do that. Just raise your right hand.

[Witness sworn.]

Mr. DOOLITTLE. OK. Would you tell us your name, then, please?

[Laughter.]

Mr. ISRAEL. Yes, Congressman.

Mr. DOOLITTLE. I knew what you meant. Thank you. Tell us your name and who you represent.

Mr. ISRAEL. My name's Dan Israel, and I am representing the Ute Mountain Ute Tribe.

Mr. DEFAZIO. OK.

Mr. ISRAEL. The M&I cost-sharing, Congressman DeFazio, is an effort to carry forward the 1986 cost-sharing agreement terms that

were agreed to by all parties, and so those dollars are simply carried forward today by the M&I users.

Mr. DEFAZIO. But, the Federal Government somehow ends up paying an additional $125 million more.

Mr. ISRAEL. Well, that's not quite correct, because what we've tried to do in these amendments is take an overall expenditure of about $720 million and reduce it down to about $280 million.

Mr. DEFAZIO. So, we're not comparing phase 1(a), which has some comparability to Animas-La Plata Lite; we're comparing Animas-La Plata Lite to the entire Animas-La Plata Project.

Mr. ISRAEL. Well, in answering the question about the Federal obligation, it's been reduced by about $350-$400 million.

Mr. DEFAZIO. In terms of the entire project, but in terms of that upon which most of the work was done, and we're hearing a lot of discussion about all of the environmental work and all the other things that have been done, that was done on phase 1, or the first part, of Animas-La Plata. But the way you're getting consistency here is to say, well, the Federal Government, if we had ever built the entire project, and we hadn't even figured out—no one at the Federal Government had taken any steps, really, to go beyond the phase 1 part, but if they had, it would have cost this much more, and therefore, the Federal Government's saving money under the terms. That's what you're saying here.

Mr. ISRAEL. Well, I think perhaps to clarify, these three facilities are under our amendment. They also are under stage A of the existing legislation. Under stage A of the existing legislation, they would have been subject to repayment as M&I water. Under our amendments, they are partially subject to repayment. Part of it is a waive in terms of the tribe's repayment obligation. So if you look at these three facilities only, I think it's correct to say that there is less repayment under our amendments than there are under the stage A description.

Mr. DEFAZIO. OK. I wanted to clarify that. Thank you.

Mr. DOOLITTLE. I'd like to thank the members of this panel for your appearance. We will perhaps have further questions; I'm sure we will. And we'll hold the record open for your responses.

[The information referred to may be found at end of hearing.]

Mr. DOOLITTLE. We thank you very much for coming, and we'll excuse you at this time, and call forward our final panel, panel No. 3.

[Witnesses sworn.]

Mr. DOOLITTLE. Let the record reflect that each answered in the affirmative.

We're pleased to have you here, and we'll begin with Mr. Orion Utton, rancher from Farmington, New Mexico. Mr. Utton.

STATEMENT OF ORION UTTON, PRESIDENT, ANIMAS RIVER AGRICULTURAL WATER USERS ASSOCIATION, SAN JUAN COUNTY, NEW MEXICO

Mr. UTTON. Mr. Chairman, and Committee members, I am Orion Utton, President of the Animas River Agricultural Water Users Association. I feel honored and privileged to testify before this Committee in support of H.R. 745 and in opposition to H.R. 3478.

The members of the Animas River Agricultural Water Users Association are major stakeholders in this Animas-La Plata issue. The water that would be used for Animas-La Plata project is the same water that we now use to grow our crops. We are very concerned that the project will seriously threaten the water supply that we depend on to grow alfalfa, corn, wheat, oats, and fruit and vegetables.

The Bureau of Reclamation documents for the Animas-La Plata Project point to 225 cubic feet per second of water that would be allowed to bypass the pumps at Durango during the summer months. They state that this water would be for the ecology of the river, but we believe that this may be the only water that would be bypassed for agricultural uses. The supporters claim that senior water rights will be protected, but there is no Bureau of Reclamation documentation as to how senior water rights will protected.

I know the ditch system in San Juan County better than anyone. I served as a county extension agent for 20 years, and while employed by the New Mexico State University Extension Service, I worked extensively on water and ditch system issues. I have also farmed all my life and own a 45-acre farm.

Attached to my testimony is a document prepared by Dennis Cooper, a water engineer from Santa Fe. This document summarizes the adjudicated water rights on the Animas River. The point of the document is that these ditches have the legal right to divert a great deal more water than the 225 cubic feet per second described in the Bureau of Reclamation documents for the Animas-La Plata project. That is not enough water to supply legal diversions for the Animas River irrigators. Every year would be a dry year.

With Animas-La Plata Lite, we simply do not know how much water we would get. There have been no studies, so nobody knows. But the real danger is that Animas-La Plata Lite does not deauthorize the full project. We believe that the scaled-down version of the project is quite simply a ploy to get a foot in the door so that the full-scale project could be built later. There is no other plausible explanation for the supporters wanting to build almost a full-size dam and pumping plant. Our wet water would be turned into paper water, and you cannot farm with paper water.

A few years ago, 62 percent of the population supported the Animas-La Plata project, but now we are beginning to realize what would happen to the Animas River if the project were built. Now, only 34 percent are in favor of the project. The Animas River agricultural water users do not want this project.

Please oppose H.R. 3478 and support H.R. 745. This is the time to deauthorize the Animas-La Plata project. Do not make it easier to build. Thank you for the opportunity to testify. I invite you to ask questions about this issue.

[The prepared statement of Mr. Utton may be found at end of hearing.]

Mr. DOOLITTLE. Thank you.

Our next witness is Mr. George Arthur, vice chairman of the Resources Committee of the Navajo Nation Accounts. Mr. Arthur.

STATEMENT OF GEORGE ARTHUR, VICE CHAIRMAN, RESOURCES COMMITTEE, THE NAVAJO NATION ACCOUNTS

Mr. ARTHUR. [Speaks briefly in native tongue.]

Honorable members of the Committee here, Mr. Chairman, I bring you tidings from the Navajo Nation. I'm here to speak on behalf of H.R. 3478.

Just a few minutes ago, we also witnessed the sympathy and gracious dedications that have been offered by men of honor such as yourself, and it's not something that's unknown to the Navajo people. Just recently, as Mrs. Judy Knight-Frank indicated, we participated in the manhunt that is ongoing in the Four Corners area. We, as Navajo Nation police officers, we certainly extend to the Chestnut family, and the other gentleman's, our sincere sympathy.

And also, in this discussion, there was a word that was mentioned: extended family. Extended family on this Hill had a lose, and we certainly extend our sympathy to people such as yourself. The Navajo people know very well what extended family means. Ironically, Navajo Nation has a clan system, and ironically, my clan is of the Ute clan, the very people that sit here before you. So Mrs. Judy Knight-Frank is my mother by clan, and the gentleman from the Southern Ute is my uncle. So, that's the uniqueness in the way of how I'm here.

We have before you a written testimony, which I will submit for the record. But the Navajo Nation has three major components of their support, and has stated an amendment that would be in the record, one being, although the amount of water provided to the Navajo Nation would also be reduced, we are willing to accept such reductions provided H.R. 3478 is amended to authorize a pipeline for the delivery of all project water to the Navajo Nation. This was recently alluded to by other witnesses, being the Farmington/Shiprock water pipeline.

Secondly, we are in support to H.R. 3478, contingent on amendment that would expressly state that the Navajo Nation water rights are not affected by this legislation.

Thirdly, we also support H.R. 3478, contingent on the amendment that would require any water developed under Permit Number 2883, if such permit is transferred pursuant to section 6 of the Act, to be subject to the same requirements under the Endangered Species Act that would have been applicable in the absence of such transfer. Those, gentlemen, are the amendments that we requested.

In the previous hearing that we had before the Senate, Senator Nighthorse Campbell indicated that such amendments would be acceptable to him. So, with that, I would ask that, in light of the extended family concept, that the Navajo Nation is a position, and I, as a member of the Ute clan, would offer to my mother, the Ute tribe, and to my uncle, the Southern Ute tribe, a cup of water that you, as a child, might have offered to your mother, in the days when there were hot summers and when she thirsts.

Thank you, gentleman.

[The prepared statement of Mr. Atcitty may be found at end of hearing.]

Mr. DOOLITTLE. Thank you very much.

Our next witness is Mrs. Lori Potter, an attorney with Kelly, Haglund, Garnsey and Kahn.

STATEMENT OF LORI POTTER, ATTORNEY, KELLY/HAGLUND/ GARNSEY AND KAHN, DENVER, COLORADO

Ms. POTTER. Thank you, Mr. Chairman, members of the Committee. For the record, it's "Ms." Potter. The only Mrs. Potter is my mother. She's a spirited public citizen, but she's not here today.

Mr. DOOLITTLE. Well, I apologize. They had "Mrs." Down here.

Ms. POTTER. No problem, but she would want me to set the record straight.

Thank you for this opportunity to testify on H.R. 3478 and H.R. 745. I'm from Denver, Colorado. I'm a lawyer, and I represent, and have for the last 10 years represented, national and local environmental groups and taxpayer groups seeking alternatives to the proposed Animas-La Plata project. On behalf of those groups and their members, I want to thank Congressmen DeFazio and Petri for introducing H.R. 745, a bipartisan bill with 28 cosponsors, and for championing this issue in Congress for many years.

Animas-La Plata is widely known as "Jurassic pork" due to its tremendous size and cost, its dismal cost/benefit ratio, its unfeasibility, its environmental impacts—all of which belong to a dam-building era that's long past. Animas-La Plata Lite perpetuates many of those same problems.

First of all, Animas-La Plata Lite does not deauthorize or leave the full Animas-La Plata Project behind. The bill H.R. 3478 holds open the possibility, both legal and financial, that the entire project, all of the components you see written in the chart under "phase 1 facilities" and "phase 2 facilities" will eventually be built.

The reservoir and dam are sized at 92 percent of their original project size, and the project proponents, in their materials and in their statements to the press and others, are quite frank and quite freely admit that they would like to come back and build the entire project eventually. So Animas-La Plata Lite does carry on the problems and the criticisms that have been made of the full Animas-La Plata project. And it has a few of its own, as well.

Some of this has been alluded to here today: the cap on the state and local cost-sharing. The fact that the State and local cost-sharing is a smaller percentage of the overall price tag, than was the case under the full Animas-La Plata project. The fact, as I've said, that the full project is not deauthorized, and the environmental impacts that loom from damming and depleting the flows of a free-flowing western river, damming another creek and pumping the water 500 vertical feet into that basin, where it will sit until it is returned to the very same river. All of which environmental impacts have been documented in an environmental impact statement which has been disapproved by the EPA.

My clients are seeking a taxpayer-friendly and environmentally friendly alternative to Animas-La Plata and Animas-La Plata Lite. We also seek a solution that resolves the Indian water right issues that make this such a difficult problem. We have proposed two alternatives in the process that you've heard talked about here today. Those include the use of existing Federal facilities that store water, some of which water is stored for and delivered to these very

tribes, and the acquisition of water from willing sellers, upstream of and within the reservations in question.

We support H.R. 745 because it is a bill designed to do two things: to direct the Secretary to negotiate an alternative solution with the tribes, and to make it clear that the old Animas-La Plata must be abandoned as unfeasible. H.R. 745 alone, of the two bills, does these things. By contrast, ALP Lite and H.R. 3478 perpetuate the old problems and invite some new ones.

H.R. 745 directs the Secretary to negotiate an alternative that's consistent with all Federal laws. All parties should endorse nothing less than a resolution that complies with the law. We've heard the administration speak of its opposition to any alternative which does not comply with the law. That is, after all, what all of the project sponsors—all of the project participants—committed to do in the 1986 settlement agreement and in the cost-sharing agreement for this project.

The virtue of H.R. 745 is that it provides a way to address all of the legitimate interests and problems that have been raised here. We hope that the Committee will act on H.R. 745 and use it as a way to bring closure to this matter. Thank you.

[The prepared statement of Ms. Potter may be found at end of hearing.]

Mr. DOOLITTLE. Thank you.

Our final witness will be Mr. Mark Duncan, Chairman of the San Juan Water Commission in New Mexico. Mr. Duncan.

STATEMENT OF MARK DUNCAN, CHAIR, SAN JUAN WATER COMMISSION, AND CHAIRMAN PRO TEM, SAN JUAN COUNTY COMMISSION, NEW MEXICO

Mr. DUNCAN. Mr. Chairman and members, I'm Mark Duncan, chairman of the San Juan Water Commission and chairman pro tem of the San Juan County Commission, and with me today I have Mr. Jim Dunlap, chairman pro tem of the San Juan Water Commission. I would like to thank you for the opportunity to appear today to support the passage of H.R. 3478.

I am here because, as an elected official, I have responsibility to 110,000 New Mexicans to ensure their supply of drinking water. We need reliable, renewable water from the river system because we have no potable groundwater. We don't have the luxury of 75 inches of rain per year. We have less than 10 inches of rain per year. Even more critical is the fact that most of the member entities of the San Juan Water Commission are right now using this water when it's available. If they cannot use that water now, they would be scrambling for a drinking water supply.

The revised ALP embodied in this new legislation would enable us to build the storage necessary for sustained M&I use. That's why I'm asking you to support it. We have solid support from 110,000 people in the San Juan County for this project, including ten rural water associations and the towns of Farmington, Aztec, and Bloomfield. The voters in San Juan County voted overwhelmingly in favor of this project, and we have taxed ourselves to pay our share of this project.

H.R. 3478 is the product of 2 years of tough negotiations and sacrifice, as Governor Romer so accurately explained. We in San Juan

County sacrificed a significant portion of our depletions, almost one-third, so that the compromise would work. That is our bottom-line sacrifice. Any more, and the water commission has to start cutting back on water depletions that most of the three towns and ten rural water associations are already using.

As you know, it is very difficult to take away a benefit once you've handed it out. The administration's testimony at the Senate hearing last month, however, puts us in that difficult spot. The administration said we should scrap the revised ALP and begin again. They attended 2 years of meetings in Governor Romer's process, but offered no solutions. We have given you our best compromise. The administration, if it had been listening, would have known that.

Now, the administration wants to dump the non-Indians and pay off the Indians. We cannot be paid off, because we must have wet-water storage. We negotiated in good faith for 2 years, but apparently the administration did not. We, frankly, have had all the good faith we can stand from the administration.

The list of alternatives has been examined time and again; first during the exhaustive NEPA process, at the expense of $21 million and a 3-foot-tall stack of paper, and again during Governor Romer's process. The Indian tribes, the irrigators, and domestic suppliers, like the San Juan Water Commission, developed a workable compromise. The administration appears determined to pit neighbor against neighbor. H.R. 745 does the same thing, by deauthorizing the ALP and instructing the Secretary to negotiate only with the tribes. This is wrong and should be defeated.

New Mexico's water will not be held hostage to negotiate a final settlement with anyone. If the administration is so intent on negotiating and settling only to tribes' right, they will do so without New Mexico water.

We also received a letter from Mr. David Hayes, in which we were referred to as "interested parties." Even putting aside that slight, we have to ask, "Where is Mr. Hayes today?" The Federal Government promised us it would help develop New Mexico's allocation of Colorado river water, but for 40 years, it has prevented us from developing it by reserving it to the Animas-La Plata project. The storage facility promised by the Ridges Basin Reservoir will allow us to develop our allocation, development stymied for 40 years by the delays in the ALP project. By that delay, we have estimated San Juan County has foregone gross economic benefits amounting to more than $740 million. The government has a duty to San Juan County and New Mexico to end the delays that have cost my county so much.

We were fair and honest in our negotiations for the revised ALP, and we expect nothing less from the administration of the Federal Government. Please pass H.R. 3478 to keep the promise that Congress made long ago to me and my constituents. Thank you for holding this hearing and allowing me the opportunity to speak.

[The prepared statement of Mr. Duncan may be found at end of hearing.]

Mr. DOOLITTLE. Thank you, Mr. Duncan. Do you and Mr. Utton talk from time to time?

Mr. DUNCAN. Yes, sir, we do.

Mr. DOOLITTLE. You're both from more or less the same area, right?

Mr. DUNCAN. Yes, sir.

Mr. DOOLITTLE. He seems to be concerned that, if Animas—I guess he's worried about the full one being built; I'll ask him in a minute about the Animas Lite. But, anyway, do you share his concern that they'll lose their agricultural water if this project is built?

Mr. DUNCAN. No, sir, I do not. The ALP Lite will take 13 percent of the water in 10 percent of the driest years, out of the River. During the spring flood, often we have the opportunity to take that water out and pump it up into the reservoir. We will do so and put that water back in during the driest times of year: July, August, September, and the first part of October.

Mr. DOOLITTLE. Mr. Utton, would you care to respond to that?

Mr. UTTON. Yes, I would. I have before me a document that I researched out of the definite plan report, and it lists the number of times that the New Mexico water would be released to the river, New Mexico M&I water, and I would like to read you the amount of water. In 1931, the amount of water that would be released to the New Mexico M&I would be 4/10 of a cubic feet.

Mr. DOOLITTLE. Which year is that?

Mr. UTTON. Nineteen thirty-one, which was an extremely—1931, 1932, 1933 and 1934 were really extremely dry years. In 1934, probably the driest year on record, they would require 7.4 cubic feet per second released to the river. In 1937 they would require .2 cubic feet per second to be released to the river. In 1939, 3.3 cubic feet per second to be released to the river. In 1940, 1.3 percent—or 1.3 cubic feet to be released to the river. In 1950, 2.3——

Mr. DOOLITTLE. Let me interrupt and ask—now, put this in context for me.

Mr. UTTON. OK, I will, sir.

Mr. DOOLITTLE. What does that mean?

Mr. UTTON. It means that very little water will ever be released to the river to New Mexico, and it means that we do not need that storage in Colorado. We need storage in New Mexico.

Mr. DOOLITTLE. Oh, so the storage you contend with then, this reservoir they're creating, will take the water that would otherwise flow down the river to New Mexico?

Mr. UTTON. I'm not so worried about the Animas-La Plata Lite as I am the full-blown project. It's a full-blown project that would take vast amount of water out of our river during our critical irrigation season, but what I'm saying is that the reservoir does not need to be that large, and I've said that in my testimony, and I reaffirm it. The water that would be released—the water that San Juan County would get—would most of the time flow down the river as it always has, and with the exception of these releases. And I didn't really, I didn't mention the zeroes. There is as many zeroes in as what they are, those figures that I told you. Those figures are really insignificant in terms of the 33.4 cubic feet per second that is released in New Mexico M&I demand. So, it's really insignificant.

Mr. DOOLITTLE. Mr. Duncan, now you're in New Mexico, too, the same area. Are you concerned about the figures from those dry

years? I mean, if they built the whole project, which is theoretically possible, I guess?

Mr. DUNCAN. Mr. Chairman, I don't have a clue where those numbers came from, first off, that he was quoting there, so I'll go from what I do know. No, I'm not concerned with the project being full-blown. If you built a reservoir full-scale—let's just say hypothetically, if you built a reservoir full-scale)—we would have the opportunity to set aside M&I water for maybe a 2 or 3-year period, and we often have droughts of 2 or 3 years. And so we'd have that opportunity to set aside water for a 2 or 3-year period, therefore minimizing the downstream effect. So, while I don't know where those numbers came from, I'm not worried in the least about that.

Mr. DOOLITTLE. Mr. Turney is the State engineer, and he's already taken the oath. Mr. Turney, why don't you grab a microphone and share with us your insight on this.

Mr. TURNEY. Mr. Chairman, I wanted to just briefly touch on a couple of issues here. First of all, he talked about some minimum flow, flowing past the Durango, city of Durango, bypassing the pumping station, and that number was much less than when you added up a court decree that was issued in Mexico. And that is a true statement. However, when we look at court decrees, we also believe in a thing where current flows come back into the river and they are shared by downstream users. That's the principle of the Appropriative Water Doctrine in New Mexico. So you can't—it's not a very fair comparison to add up all the flows in the decree and just say, gee, they exceed the amount of flow past the Durango pump station.

In addition, there are additional in-flows that come in above the state of New Mexico. For instance, there's a river up there—I believe it's called the Floreida—that comes in, and you have to look at the total picture of the points of diversion. In some of the work that we have done, we think that the existing decree rights can be adequately protected. However, the Animas-La Plata rights for the cities would not be available all the time, and in fact they may have to be restricted when the very low flows start to occur at Farmington, and this is an issue.

Mr. DOOLITTLE. So, in that case, the agricultural water would be preferred over the M&I?

Mr. TURNEY. Yes, and in the West, we have an appropriative doctrine that's based on priority. It's not people over agricultural, or endangered species over agricultural. It's based purely on priority, and that's set up in our constitution, priority of time. And that sets who will be the senior water-right holder.

Mr. DOOLITTLE. Well, endangered species seem to get the absolute first claim regardless of who has the water rights, don't they?

Mr. TURNEY. I've heard that claimed, but that's not in our constitution.

[Laughter.]

Mr. DOOLITTLE. Thank you. OK, Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman.

Mr. Duncan, you talked about, you've already levied the taxes, for some time now, to pay for the share—your share. What amount of money has been raised by the people of the San Juan district?

Mr. DUNCAN. Mr. Chairman or Congressman, we have about $8 million set aside in that account right now.

Mr. DEFAZIO. Eight million dollars? And that's for construction, construction operation?

Mr. DUNCAN. That is for the construction.

Mr. DEFAZIO. For your share of the construction. OK, well, under this cost-sharing agreement, local cost-sharing is capped at $13 million, Colorado at $16 million, so, you're going to spend that whole $8 million, you're going to be paying more than half of the local cost-sharing. Are you still expecting to spend that $8 million?

Mr. DUNCAN. Yes, sir, I sure am, Mr. Chairman.

Mr. DEFAZIO. OK, so, your obligation has not changed under this cost cap?

Mr. DUNCAN. Mr. Chairman, Congressman, our cost-sharing, as I'm trying to remember who it was that stated in the second panel, appropriately goes down according to what we get out of this, and I'd like to ask council to make sure on that.

Mr. DEFAZIO. OK, so you're saying you're going to pay proportionately the same amount?

Mr. DUNCAN. Yes, sir.

Mr. DEFAZIO. With the cost cap. I guess the question would be, why should anyone in Congress who doesn't represent that district advocate a cost cap which isn't extended in other projects?

Mr. DUNCAN. Mr. Congressman——

Mr. DEFAZIO. [continuing] to non-Indian users?

Mr. DUNCAN. In my written testimony, I think you will see a number of projects that were given leniency by Congress, and we're not asking for any laws to be broken here; we're not asking for any funding laws to be broken here.

Mr. DEFAZIO. Well, the laws have changed. I mean, it is much more—used to be, in the old days, Congress built projects and pretty much didn't even ask for repayment sometimes, but the laws have changed.

Ms. Potter, on yours, Governor Romer got into an exchange with me. We were discussing the environmental implications, and he said that, in support of his outstanding environmental record, he was confident that, and the reason he supported sufficiency, was because of all the studies and all the work that had been done. But, in reading page 4 of your rather enlightening testimony, which, given your time restraints, you didn't get to go into, it sounds pretty dismal here. It says, series of actions, Bureau admitted its own, ALP was in violation of the law, out of compliance with ESA, EIS was inadequate, out of date, but you had to sue to get the agency to admit that. Bureau claimed to be exempt from the Clean Water Acts, had no permits, didn't qualify for an exemption; the Bureau illegally dumping drilling fluid in Basin Creek. EPA cited a violation. The Bureau then began programming exhuming burial sites.

So, I'm puzzled, because Governor Romer was so hot about that. I mean, I started to think, well, maybe I'm wrong. I mean, is there some sufficient environmental work that has been done that would withstand a court challenge, that is directed at the specifics of Animas-La Plata Lite that's before us?

Ms. POTTER. Well, no, as Commissioner Martinez stated, there are aspects of the Animas-La Plata Lite that are different and that, quite clearly, have not ever been studied. That is on top of existing documentation, which, as you've just indicated, has some real problems.

First, the EIS was the basis of a lawsuit. The Bureau settled that lawsuit and agreed to do a new EIS. The next document that it came out with received such public criticism that it was withdrawn. The next document that it came out with has received an unsatisfactory rating from the EPA, and it's also been criticized by the Corps of Engineers. It, of course, has not been a subject of any court challenge, but there isn't an adequate EIS in the bunch.

Mr. DEFAZIO. Does this, and this doesn't just resolve on the issue of squawfish; this goes to many other issues of law?

Ms. POTTER. Oh, no, it goes to a great number of issues, of endangered species and other wildlife issues, are among those things that are addressed, but there's a full range of issues, and it's important to know that an adequate EIS is the entire basis for the claim of exemption from the Clean Water Act. The project is claiming an exemption from the Clean Water Act based on a seldom-used provision known as 404(r), and that requires an adequate EIS to be in place, and it requires a full analysis of the wetlands impacts to have been done. Those, too, are under question by the same agencies—the EPA and the Corps of Engineers, as I'd mentioned previously. So those inadequate documents are the basis for the claim of exemption from yet another Federal law.

Mr. DEFAZIO. You raised one other point which no one else has touched on. You raised a number of points in your testimony, one in particular caught my attention, because this is an area where I'm much better qualified than in water law and the intricacies of this project—and that is the power costs for pumping the water uphill. Apparently, there was some assumption—it says the market value of power reserved for ALP is $6 million per year, subsidized by the Federal Government. Now, what do you mean here? How's that?

Ms. POTTER. Well, a certain amount of power is being put aside to pump the water from the river level to the basin level, which is about 500 feet above the river, and that power value can be calculated using present market rates in the region. That value that you read is the amount of Federal power multiplied by the present market rate for electricity at the price per kilowatt hour.

Mr. DEFAZIO. And is this Bureau of Reclamation-produced power? Is it produced at Bur-Rec projects, or at other Federal—what kind of——

Ms. POTTER. Yes, it's a WAPA, Western Area Power Administration, power allocation set aside for this project. It is Federal power produced at Federal facilities.

Mr. DEFAZIO. So it's a WAPA allocation. So it's a melded, wholesale power. I mean, it's not from a dedicated source.

Ms. POTTER. That's right.

Mr. DEFAZIO. So, the Western Area Power Administration would be mandated here to provide power to this project, and forgo the market rate for that power?

Mr. POTTER. That's correct.

Mr. DEFAZIO. That's extraordinary. That's absolutely extraordinary and flies against everything else I'm hearing in Congress these days about power deregulation. That we would be mandating that the Federal Government provide power at a below-market cost to this project. That's absolutely extraordinary. Thank you.

Mr. DOOLITTLE. I'd like to thank the members of this panel for their testimony. We will have further questions and ask you to respond expeditiously.

[The information referred to may be found at end of hearing.]

[The prepared statement of Mr. Norton may be found at end of hearing.]

[The prepared statement of Mr. Blassingame may be found at end of hearing.]

[The prepared statement of Mr. Griswold may be found at end of hearing.]

[The prepared statement of Mr. Kroeger may be found at end of hearing.]

[The information referred to follows:]

Mr. DOOLITTLE. With that, we'll excuse the panel, and this hearing is adjourned.

[Whereupon, at 6:10 p.m., the Committee adjourned subject to the call of the Chair.]

[Additional material submitted for the record follows.]

STATEMENT OF HON. GARY E. JOHNSON, GOVERNOR, STATE OF NEW MEXICO

I speak today on behalf of H.R. 3478, which makes changes to the authorized Animas La Plata Project, a project to which New Mexico is a beneficiary.

The need for a dependable water supply for Northwest New Mexico has long been recognized. Although the majority of communities in the state get the water from wells, communities in Northwest New Mexico get their water from the Animas and San Juan Rivers. Groundwater in the area contains such high levels of contaminants that, for the most part, it is all but unusable. During periods of extended drought, the Animas River has historically run dry. Raw water storage is necessary to supply water to communities when the river is in a low flow stage. The Animas-La Plata Project is designed to provide a water supply during low flow river conditions for both Indians and non-Indians in New Mexico, a goal which the State of New Mexico strongly supports.

H.R. 3478 is designed to support objectives established by the New Mexico Interstate Stream Commission. These objectives, in addition to providing a final settlement of Colorado Ute Indian water right claims and a much needed municipal and industrial water supply—include a reduction in project costs, staying within allowable river depletions to provide a habitat for endangered species, protection of senior water rights, address water quality concerns, and transfers a portion of the ownership of the project water rights from the Secretary of Interior to the state of New Mexico for project beneficiaries.

Studies, done under a cooperative agreement funded through the Bureau of Reclamation, indicates that the cost of the project has been substantially reduced.

The bill further provides for a distribution of project water which stays within the U.S. Fish and Wildlife Biological Opinion.

The bill would appear to address water quality concerns previously expressed by New Mexico.

A basic premise of the project is that senior water rights in New Mexico will be protected. As the project planning proceeds forward, projected operating schedules will have to be developed by the Bureau of Reclamation, in close cooperation with the New Mexico State Engineer, which will adequately demonstrate that senior water right holders will in fact be protected.

The bill contains language directing the Secretary of the Interior to assign a portion of the water right permit, now held in the Secretarys name, to the state of New Mexico for certain project beneficiaries in New Mexico. This concept we support.

Additionally, we have had discussion with the Navajo Nation to include language in the bill to ensure that the water which they will receive under the project can be delivered to the Navajo communities downstream of Farmington and Shiprock. Over the past two decades, the population of the Navajo community of Shiprock has increased. Proposed amendments to the bill, which are now being discussed, would allow for the construction of a new Farmington to Shiprock pipeline to augment an existing pipeline. This pipeline is essential to address the public health and safety of the Navajo communities and is a project which the State very much endorses. The State welcomes involvement in this ongoing discussion to insure that the water rights of all parties are properly defined pursuant to state law.

The reconciled Animas La Plata Project generally settles the claims of two Colorado Ute Indian tribes to waters of the Animas and La Plata rivers. This is an important aspect of the project to provide certainty to New Mexico water users on these two rivers so that they will in fact have wet water available to them under their state water rights.

In closing, H.R. 3478 will aid in providing a more dependable water supply for both Indian and non-Indian communities in northwest New Mexico. Northwest New Mexico is growing and it is important to provide an adequate water supply for the area's future.

STATEMENT OF THOMAS C. TURNEY, STATE ENGINEER, SANTA FE, NEW MEXICO

I speak today on behalf of H.R. 3478, which makes changes to the authorized Animas La Plata Project—a project to which New Mexico is a beneficiary.

The reconciled Animas La Plata Project would provide two basic components of New Mexico's plan for development of its water resources in Northwest New Mexico. The reconciled project generally settles the claims of two Colorado Ute Indian tribes to waters of the Animas and La Plata rivers. This is an important aspect of the project because it provides certainty to New Mexico water users on these two rivers so that they will in fact have wet water available under their state water rights.

Secondly, the reconciled project will provide a more dependable water supply for both Indian and non-lndian communities in northwest New Mexico. Northwest New

Mexico is growing and it is important to provide an adequate water supply for the area's future.

The need for a dependable water supply for Northwest New Mexico has long been recognized. Although the majority of communities in the state get their water from wells, communities in Northwest New Mexico get their water from the Animas and San Juan Rivers. Groundwater in the area contains such high levels of contaminants that, for the most part, it is all but unusable for potable water. During periods of extended drought, the Animas River has historically run dry. Raw water storage is necessary to supply water to communities when the river is in a low flow stage. The Animas-La Plata Project is designed to provide a water supply during low flow river conditions for both Indians and non-Indians in New Mexico, a goal which the State of New Mexico strongly supports.

H.R. 3478 is a compromise bill negotiated by Indians and non-Indians. It supports objectives established by the New Mexico Interstate Stream Commission. These objectives include, in addition to providing a settlement of the Colorado Ute Indian water right claims and a much needed municipal and industrial water supply—a reduction in project costs, staying within allowable river depletions to provide a habitat for endangered species, protection of senior water rights, addresses water quality concerns, and transfers a portion of the ownership of the project water rights from the Secretary of Interior to the state of New Mexico for the project beneficiaries.

Studies, done under a cooperative agreement funded through the Bureau of Reclamation, indicate that the cost of the reconciled project has been substantially reduced.

The bill further provides for a distribution of project water which stays within the U.S. Fish and Wildlife Biological Opinion.

The bill would appear to address water quality concerns previously expressed by New Mexico as it eliminates certain irrigations lands which could have been a source of heavy metals.

A basic premise of the project is that senior water rights in New Mexico will be protected. As the project planning proceeds forward, projected operating schedules will have to be developed by the Bureau of Reclamation, in close cooperation with the New Mexico State Engineer, which adequately demonstrates that senior water right holders in New Mexico will in fact be protected.

The bill contains language directing the Secretary of the Interior to transfer a portion of the water right permit, now held in the Secretary's name, to New Mexico for the project beneficiaries. We support this concept.

Additionally, discussions are ongoing with the Navajo Nation to include language in the bill to ensure that the water which they will receive under the project can be delivered to the Navajo communities downstream of Farmington and Shiprock. Over the past two decades, the population of the Navajo community of Shiprock has swelled. Proposed amendments to the bill, which are now being discussed, would allow for the construction of a new Farmington to Shiprock pipeline to augment an existing pipeline. This pipeline is essential to address the public health and safety of the Navajo communities and is a project which the State very much endorses. The State welcomes involvement in these ongoing discussions to ensure that the water rights of all parties are properly defined pursuant to state law.

Thank you for the opportunity to testify before you today.

STATEMENT OF CLEMENT FROST, CHAIRMAN, SOUTHERN UTE INDIAN TRIBE

Good Afternoon. My name is Clement Frost. I am the Chairman of the Southern Ute Indian Tribe. I am here today to testify in support of H.R. 3478, the Colorado Ute Settlement Act Amendments of 1998. On behalf of the Southern Ute Indian Tribe and its Tribal Council, I ask that Congress carry out the promises that the United States has made to the Southern Ute Indian Tribe through the years to provide the water which the Tribe needs now and in the future.

I am also here today to strongly oppose H.R. 745, the bill to deauthorize the Animas-La Plata Project. That bill breaks the United States' agreement with the Colorado Ute Tribes that was signed into law by President Reagan in 1988. It ignores the years of work that went into the 1988 Settlement Act and would violate the United States' trust responsibility to the two Colorado Ute Tribes. I can promise this Committee that if the Congress were to de-authorize the ALP and demand that the Tribes return to the negotiating table as proposed in H.R. 745, my Tribe would return to court. We would sue the United States for its breach of the 1986 Agreement and we would seek to establish our rights through litigation. Why would any tribe negotiate with the United States if the Congress is willing at any time to back out of settlement legislation passed by Congress and signed into law by the Presi-

dent simply because it no longer likes the agreement? That may have happened in the past, but my Tribe will not be a part of repeating that history. The Southern Ute Indian Tribe has been more than willing to work to address the problems that have delayed the construction of the ALP. That is a far cry from walking away from the promises that were made in the 1988 Settlement Act as demanded by H.R. 745. The right way to address the issues facing the ALP is H.R. 3478; it is not to pretend that the 1988 Settlement Act was never passed.

H.R. 3478, the legislation to amend the 1988 Settlement Act cannot be understood without knowing the history of the Ute Reservation. When the Ute Bands signed the treaty establishing the Ute Reservation in 1868, the United States promised the Ute people that the Reservation would be a permanent home that would support our people forever. The key to carrying out that promise is water—a fact that the Tribal leadership has always known but which the United States has sometimes forgotten.

Long before the water rights litigation started in the 1970's, the Southern Ute Indian Tribal Council recognized that storage of water from the Animas River was needed to provide a source of water to meet the needs of future generations of the Southern Ute Tribe. While the opponents to the Project say that the Tribes did not become involved with the Project until the settlement discussions in the 1980's, both Ute Tribes supported the authorization of the Project in 1968. Afterwards, the Ute Tribes worked with the ALP District and the Bureau of Reclamation to develop a Project that would serve the needs of the Tribes.

Former Chairman Leonard C. Burch and former Chairman Chris A. Baker worked hard to have the Animas-La Plata Project built. They knew that the Project is the best way for the Tribe to get the water it needs for its future. I also now that the future of my Tribe depends on making sure that the Tribe has a reliable water supply that can be used for the development of our Reservation.

When the Settlement Act was signed by President Reagan nearly ten years ago, the Tribal Council thought it had finally won its long battle to acquire a firm water supply to meet the present and future needs of the Southern Ute people.

It is important to understand how much work had been done on the Project when the settlement agreement was signed in 1986. A definite plan report for the Project had been completed; an Environmental Impact Statement had been finished and construction of the Project had been approved under the Endangered Species Act. In other words when the Settlement Agreement was signed, all environmental compliance work was done. When Congress agreed with the Settlement in 1988, it knew what it was talking about. The Project had been studied and studied, and its advantages and disadvantages were well known.

The parties to the settlement are here today to support modifications to the 1988 Settlement Act, which all of the parties have accepted in an effort to make the Tribal settlement real. A great deal of sacrifice was required to make the current proposal work. The foundation for the settlement is still the Animas-La Plata Project but only a small portion of the project is required to fulfill the settlement. No longer will water have to be taken to the La Plata Basin. No irrigation facilities are included in the settlement.

The modifications will greatly reduce the cost of the Settlement. They will also answer any question over the environmental impact of the Project. In the current political climate, such changes are necessary for the Settlement to move forward. As a result of those changes, the Tribe will not receive all of the benefits that it was promised in 1988. But the Tribe will get a reliable supply of stored water that it can control for its own use—that is what we have always wanted. We also know that construction of a storage reservoir is only the first step in putting water to use for the benefit of our people. But it is a very important first step in building a successful economy on our reservation. We are confident that with that supply we can move forward into the next century. Certainly, the successes of the Southern Ute Indian Tribe—and there are many—all relate to the Tribe taking control of its resources and using them for the benefit of tribal members.

I also want to address the position of the Administration. As you may have heard, in the Senate, the Administration strongly opposed the solution that the Tribes, the State of Colorado and the other parties to the 1986 Settlement have developed to address the concerns that have been raised about the Project. The Tribes were outraged by that testimony.

We have tried our best to work with the Administration to carry out the 1988 Settlement. So far, we have met with little success. In the spring of 1996, the leaders of the Ute Tribes met with Secretary of the Interior Bruce Babbitt to discuss the matters that were delaying the construction of the Project and the implementation of the last phase of the settlement of the tribal water rights—the Project. Secretary Babbitt suggested that we work with Governor Roy Romer to try to develop an ap-

proach that might resolve the concerns that had been raised about the Project. For over a year, the Tribes and other settlement parties met with the project opponents and representatives of the Department of the Interior and the Environmental Protection Agency under the supervision of Lt. Governor Gail Schoettler. Throughout this process, the Federal agencies never acknowledged their trust responsibility to the Tribes nor tried to help find a solution that would remain true to the spirit of the 1988 Settlement Act.

At the end of the Romer-Schoettler process, there was no consensus on how to proceed. Instead, two alternatives emerged. The alternative supported by the Tribes, the other parties to the 1988 settlement, and ultimately the State of Colorado, is reflected in H.R 3478.

The other alternative, which was rejected by the Tribes, called for the creation of a fund to allow the Tribes to purchase agricultural water rights from their neighbors and then attempt in state water court to change the uses of such water to meet tribal needs. In a water short area such as southwest Colorado, that suggestion is a formula for disaster socially and politically and would not provide the Tribes with the water which they need and which the United States promised to them under the 1988 Settlement Act. The proposal was not acceptable to anyone who would have been affected, nor was it acceptable to the State of Colorado. Nevertheless, the Department of the Interior insisted on studying that alternative, although no report has ever been made public or shown to tribal representatives.

Despite our repeated requests, no one from the Administration was ever willing to carry on a meaningful conversation with tribal representatives about the Tribes' intent to implement the 1988 Settlement Act by reducing the scope of the Project required to complete the settlement prior to the hearing in the Senate. Until the day of the hearing, we expected that the Administration would support the compromises that had been made, although we understood that some of the details of the proposed legislation were troublesome. We learned of the Administration's opposition to our position from the staff of the Indian Affairs Committee late in the morning of the day of the hearing. No one from the Administration discussed with us the Administration's plan to destroy the years of hard work that led to the compromises contained in H.R. 3478. Nor did anyone from the Administration tell us or any tribal representative that after years of claiming to support the ALP and the 1988 Settlement Act, the Administration was now arguing that a search for new alternatives was required that would necessitate years of additional study. The Administration's opposition and the way that it was announced failed to live up to the government to government relationship between our Tribes and the United States.

The Administration's disappointing performance in the Senate led to widespread criticism. Now the Administration wants to talk to us, saying that its opposition was misunderstood. We understand the need to talk but we have many questions. Does the Administration understand that its representatives must talk with all the parties to the 1986 Settlement Agreement? Why should the Tribes believe that the Administration is now willing to work with us and our neighbors in good faith? How do we know that they can be trusted and that those within the Administration who are opposed to any water development will not destroy any agreement we might reach with Interior? Is the Administration finally willing to admit its obligation to provide the Tribes and our neighbors with water stored from the Animas River? Can they assure us that we will not spend another 10 years discussing the merits of the Settlement after it is enacted by the Congress?

In closing, I want to make three points. First, despite the magnitude of the modifications to the Settlement that have been proposed, we do not expect that these compromises will satisfy all of our opponents, many of whom simply object to any water development no matter what its purpose and no matter how small its impact. I hope that you understand the substantial benefits of this Settlement to the Southern Ute Tribe and also recognize that it provides water to the two Ute Tribes without taking water away from our non-lndian neighbors. Second, I want to recognize the honor and integrity of our non-lndian neighbors who are the Tribes' partners in the Project. The negotiations that resulted in the modified Settlement were long and difficult. The first goal of our partners was not to serve their own interests. If that had been the case, this modified settlement would not have been possible. But our partners felt the need to make sure that the United States lived up to its promises to the Ute Tribes. We appreciate that. Finally, we ask Congress not to forget the promises that were made in 1868 and confirmed in 1988. We ask you to pass H.R. 3478.

STATEMENT OF JUDY KNIGHT-FRANK, CHAIRMAN, UTE MOUNTAIN UTE TRIBE

1. Introduction.

"In order to reduce future controversy" the United States Departments of Justice and Interior entered into the 1986 Colorado Ute Water Rights Settlement Agreement. In Public Law 100-585 Congress implemented the 1986 Agreement. H.R. 3478 represents the good faith effort, after a decade of intense environmental compliance, by the non-Federal parties to the 1986 Agreement, to accept a substantially reduced water supply project.

2. H.R. 3478 Significantly Reduces The Cost of Settling The Colorado Ute Tribal Water Rights.

H.R. 3478 results in a reduction of the cost to settle the Colorado Ute water rights as described in the 1988 Settlement Act—estimated by the Bureau of Reclamation to be $379 million in 1986 and $675 million in 1998. A seven year construction schedule in H.R. 3478 would result in 7 annual Federal expenditures of $38 million. H.R.3478 therefore implements a decade old Indian water rights settlement using substantially fewer dollars than originally provided for in the 1988 Settlement Act. In exchange for reducing the water supply by 40 percent, the Colorado Ute Tribes seek a waiver of their capital repayment. Under existing law, the Tribes' repayment is deferred until revenues exceed their costs. The Tribes' proposed waiver therefore operates to expedite the productive use of these water supplies.

3. H.R.3478 Implements Endangered Species Act Protections.

H.R. 3478 also provides the means to assure a successful recovery of endangered fish in the San Juan Basin. For seven years, a broad array of tribal, local, state and Federal entities have worked together to re-operate flows in the San Juan River to benefit endangered fish. This recovery program is specifically dependent upon the construction of the three facilities incorporated in H.R. 3478.

H.R. 3478 relies on nearly two decades of environmental analysis. The Colorado Ute Tribes have conditioned their willingness to take a 40 percent reduction in water supplies proposed in H.R. 3478 on a commitment by Congress that these amendments will indeed become a final settlement. The Tribes are unwilling to accept a reduced settlement unless they are assured that the reduced facilities and depletions can rely on the existing environmental analysis. Without this protection, we are afraid that a second decade may pass before the United States commitments made in 1988 are finally realized.

4. H.R. 3478 Authorizes A Reservoir For Present And Future Uses.

H.R. 3478 authorizes a 260,000 acre foot reservoir. That reservoir allows depletions of 57,100 acre feet to be stored. The reservoir size also assures that as the region's last water storage facility, it is positioned to provide M&I and agricultural storage for future generations. While H.R. 3478 does not provide the authority to store additional depletions, the Endangered Species Act program in the San Juan Basin is expressly designed to both preserve endangered fish and allow water development to proceed. This reservoir accomplishes both of these goals.

The reservoir has an inactive storage elevation which is designed to (1) allow water to flow back through the conduit system to satisfy City of Durango M&I needs, (2) allow access to the La Plata Basin in the event the ESA allows additional water supplies for irrigation and funding can be secured and (3) assure that the reservoir establishes a useable and functioning 1,600 acre recreation lake.

5. The Legacy Fund Is A Wholly Inadequate Alternative.

Alternatives to a reservoir using Animas River water have been explored for two decades. Opponents of H.R. 3478 have offered a legacy fund as an alternative. That alternative proposes giving the two Colorado Ute Tribes a sum of money to acquire land and direct stream flows from its neighbors. This alternative—rejected by the Colorado Ute Tribes and the State of Colorado—pulls the rug out from under the 1986 Water Rights Settlement Agreement. In that Agreement, irrigators and communities using direct flow out of the region's rivers were allowed to continue their historic use of these water supplies, subject to the Tribes' obtaining some direct flow rights and the Tribes' securing a new supply of water from the generous flows of the Animas River.

The Legacy Fund is also problematic because in the absence of storage, the Tribes will be acquiring a water supply which frequently exists for only three months a year. Moreover, any effort to move that direct flow to another location would trigger extensive Colorado Water Court litigation and raise serious wetlands and Clean Water Act issues. In a word, the legacy fund is an effort to "buy out" Colorado Ute Tribes and not to honor the 1986 Settlement Agreement.

6. Pervasive Litigation Involving the United States Is The Only True Alternative To A Reduced ALP.

All parties to the 1986 Agreement have a good faith obligation to implement its provisions. If the United States fails to provide the Colorado Ute Tribes with a reasonable (even if reduced) assured supply of water, it leaves the Tribes with no alternative but to pursue litigation.

a. Water Rights Litigation.

In the event there is no reduced ALP, the Tribes and the United States will have to prosecute reserved rights adjudications against irrigators and rural communities now relying upon Animas and La Plata River direct flows. This is a massive undertaking which is sure to set back regional integration for decades to come.

b. ESA Litigation.

The Tribes will move with their Colorado partners to institute litigation designed to assure that all San Juan River depletions are put in jeopardy (and new ones prohibited) until the Tribes' depletion supply is secured, and;

c. Bad Faith Contract Litigation.

The Colorado Ute Tribes would pursue breach of trust and bad faith contract breach claims against the United States for failure to implement in good faith the 1986 Agreement. While that Agreement expressly contemplated that Congress might not implement it, it was always understood that the Departments of Justice, Interior, OMB and others were under a good faith obligation to provide the Tribes with a water supply. Indeed a decade of modest Administration appropriations led the Tribes to incur significant expenditures of the 1986 Agreement.

7. Conclusion.

The non-Federal parties, including the States of Colorado and New Mexico, have done their share to "avoid future controversy" as mandated by the 1986 Agreement. It is now time for the Federal parties to do the same.

STATEMENT OF SAGE DOUGLAS REMINGTON

INTRODUCTION

Mike-Ku, in the native Ute language, I thank you for the opportunity to testify on H.R. 3478 and H.R. 745. I am the spokesman for the Southern Ute Grassroots Organization (SUGO), which is a group of Southern Ute Tribal members who live on the Southern Ute reservation in Colorado' and who are in support of H.R. 745 and opposed to H. R. 3478.

History of Grassroots Opposition to Animas-La Plata Water Project (A-LP).

I have been instructed by the SUGO Elder Council to present a cultural and spiritual perspective that is in conflict with the mainstream political and cultural value system. My colleagues in opposition to the Animas-La Plata Project will speak about the environmental, taxpayer, and economic concerns that we all share about ALP.

The roots of SUGO go back to 1989 when a group of concerned Southern Ute Tribal members formed the *TCommittee For Better Tribal Government.* The committee's principal concern was that the best interests of the majority of Ute people were not being properly represented in the Animas-La Plata Reclamation Project (ALP). This group of Southern Ute Tribal members gathered the necessary signatures to institute a recall election for the Tribal Council. With some questionable maneuvering, the incumbents succeeded in disqualifying one recall vote. This made the election result in a tie. Under the Tribal Constitution, the tie preserved the status quo. Dissatisfaction with ALP, abuses of power and lack of responsiveness by the Tribal Government did not die after the failed recall attempt. The organizers of the *Committee for Better Government* proceeded to form the Southern Ute Grassroots Organization (SUGO).

Ute people have maintained their connection with the land and water since there were loosely confederated bands of a people called the "Nuche." We believe that rocks, trees, the rivers and the Earth are alive. We have lost most of our land base through violent assault and "legal" manipulations that have separated the Utes from their land and water.

The Ute's share with other traditional tribal people three primary political principles:

All land, water and other natural resources are communally owned by the tribe; private ownership of land, water or goods beyond those of the immediate household is unthinkable.

All tribal decisions are by consensus, in which every tribal member participates; and,

Traditionally, Tribal Council and leaders are not coercive or authoritarian, unlike their non-Indian counterparts.

There has never been a general council meeting of the Southern Ute people dedicated to a discussion about the benefits of the Animas-La Plata Project. In general council meetings, every adult member of the tribe is permitted to speak and discussion continues until consensus is reached. Questions and concerns about this project have gone unanswered!

Development of the Alternative to the Animas La Plata Project.

In December, 1996, SUGO held a meeting with members of the Southern Ute tribal membership to discuss an alternative to the Animas-La Plata Project. It was at this time that the Ute Legacy Land and Water Fund concept was developed. Ute tribal members who had land assignments and allotments were asked, "What would you like to see result from this project?" Their responses were unanimous. Ute tribal members wanted to restore the integrity of the traditional Ute land base with the purchase of land and water rights on the reservation.

The Ute Legacy Land and Water Fund was introduced at the February, 1997, Romer/Schoettler meeting in Towoac, Colorado, and has been incorporated into the Citizens Coalition alternative which is one of the two alternatives being analyzed by the Bureau of Reclamation.

CONCLUSION

It is with a heavy heart that the Southern Ute Grassroots Organization must declare its support for H.R. 745, a bill that would deauthorize the old project. This project was never clearly defined in terms of benefits to the Southern Ute Tribal members. It can never be constructed as originally planned under the 1986 Settlement Agreement.

H.R. 745 directs the Secretary of Interior to negotiate an alternative that is consistent with all Federal laws. An alternative to ALP should provide the full amount of water allocated to the tribes in the 1986 Settlement Agreement.

I am reminded of a scene that took place here is in Washington, D.C. on May 2, 1948. The Federal Government forced a strong-arm settlement on the Mandan, Hidatsa, and Arikara Tribes to make way for the Garrison Dam on the Fort Berthold Indian Reservation, North Dakota. This picture illustrates the "heavy heart" of George Gillettee, Chairman of the Fort Berthold Indian Tribal Business Council, as he is forced to sign an agreement for the dam. This is not how Indian water projects should continue to develop. The Southern Ute tribal membership must have a voice in the decision making process of any Animas-La Plata Water Project. It can be done!

Tuvus-Togoy-Ax!

The Legacy Fund vs. "ALP Lite"

A Side By Side Comparison

Southern Ute Grassroots Organization (SUGO)

	The Legacy Fund	*ALP Lite*
Cost	$115 million.	$250 - 300 million.
Water Benefits	All water promised under the 1986 Settlement Agreement - 62,000 Acre Feet.	46% less than the Settlement Agreement promised - 33,050 Acre Feet.
Land Benefits	The land acquired in connection with water acquisitions will be a substantial bonus	None.
Jobs for Utes	Possible reservoir expansions, any new small terminal reservoirs, conservation and delivery system efficiency improvement projects can all be done by Ute companies. No MOU or Indian preference agreement is needed. The Tribes would have total discretion and control over projects and expenditures by the Fund.	It is possible for the Tribes to construct portions of the project under P.L. 39-638, but it will require a Memorandum of Understanding with the federal government that protects other project participants. The federal government is still in charge.
Water Delivery	Wet water on the reservations, in places to be selected by the Tribes. Any storage rights and/or delivery systems associated with purchased rights will be immediately available for use by the Tribes.	None to the Tribes - "ALP Lite" is a bucket of water in Ridges Basin, miles from the nearest reservation lands with no connecting delivery systems.
Storage Rights	All storage rights connected to purchased water rights, plus new storage from existing reservoir expansions and any new small terminal reservoirs constructed.	260,000 Acre Feet total storage, 57,100 Acre Feet of annual depletions, but no means of getting water to the reservations.
Revenue Opportunities	The acquisition of senior water and storage rights, spread across	To date, project proponents have offered no information or even

Revenue Opportunities continued-	the 7 rivers that cross Co. Ute lands will establish access to a large and diverse base of potential customers for Ute water. Tribal profits are potentially greater because the underlying O&M costs for the water will be less. And, the Legacy Fund Concept makes the federal government a potential customer for stream flow water.	ideas about how they would apply "ALP Lite" water to produce revenues for the Tribes.
Repayment Obligations	None - the Tribes will own what they buy or build with money from the Fund.	Uncertain - exceptions must be obtained to at least the following laws: -The Water Supply Act of 1958, -The Leavitt Act, and -The Colorado River Storage Act of 1968.
Annual O&M Costs	Whatever O&M is associated with the water rights purchased and/or the storage facilities expanded (or constructed). Eliminates the need to pay for pumping the lion's share of the two Tribes' water uphill to Ridges Basin.	The annual O& M cost for the old ALP Phase I was $16 Acre Feet for M&I water ($16 X 33,050 = $528,800 per year). More information about this issue is needed.
Environment Impacts	The Legacy Fund concept is centered around existing facilities and uses, and therefore will have far less impact.	Less than the old ALP - how much less is not known and this is a problem. "ALP Lite" is a new project that requires new studies to ensure compliance with: -The National Environmental Policy Act -The Clean Water Act, and -The Endangered Species Act "ALP Lite" still floods Indian burial sites, critical wildlife

Environment Impacts continued		habitat and impacts river flows.
Sovereignty Issues	Enhances Tribal Sovereignty - once the Fund is established the Tribes will have sole discretion over its expenditure, within the purpose parameters for which the Fund was established.	Remains a federal Project subject to: -Federal controls -Annual federal appropriations -The rights and interest of the remaining non-Indian project participants.
Tribal Land Consolida-tion	The Legacy Fund creates a one time opportunity to get all the water that was promised **and** make giant gains towards consolidating and expanding Ute reservation lands at the same time	There are no land acquisition opportunities associated with "ALP Lite."
Political Issues	-The cost is less than half of "ALP Lite," and it can be funded with a single appropriation. -The Fund concept has negligible environmental impacts and will face minimal environmental challenges. -No existing federal laws must be changed. -The Fund takes advantage of free market principles instead of fighting them by trying to preserve outdated and controversial water subsidies. -The opponents that have been fighting ALP for years (quite successfully) will be supportive of the change. The Legacy Fund is the keystone of their preferred alternative to ALP & "ALP Lite."	-At least 3 federal Laws must be changed, and the 1986 Settlement Agreement must be amended. -3 **different** federal environmental laws must be satisfied in the face of strong opposition & increasing federal budget pressures. -"ALP Lite" will require at least 8 years of successful federal appropriation battles against significant opposition - "ALP Lite" still contains huge subsidies that will be troublesome to Congress. -"ALP Lite" will cost public power customers more than $200 million plus interest. They will not be pleased.

STATEMENT OF JIM ISGAR, BOARD MEMBER, THE ANIMAS-LA PLATA WATER CONSERVANCY DISTRICT

My name is Jim Isgar. I am a member of the Board of Directors of the Animas-La Plata Water Conservancy District. I am here today to urge your support for H.R. 3478, the Colorado Ute Settlement Act Amendments of 1998.

My grandfather came to the San Juan Basin in Southwest Colorado in the early part of this century to homestead land which was opened for settlement by the United States government on what had been the Ute Indian Reservation. My grandfather was never able to succeed at farming because of a lack of water on his homestead. As a result, my father and his brothers spent years working in the hard-rock mines in Silverton, Colorado, in order to make a living. It was always their dream, however, to return to farming. My father was eventually able to buy land on the La Plata River, the same land which I farm today.

In any year, I and my neighbors may or may not make a crop, depending upon the water supply. That is one of the reasons why, for so many years, my father and I have joined with our Ute Indian neighbors to support construction of the Animas-La Plata Project. The farmers and ranchers of the La Plata River Basin waited patiently for 30 years after the Animas-La Plata Project was initially authorized for construction. During this time, the farm and ranch community missed many opportunities to investigate and construct other smaller water resource development storage projects which could have supplied us with critically needed irrigation water. Many of the farmers and ranchers in our area, determined to wait for the Animas-La Plata Project, also missed the opportunity to change their farming base of operations from the La Plata River to the Dolores Project area and to purchase land at a reasonable price in that area. Twenty years ago, dry land in the Dolores Project area sold for $400 an acre. Today, that land is worth $1,500 an acre, as irrigated land receiving water from the Dolores Project.

Unfortunately, the water from the Animas-La Plata Project which is needed to ensure the health of our agricultural economy will not be provided by this legislation. The long delay and eventual elimination of irrigation facilities from this Project have combined to do a great disservice to the farmers and ranchers in the La Plata River valley. Nevertheless, I am here today representing the ranchers and farmers in our area to request that you pass this legislation and honor the Federal Government's commitment to the two Colorado Ute Indian Tribes.

To seek to bring proponents and opponents of the Project together, the Animas-La Plata Water Conservancy District participated in the process organized by Colorado Governor Roy Romer and Lt. Governor Gail Schoettler. As you know, the Animas-La Plata Project had been stalled for over ten years because of concerns about the Project's environmental impacts and its costs. In the Romer/Schoettler Process, we spent 18 months exploring the issues and, after much soul searching and agonizing, developed what has been popularly referred to as "Animas-La Plata Lite," a much smaller version of the Animas-La Plata Project. Animas-La Plata Lite not only greatly reduces the cost of the original Project, but also effectively eliminates all reasonable environmental concerns.

At the conclusion of the Romer/Schoettler Process, the farmers and ranchers in Southwest Colorado were devastated. Our hope of additional irrigation water supplies was defeated, primarily because of the huge Project cost increases caused by many years of delay. Delay has been the strategy of the Project opponents, and they have been very successful. Two years ago, when the fiscal conservatives in the Congress joined with national environmental groups, it became apparent that if we were ever going to have a solution to the rightful reserved water rights claims of the two Colorado Ute Indian Tribes, something drastic had to happen with the Animas-La Plata Project. A/LP Lite is the result.

The farmers and ranchers believe the environmental organizations have won. The Animas-La Plata Project of our dreams will not be a reality. Instead of Project depletions of 150,000 acre feet each year, A/LP Lite complies with the current mandate of the U.S. Fish and Wildlife Service's Final Biological Opinion for the Project and will deplete no more than 57,100 acre feet annually. We agreed to this reduction despite the fact that the State of Colorado is entitled to 150,000 acre feet of depletions under the Colorado River Compact and the Upper Colorado River Compact, as set aside for the San Juan Basin of Colorado ever since the 1956 Colorado River Storage Project Act.

The negotiations to divide up the A/LP Lite water supply of 57,100 acre feet were difficult, in the extreme. You may well ask, after giving up their irrigation water, why are the farmers and ranchers still supporting A/LP Lite. The answer is, we get the right to continue to use, without fear of losing it to Tribal water claims, the water which my grandfather appropriated under Colorado state water law 95 years

ago. This is water which, if the Indians' claims are not settled by A/LP Lite, will be taken away from the ranchers and farmers to satisfy the Tribes' claims. Because settlement of the Indian claims is vital to all the ranchers and farmers, we urge you to move forward with this legislation. The Tribes have agreed to settle their reserved water rights claims despite the fact that the water to which they were entitled under the 1988 Settlement Agreement is cut by two-thirds under A/LP Lite.

The ranchers and farmers also support A/LP Lite because of the water supply it will make available to the City of Durango, Colorado. We all recognize that Durango must have a firm water supply to provide for the needs of our neighbors in the city. The farmers and ranchers in Southwestern Colorado do not live in a vacuum. We have a proud record of cooperating with our "city" friends, as well our Indian friends. That record of cooperation has been the strength of the Animas-La Plata Project.

We are here today to demonstrate our continued support and cooperation with our friends. We ask you, the members of this Committee and the Congress, to recognize the many sacrifices that have been made and the many compromises that have been struck by Indians and non-Indians alike. The belated opposition to A/LP Lite by the Clinton Administration should not deter you from doing what is right. It is right to pass this legislation, honor your commitment to our Native American friends, and make that most precious of all resources in the West, water, available for beneficial use.

STATEMENT OF ORION UTTON, PRESIDENT, ANIMAS RIVER AGRICULTURAL WATER USERS ASSOCIATION, SAN JUAN COUNTY, NEW MEXICO

Mr. Chairman and Committee Members:

I am Orion Utton, President of the Animas River Agricultural Water Users Association of San Juan County, New Mexico. I feel honored and privileged to testify before this Committee in support of H.R. 745 and in opposition to H.R. 3478.

The members of the Animas River Agricultural Water Users Association are major stakeholders in this Animas-La Plata issue. The water that would be used in the Animas La Plata project is the same water that we now use to grow our crops. We are very concerned that the project will seriously threaten the water supply that we depend on to grow alfalfa, corn, wheat, oats, apples and vegetables.

The Bureau of Reclamation documents for the Animas La Plata project point to 225 cubic feet per second (cfs) of water that would be allowed to bypass the pumps at Durango during the summer months. They state that this water would be for the ecology of the river, but we believe that this may be the only water that would be by-passed for agricultural users. Project supporters claim that senior water rights will be protected, but there is no Bureau of Reclamation documentation as to how senior water rights will be protected.

I know the ditch system in San Juan County better than anyone. I served as a County Extension Agent for 20 years. While employed by the New Mexico State University Extension Service, I worked extensively on water and ditch system issues. I also have farmed all my life and own a 45 acre farm.

Attached to my testimony is a document prepared by Dennis Cooper, a water engineer from Santa Fe. This document summarizes the adjudicated water rights on the Animas River. The point of the document is that these ditches have the legal right to divert a great deal more water than the 225 cfs described in the Bureau of Reclamation documents for the Animas La Plata project. That is not enough water to supply legal diversions for the Animas River irrigators. Every year would be a dry year for us.

With ALP-Lite we simply do not know how much water we would get. There have been no studies, so nobody knows. But the real danger is that ALP-Lite does not deauthorize the full project. We believe that the scaled down version of the project is quite simply a ploy to get a foot in the door so that the full scale project could be built later. There is no other plausible explanation for the supporters wanting to build an almost full-sized dam and pumping plant. Our wet water would be turned into paper water, and you cannot farm with paper water.

A few years ago, 62 percent of the population supported the Animas La Plata project. But now that we are beginning to realize what would happen to the Animas River if the project were built, only 34 percent are in favor. The Animas River agricultural water users do not want this project.

Please oppose H.R. 3478 and support H.R. 745. This is the time to deauthorize the Animas La Plata project. Please do not make it easier to build.

Thank you for the opportunity to testify. I invite you to ask questions about this issue.

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06/27/90 prepared by DRC

'udicated water rights on the Animas River

As contained in the Echo Ditch Decree

Ditch	Irrig or M&I	Priority	Priority Number	Acres (land)	acre-feet (water)	Flow (CFS)	acres/cfs
Aztec	I	1882	4	1129.7	3389.10	28.24	40.00
Independent	I	1891	8.1	1787.62	5362.86	44.44	40.23
Willett	I	1878	2.4	49.1	147.30	1.61	30.50
Cedar	I	1886	5.1	340.8	1022.40	8.52	40.00
Twin Rock	I	1887	6	345	1035.00	8.62	40.02
Eledge	I	1878	2.1	1031.9	3095.70	25.79	40.01
Kello-Blancett	I	1880	3.1	526	1578.00	13.15	40.00
Farmers	I	1892	9	1096.3	3288.90	27.4	40.01
Lower Animas	I	1877	1.1	1476.93	4430.79	36.93	39.99
Farmers Mutual	I	1920	16	4181.51	12544.53	104.53	40.00
Aztec Extension	I	1903	13	253.34	760.02	6.33	40.02
Graves Atterbury	I	1878	2.1	54.7	164.10	1.68	32.56
Lower Animas Ext.	I	1908	15	642	1926.00	16.05	40.00
Halford	I	1891	8.2	891.25	2673.75	22.28	40.00
North Farmington	I	1897	11	1187.85	3563.55	29.7	39.99
Echo	I	1896	10	1584.48	4753.44	39.61	40.00
Star	I	1877	1.2	1361.58	4084.74	34.03	40.01
Farmers - Jones ext.	I	1907	14	210.4	631.20	5.26	40.00
Ralston	I	1886	5.2	364.2	1092.60	9.2	39.59
aves Atterbury ext.	I	1901	12	643.4	1930.20	16.08	40.01
anchmans-Terrell	I	1880	3.2	345.3	1035.90	8.63	40.01
Wright-Leggett	I	1878	2.5	808.76	2426.28	20.22	40.00
Stacey	I	1886	5.3	483.2	1449.60	12.08	40.00
Farmington Allen	I	1878	2.3	650	1950.00	16.25	40.00
Sargent	I	1888	7	173.8	521.40	4.5	38.62
Subtotal				21619.12	64857.36	541.13	

Ditch	Irrig or M&I	Priority	Priority Number	Acres (land)	acre-feet (water)	Flow (CFS)	acres/cfs
Lower Animas-Aztec	M	1877	1.1		862.50	3.59	0.00
Willett-PNM	M	1908			0.00	33	0.00
N.Farm.-Farmington irrg	M	1897	11		2757.84	14.1	0.00
Willett-PNM	M	1918			0.00	58	0.00
Indep-Farmington reserv	M	1891	8.1		1955.91	10	0.00
Willett-PNM	M	1928			0.00	80	0.00
Willett-PNM	M	1882			0.00	34	0.00
Indep-Farmington irrig	M	1891	8,1		1713.38	8.76	0.00
Star-Farmington	M	1877	1.2		2047.84	10.47	0.00
Eledge-PNM	M	1910				200	0.00
Wright-Leg-Farmington	M	1878	2.5		2053.71	10.5	
Subtotal					11391.17	462.42	
JTALS				21619.12	76248.53	1003.55	

STATEMENT OF THOMAS E. ATCITTY, PRESIDENT, THE NAVAJO NATION

My name is Thomas Atcitty. I am the President of the Navajo Nation, the largest federally recognized Indian tribe, located in the states of the Arizona, New Mexico, and Utah. By resolution of the Intergovernmental Relations Committee of the Navajo Nation Council, I am authorized to appear before you today to express the support of the Navajo Nation for H.R. 3478, the Colorado Ute Settlement Act Amendments of 1998, subject to certain conditions. These conditions will require three minor amendments as described herein.

The Navajo Nation has historically been ambivalent about the Animas-La Plata Project. On one hand, the Project was designed to include a supply of municipal drinking water for Navajo communities in northwest New Mexico. On the other hand, because Navajo water rights in the San Juan River Basin have not been quantified, the Navajo Nation has been concerned that any new water development in the Basin may adversely affect our water rights or make future Navajo water development more difficult. We appreciate the difficulty that our sister Ute Tribes have experienced in getting a reliable supply of water to meet the needs of future generations of tribal members. Indeed, the Navajo Nation has experienced its own difficulties in water development in the Basin.

The Navajo Nation historically confronted this dilemma by neither supporting nor opposing the Animas-La Project (the Project), while at the same time, offering support for the rights secured by our sister Tribes under the Colorado Ute Indian Water Rights Settlement Act (the Act). H.R. 3478 is appealing because the smaller project would result in less water depletions than the fully developed Project while providing the Utes with the water necessary to settle their claims. Although the amount of water provided to the Navajo Nation would also be reduced, *we are willing to accept such reductions provided H.R. 3478 is amended to authorize a pipeline for the delivery of Project water to the Navajo Nation.*

We also recognize that water development in the San Juan Basin is tied to the cooperative efforts of the tribes and the non-lndian water users to recover the endangered fish in the river. The depletions described in H.R. 3478 are consistent with that effort and will encourage the continued partnership between the tribes and the other water users. To ensure that the New Mexico beneficiaries of the Animas-La Plata Project continue in this partnership, *our support for H.R. 3478 is also contingent on an amendment that would require any water developed under permit number 2883, if such permit is transferred pursuant to section 6(b)(3) of the Act, to be subject to the same requirements under the Endangered Species Act that would have been applicable in the absence of such transfer.*

The Navajo Nation has asserted claims to water in the San Juan River Basin for the Navajo Indian Irrigation Project and for other purposes. The United States has not yet filed water rights claims on behalf of the Navajo Nation, nor has the United States pursued a negotiated settlement of these claims. As a result, the water rights claims of the Navajo Nation have not yet been fully adjudicated or quantified. This legislation is not intended to affect the Navajo claims, and *our support for H.R. 3478 is also contingent on an amendment that would expressly state that Navajo water rights are not affected by this legislation.*

Finally, I would like to inform you of the settlement negotiations that have commenced between the Navajo Nation and the State of New Mexico to quantify Navajo water rights in the San Juan River Basin in New Mexico. We are hopeful that these negotiations will result in an agreement that will eventually be approved by Congress. In anticipation of our own settlement, we urge on behalf of our Colorado Ute neighbors, your favorable consideration of H.R. 3478, subject to the conditions I have described.

We have worked, and will continue to work, with the Ute Tribes and with the other Project beneficiaries to draft amendments to the bill consistent with the principles I have described. The proposed amendments, which are acceptable to all Project beneficiaries, are attached. Thank you for this opportunity to express our support for this important bill.

PROPOSED NEW MEXICO–NAVAJO NATION AMENDMENTS TO H.R. 3478

The ALP proponents and the Navajo Nation request that the following amendments to H.R. 3478 be introduced and enacted.

§3(c)(i) of H.R. 3478 is amended to read:

(i) New Mexico and Navajo Nation Water Matters

1. Assignment of Water Permit—Upon request of the State Engineer of the State of New Mexico, the Secretary shall, in a manner consistent with applicable State law, transfer, without consideration, to the New Mexico Animas-La

Plata Project beneficiaries or the New Mexico Interstate Stream Commission any portion of the Department of the Interior's interest in New Mexico Engineer permit number 2883, dated May 1, 1956, in order to fulfill the New Mexico purposes of the Animas-La Plata Project, provided that this permit assignment shall not affect the application of the Endangered Species Act to the use of the water.

2. Navajo Nation Municipal Pipeline—After the date of enactment of the Colorado Ute Settlement Act Amendments of 1998, the Secretary shall provide for the construction of a water line to augment the existing antiquated system to convey municipal water supplies of the Navajo Nation from Farmington, New Mexico, to the Navajo Indian Reservation at Shiprock, New Mexico. Prior to such construction, the Secretary shall initiate and complete appropriate environmental compliance with respect to the Navajo Nation municipal pipeline. Construction costs allocable to the Navajo Nation for the Navajo Nation municipal pipeline shall be non-reimbursable.

3. Protection of Navajo Water Claims—Nothing in this Act shall be construed in any way to quantify or otherwise adversely affect the water rights and the claims of entitlements to water of the Navajo Nation.

STATEMENT OF GALE A. NORTON, ATTORNEY GENERAL, COLORADO

I am sorry that I am unable to be here in person to testify today, but I appreciate this opportunity to express my support for H.R. 3478 and my opposition to H.R. 745. It seems fitting that this Committee is considering these two bills at the same time. H.R. 745 was introduced last year largely because of concerns about the high cost of building the Animas-La Plata Project. The project proponents responded to those concerns. The result is H.R. 3478, which drastically reduces the size and cost of the project.

I am particularly disappointed in the Administration's failure to support H.R. 3478. Interior and EPA both have studied the Animas-La Plata Project intensively and participated fully in the Romer-Schoettler process to evaluate alternatives. They say that the project proponents' compromise isn't good enough, but they have never said what they do want or offered an alternative. Perhaps most frustrating, they use the Tribes' good faith compromises, such as agreeing to forego water delivery facilities, as an excuse to further delay meeting the Federal commitment to the Tribes.

H.R. 3478 implements an agreement among the Southern Ute and Ute Mountain Ute Tribes, the Navajo Nation, and water users in Colorado and New Mexico to build a modified Animas-La Plata Project that will satisfy the Ute Tribes' reserved water rights claims for about one-third the cost to Federal taxpayers of the original project. This legislation responds to previous fiscal and environmental criticisms of the original project, as reflected in H.R. 745; provides for state and local cost-sharing; and recognizes that the responsible Federal agencies have fully complied with the Endangered Species Act, the National Environmental Policy Act, and the Clean Water Act. Most importantly, however, H.R. 3478 is acceptable to the Ute Tribes as a final settlement of their legal claims to water from the Animas and La Plata Rivers. If H.R. 3478 is not enacted, the State of Colorado, the United States, the Ute Tribes, and southwest Colorado water users appear destined for years of expensive and acrimonious litigation.

The Animas-La Plata Project's primary purpose is to settle litigation by the United States asserting reserved water rights on behalf of the Southern Ute and Ute Mountain Ute Tribes. Over a decade ago, both the United States and the State of Colorado made a solemn commitment to the Tribes to build the project so that the Tribes would have water to meet their needs. The Tribes have rejected all proposals to give them money instead of water, and decades of studies have shown that this project is the only feasible way to provide that water. H.R. 3478 allocates to the Ute Tribes almost two-thirds of the depletions presently allowed by the U.S. Fish and Wildlife Service's biological opinion for the project, issued under section 7 of the Endangered Species Act.

It is important to understand the history of the Federal and State of Colorado commitments to build Animas-La Plata. In *Winters v. United States,* 207 U.S. 564 (1908), the U.S. Supreme Court held that when the United States enters into a treaty with an Indian tribe creating a reservation, it impliedly reserves sufficient water to irrigate the reservation lands. These reserved water rights have a priority date based on the date of the creation of the reservation, which makes them senior to non-Indian water rights appropriated after the reservation was created. Based on the *Winters* doctrine, in 1976, the United States Department of Justice filed re-

served water right claims in Colorado water court[1] on behalf of the Ute Tribes. The original Ute Reservation was established by treaty in 1868 (with some later additions), making the claimed rights the most senior rights on the river.[2] Thus, if successful, the Tribal claims would have preempted the vested water rights of non Indian water users. In the more water-short river basins, such as the La Plata River basin, the claims had the potential to exceed the entire available water supply, thereby drying up family farms and ranches that have existed for generations and wreaking havoc on local economies.

As the parties began preparing for trial, it became clear that there were many contested issues, including the priority dates of the claimed rights, the amounts of water to which the Tribes were entitled,[3] the purposes for which the water could be used, whether the water could be used off the reservations, and how and by whom the rights would be administered.[4] Rather than pursuing lengthy, costly, and hostile litigation, all the parties sat down together and, after years of negotiation, entered into the Colorado Ute Indian Water Rights Final Settlement Agreement in 1986. Two years later, Congress passed the Colorado Ute Indian Water Rights Settlement Act of 1988, Public Law 100-585, and President Reagan signed it, affirming the Federal commitment to build Animas-La Plata. In 1991, the Colorado water court entered consent decrees based on the Settlement Agreement and passage of the Settlement Act and necessary state legislation. However, compliance with environmental statutes and questions about the project's cost delayed construction.

Thus, ten years after passage of the Settlement Act, the United States still has not kept its promise to build this project.

In an effort to break the stalemate, project proponents entered into discussions with project opponents under the auspices of Colorado's governor and lieutenant governor. After meeting many times and consulting with Federal agencies, each side put forward a proposal. The opponents' proposal relied primarily on the payment of money, which was not acceptable to the Ute Tribes. The proponents, however, negotiated among themselves, with the Tribes and water users all making major concessions, to arrive at the proposal for a smaller, less expensive project that forms the basis for H.R. 3478. The project beneficiaries divided the 57,100 acre-feet of depletions allowed by the biological opinion, and allocated most of the project water to the Ute Tribes, with other water users in Colorado and New Mexico, including the Navajo Nation, receiving a smaller share. §3(a). Irrigated agriculture took the biggest hit; about 48,OOO acre-feet are allocated to Indian and non-Indian municipal and industrial uses, §3(a), while the Secretary is authorized to allocate an additional 6,010 acre-feet for irrigation, §3(b). The Act does not include any facilities to deliver water to the La Plata basin, but non-Indian farmers and ranchers in that basin benefit from H.R. 3478 because it protects their existing water rights by finally removing the threat that has hung over their heads all these years. §3(c).

Some project opponents question the Ute Tribes' decision to insist that the United States live up to its part of the bargain and build a real reservoir that holds real water rather than giving them money to buy water rights. These groups presume to tell the Tribes that they are making a bad deal because the modified project does not include water delivery facilities. Certainly the Tribes would prefer to have delivery facilities included in the project, as they should be under the Settlement Agreement and 1988 Act, but they elected to sacrifice those facilities in order to secure water in storage that they can use on or off the reservations, consistent with the water marketing provisions of the Settlement Agreement and the 1988 Act, which remain unchanged. Project opponents fail to respect the Tribes' long struggle to secure water for their future. Instead, they seek to penalize the Tribes for compromising, and to force them to take money in place of the water to which they are entitled.

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[1] The Department of Justice originally filed the claims in Federal District Court in 1972. The United States Supreme Court ruled that, under the McCarran Amendment, 43 U.S.C. §666, the case should be heard in state court. *Colorado River Water Conservation Dist. v. United States,* 424 U.S. 800 (1976).

[2] The United States actually claimed a priority date of time immemorial for the original reservation, but an 1868 priority would have the same practical effect.

[3] Indian reserved rights are generally quantified on the basis of "practicably irrigable acreage." *Arizona v. California,* 373 U.S. 546, 598-601 (1963). This number was very much in dispute.

[4] Some have suggested that these are simple issues and that the State and water users would, in fact, easily prevail in litigate. These critics of the settlement point to legal arguments that the State could and probably would make if forced to litigate. However, they fail to fully understand or appreciate the Tribes' counter-arguments. I have reviewed the arguments on both sides and assure you that the battle would be hard-fought and the outcome far from certain.

Project opponents also argue that H.R. 3478 exempts the Animas-La Plata Project from environmental compliance. That is absolutely not true. Rather, the Act recognizes that there has already been full compliance with the Endangered Species Act, the National Environmental Policy Act, and the Clean Water Act. §3(c). Animas-La Plata may well be the most thoroughly studied, modified, and mitigated water project in history. In fact, the high pumping costs about which its opponents complain are the result of the original, environmentally sensitive siting decision to build the reservoir off-channel, rather than in the Animas Gorge. Federal agencies and environmental groups who will be satisfied with nothing less than complete abandonment of the project seek to use environmental laws to literally study the project to death. H.R. 3478 simply says "enough is enough."[5]

Construction of the Animas-La Plata Project, as modified, remains essential to the settlement. Under the Settlement Agreement, if key portions of the project are not completed by January 1, 2000, the Ute Tribes have until January 1, 2005 to elect whether to go back to water court to pursue their original claims in the Animas and La Plata Rivers. If construction is well under way by then, I am confident that the Tribes will not pursue that option. However, unless Congress takes prompt and decisive action to end what has become an administrative nightmare and meet the Federal Government's commitment to the Tribes, I fear they will look to the courts for relief.

Reopening of the Ute Tribes' claims would trigger litigation among the Tribes, the United States, the State of Colorado, and water right holders, as well as renewed uncertainty regarding the use and value of existing water rights. As discussed above, the Tribes' reserved rights claims raise a number of complex legal and factual issues and threaten the livelihoods of farmers and ranchers who rely on the already water-short La Plata River. Such litigation would involve virtually all water users in the Animas and La Plata basins, take many years of trial and appeals, cost millions of Federal, state, and local taxpayer dollars, and undo decades of cooperation between Indians and non-Indians in southwest Colorado.

I do not exaggerate. The Big Horn River adjudication in Wyoming, which litigated the reserved right claims for the Wind River Indian Reservation, began in 1977 and was decided by the Wyoming Supreme Court *for the first time* in 1988. *In re General Adjudication of All Rights to Use Water in the Big Horn River System,* 753 P.2d 76 (Wyo. 1988). The case then went to the U.S. Supreme Court. *Wyoming v. United States,* 492 U.S. 406 (1989). Since then, the case has been to the Wyoming Supreme Court four more times. *In re General Adjudication of All Rights to Use Water in the Big Horn River System,* 803 P.2d 61 (Wyo. 1990); 835 P.2d 273 (Wyo. 1992); Docket Nos. 93-48 & 93-49 (Oct. 26, 1993) (unreported order dismissing appeal); 899 P.2d 848 (Wyo. 1995). Nor have the issues been finally resolved. There is presently a proceeding underway to resolve disputes over quantification of private rights derived from tribal lands. All told, the State of Wyoming and the United States have spent tens of millions of dollars litigating the Wind River Reservation claims for more than twenty years, and the result is continuing conflict.

While I obviously cannot discuss the State of Colorado's possible defenses to the Tribes' claims, or the likely outcome of the litigation (other than to say that the issues are complex and would be hard-fought), one thing is certain: there will be a big loser, whether it is the Tribes or the water users, and, ultimately, the entire region will suffer. H.R. 3478 is the right thing to do. The Act meets the United States' trust obligations to the Ute Tribes and protects the existing property rights of all water users in the Animas and La Plata basins in Colorado in a way that is fiscally and environmentally responsible. I fully support it and urge you to do likewise.

STATEMENT OF CHARLES BLASSINGAME, BOARD MEMBER, LA PLATA CONSERVANCY DISTRICT, LA PLATA, NEW MEXICO

Mr. Chairman and members of the Subcommittee, Thank you for the opportunity to support H.R. 3478, the Colorado Ute Settlement Act Amendments of 1998. I want to explain why this legislation in critical to me. It is critical even though the Revised Animas-La Plata Project outlined in the legislation significantly cuts the amount of depletions's New Mexico Irrigators have counted on since 1968 from the authorized, full sized Animas-La Plata Project.

[5] Section 3(c) only applies to the facilities and depletions described in H.R. 3478. Should the Fish and Wildlife Service ever increase the ceiling on project depletions, any expansion would require additional environmental compliance.

The settlement of Ute Indian water claims provided by this legislation protects the water rights I currently own and use. Without the settlement of Indian water claims, those rights are in jeopardy. That is why we were willing to agree to the drastic reductions in water depletion's and the total elimination of irrigation facilities proposed in this legislation. The New Mexico Irrigators anticipated about 15,000 acre-feet per year of new water from the full Animas-La Plata Project, along with the delivery system to move the water from the Animas River to our La Plata River Valley. We intended to use this new water to allow us to grow more and higher value crops on our fertile land.

Irrigators on the La Plata River know the importance of water. The majority of La Plata water flows are in April, May, and June. By the last of June we are cutting water according to Priority. Since 1922, New Mexico and Colorado Irrigators have shared La Plata water through the La Plata River Compact 37-63-101. The Compact provides for equitable distribution of the water of the La Plata River and to remove all causes of present and future controversy between the State of Colorado and New Mexico over La Plata river water. Failure to settle the Ute Indian water claims as proposed in H.R. 3478 puts this cooperation in jeopardy, as the Ute Tribes will be forced to re-assert their claims to all the water in the La Plata and Animas river.

The La Plata Conservancy District has cooperated with the Ute Mountain Ute Tribe, Southern Ute Tribe, Navajo Nation, San Juan Water Commission, Southwestern Water Conservancy District and the Animas-La Plata Water Conservancy District to agree to only 780 Acre-feet per year of depletions, or less than 10 percent of our promised water. I believe this spirit of cooperation is unusual in the unity all have expressed in coming to a workable alternative to the original ALP.

As truck load after truck load of hay passes through La Plata from the Dolores River Project on the way to dairy farms in Southern New Mexico, Texas and Mexico, we can only dream of what we thought we were to receive in the Animas-La Plata Project in 1968.

H.R. 3478 allows us to maintain our historic water rights. Please support H.R. 3478, the Colorado Ute Settlement Act Amendments of 1998.

Thank you.

STATEMENT OF RICHARD K. (MIKE) GRISWOLD, BOARD MEMBER, THE ANIMAS-LA PLATA WATER CONSERVANCY DISTRICT

My name is Mike Griswold. I have been a member of the Board of Directors of the Animas La Plata Water Conservancy District for four years. Before my retirement, I worked for the U.S. Forest Service, the National Park Service and Congressional staffs for over 30 years.

The history of the Animas-La Plata Project is a history of compromise and cooperation. The non-Indian water users who were to receive irrigation water from the Project have compromised to the point that only critically needed municipal water supplies are left in the Project for the beneficial use of non-Indian water users in Southwestern Colorado. Because national environmental organizations have been successful in delaying the Project, the irrigation of new croplands, a long held dream of farmers and ranchers in Southwestern Colorado, has disappeared. National environmental organizations have gleefully destroyed the dream of new water storage so vitally needed in our area and offer instead the redistribution of an already short supply of water.

I would now like to address, for the information of the Committee, a few of the many untruths that national environmental organizations continue to tell about the Project.

1. National wildlife organizations state that A/LP Lite still harms the environment and "... would adversely affect a gold medal trout fishery." The trout fishery on the Animas River, a stocked fishery, received a gold medal designation because of the support of the Southwestern Water Conservation District. The District contracted for a fishery biologist to evaluate the designation. The biologist's findings indicated that neither the water project nor designation would adversely impact the other. Therefore, the proponents of the Animas-La Plata Project favorably recommended the gold medal designation.

2. Environmentalists say "Animas-La Plata Lite would adversely affect an Olympic whitewater training site." The referenced whitewater park, however, lies entirely upstream from the passive intake for the pumping station of the Project. To our knowledge, there is no official "Olympic training site" on the entire Animas River.

3. Environmentalists say A/LP Lite "would ... adversely impact ... endangered fish species." The U.S. Fish and Wildlife Service's Final Biological Opinion for the Animas-La Plata Project, which limits Project depletions to 57,1000 acre feet annu-

ally, states that the Project, with only that amount of depletions, would have no adverse impact upon the endangered fish. Furthermore, because of the Project, the San Juan River Recovery Implementation Program was established eight years ago and is actively attempting to recover the endangered fish.

4. Environmentalists say the Project would "inundate Colorado's Bodo Wildlife Area, wintering habitat for the state's second largest elk herd." In reality, the Project would inundate only a small fraction of the Bodo Wildlife Area, with mitigation land to be purchased as part of the Project. The elk herd, which is not even the second largest band of elk in La Plata County, Colorado, much less in the state of Colorado, utilizes the Bodo area only during a short portion oftheir migration each year.

5. Environmentalists completely misstate the alleged Bureau of Reclamation's admission that the Project would return "just 36 cents for each taxpayer dollar spent." The environmentalists fail to mention that the Bureau of Reclamation, on the very same page of its Economic Analysis Summary, states that the benefit/cost ratio for the Project varies between a low of 36/dollar to a high of $1.41/dollar, depending upon the analysis process used and the rates of interest assumed in the evaluations. Furthermore, the economic analysis process used by the Bureau of Reclamation charged costs to the Project, including a reduction in revenues from power generation at Glen Canyon Dam and salinity costs on the Colorado River, which have never before been charged to any Bureau of Reclamation project.

6. The environmentalists say "the Citizen's Coalition and the Southern Ute Grassroots Organization have developed an alternative which would provide the full amount of water in the Settlement Agreement and allow the Tribes to develop it where it is needed." This alternative, known as the SUGO Legacy Fund, was carefully considered and vehemently rejected by the Tribal Councils of both the Southern Ute Indian Tribe and the Ute Mountain Ute Tribe. The so-called Legacy Fund was rejected primarily because it would not provide the Tribes the full amount of stored municipal and industrial water in the Settlement Agreement. In fact, the Fund would not provide any stored water. It would provide the Tribes only with money to buy land and irrigation water from their neighbors and friends, which the Tribes would then be required to change to municipal and industrial use in protracted litigation in Colorado State Water Court; Without a storage reservoir, the Legacy scheme is a redistribution of an existing water shortage.

7. Finally, environmental organizations claim that this legislation exempts A/LP Lite from "... The Clean Water Act, The Endangered Species Act, and the National Environmental Policy Act." The legislation, however, states only that the massive environmental documents already provided for the Animas-La Plata Project, at a cost of over $20 million, have satisfied the requirements of those Acts. The legislation reads as follows: "the April 1996 Final Supplement to the Final Environmental Impact Statement-Animas-La Plata Project issued by the Department of the Interior and all documents incorporated therein and attachments thereto and the February 19, 1996 Final Biological Opinion of the United States Fish and Wildlife Service-Animas-La Plata Project shall be considered to be adequate to satisfy any application under ... the ESA, NEPA or Federal Water Pollution Control Act." This is not a waiver. The Congress is only being asked to acknowledge that enough is enough—$20 million of environmental studies are adequate to construct this greatly reduced version of the authorized Project.

These are only a few examples of the false statements the environmentalists are making in seeking to defeat H.R. 3478. H.R. 3478 exemplifies a spirit of cooperation and agreement between the Indian and non-Indians in this resolution of the reserved water rights claims of the two Colorado Ute Indian Tribes. It was agonizing for my farmer and rancher friends to give up their irrigation water in limiting the Project to depletions of 57,000. We are here, however, to ask you to support the fulfillment of the government's trust obligation to the Tribes and its obligations to the Tribes' non-Indian friends and neighbors.

STATEMENT OF FRED V. KROEGER, PRESIDENT, SOUTHWESTERN WATER CONSERVATION DISTRICT

My name is Fred Kroeger. I am President of the Board of Directors of the Southwestern Water Conservation District of Colorado and a member of the Board of Directors of the Animas-La Plata Water Conservancy District. I was a member of the Colorado Water Conservation Board for 21 years. I am submitting this written statement in support of passage of H.R. 3478.

I regret that I am not able to personally attend the hearing today. My absence will break my record of appearances before Committees of the Congress in support

of the Animas-La Plata Project. I first appeared before the Committees which were considering the legislation which eventually became the Colorado River Basin Project Act of 1968. As you will recall, the Basin Project Act authorized for concurrent construction the Central Arizona Project, together with five water resource development projects in Southwestern Colorado. That, of course, has not happened. While the Central Arizona Project has been completed, only two of the five Colorado projects have been constructed: the Dallas and the Dolores Projects. The only other project of the five that has received active consideration in the past 15 years is the Animas-La Plata Project.

In the early 1970's I first testified on behalf of construction funds for the Dallas and Dolores Projects and planning funds to complete the Animas-La Plata Projects Definite Plan Report and Environmental Impact Statement. Upon completion of those documents in 1980, I, as well as many of my constituents, were convinced that the Project would be under construction shortly thereafter. Unfortunately, continuous, detrimental delays have driven up the cost of the Project as first envisioned and proponents have been forced once again to accept a compromise which greatly reduces the benefits to our citizens.

Despite this loss to farmers and ranchers, I am here today to urge your support for H.R. 3478, the Colorado Ute Settlement Act Amendments of 1998. This legislation will settle the reserved water rights claims of the two Colorado Ute Indian Tribes in southwestern Colorado once and for all. The settlement legislation represents the final compromise in our decades-long effort to resolve the Tribes' claims by negotiation, instead of litigation.

I am also here today to strongly oppose H.R. 475, legislation which has been introduced to deauthorize the Animas-La Plata Project. Passage of that legislation would be a breach of faith and a breach of trust not only to the two Colorado Ute Indian Tribes, but also to the non-Indian water users and municipalities of Southwestern Colorado and Northwestern New Mexico. H.R. 475 is an outrageous proposal. Passage of that legislation would say "Congress does not care that Congress passed the Ute Water Rights Settlement Act in 1988, that the President of the United States signed the Act in 1988. We are going to turn our back on that legislation and demand everybody begin all over again." "Blood, sweat and tears" have been put into the effort to settle the legitimate Indian reserved water right claims in Southwestern Colorado and at the same time provide a critically needed water supply for our area, water which we in the West must have if our part of the country is going to prosper in the future. Such a message from Congress would be a death knell for all other Indian water rights settlements now being negotiated.

The history of the Animas-La Plata Project is a history of compromise. Together, the two Colorado Ute Tribes and non-Indian water users have strived to achieve a resolution of the Tribes' reserved water rights claims in a positive manner for all in the community. The farmers and ranchers whom I represent here today have compromised more and given up more than any other group in their efforts to solve the Tribes' claims. The cooperation between the two Indian tribes and the non-Indian water users in the San Juan Basin for more than three decades speaks to the mutual respect of those friends and neighbors.

Two outstanding examples of the spirit of cooperation to achieve a win-win situation are the Animas-La Plata Project cost-sharing agreement of 1985 and the 1986 tribal water rights settlement agreement. In the cost-sharing agreement, the State of Colorado and local water users committed more than $60 million toward the resolution of the Ute Indian water claims. The key ingredient of the 1986 Settlement Agreement is new water storage: the Ridges Basin Reservoir of the Animas-La Plata Project. If the Ute Indian Tribes were to receive the water to which they are legally entitled without the construction of new storage, non-Indian farmers who have been utilizing that water for more than 95 years would be deprived of their water supply and the non-Indian agricultural economy in southwestern Colorado and northwestern New Mexico would be destroyed. The Tribes and their neighbors are solidly committed to a solution which does not rob Peter to pay Paul. H.R. 3478 is that solution despite the sacrifices it requires.

Project supporters thought that with the passage of the 1988 Colorado Ute Indian Water Rights Settlement Act, Project construction would be forthcoming. However, ten years after passage of that landmark legislation, which was widely recognized as a model for the settlement of Indian water rights claims, the Project is still not under construction. Project opponents, without a personal stake in the settlement of the Tribes' rights, have delayed the construction of the Animas-La Plata Project. Those delays drove up the cost of the original project to the point that the water users and the Tribes were required to make further compromises and sacrifices.

We are before you now with the results of those compromises and sacrifices, about which nobody is happy, but which everyone recognizes are necessary for securing

the new stored water so vital for all the water users in the San Juan Basin. Instead of a project to provide 150,000 acre-feet of water depletions in our area, we now have a project which complies with the Endangered Species Act and limits our depletions of water to 57,100 acre-feet of water per year. To divide that limited water supply among the beneficiaries of the Animas-La Plata Project was a difficult, heart-wrenching process.

Under the compromise before you, the two Ute Indian Tribes will not receive all of the water they were promised in 1988, but the cost to the Tribes will be limited to the cost of Project operations and maintenance. The non-Indian farmers and ranchers will not receive the benefits they were first promised in 1956, subsequently in 1968, and again in 1988. The non-Indian farmers and ranchers have agreed to relinquish all of the irrigation water and facilities which for so many years were a central feature of the Animas-La Plata Project. While irrigation may not now be popular, it is vital. Nevertheless, the non-Indian ranchers and farmers recognized that under the current political atmosphere it would not be possible to proceed with the Animas-La Plata Project as approved in 1988.

Then why do the non-Indian ranchers and farmers support the proposed legislation? First and foremost, the two Colorado Ute Tribes have agreed that the modified Animas-La Plata Project will settle all of their reserved water rights claims in the San Juan Basin. This removes any remaining threat to the non-Indian water users in our area; i.e. the proposed legislation settles the Tribes' claims in a way that avoids the Tribes taking any water away from their non-Indian friends and neighbors. Secondly, the legislation will provide a much needed domestic supply of water for the growing communities in Colorado, including the City of Durango, and communities in northwestern New Mexico. Finally, the legislation respects the Federal Government's trust obligation to the Tribes.

I anticipated that the opponents of the Animas-La Plata Project would throw up their hands and declare victory over the scaled-back Animas-La Plata Project. Despite the major concessions agreed to by proponents of the Animas-La Plata Project, that is not the case. The opponents would have the Federal Government continue to conduct repetitious environmental studies, studies which have already conservatively cost tens of millions of dollars. The opponents, claiming to be friends of the Ute Indian Tribes, have threatened to litigate the Animas-La Plata Project for the next forty years.

The proponents of the Animas-La Plata Project have worked long and hard to avoid the bitter and divisive court action that will result unless additional water storage is available for the Ute Indian tribes and our communities. The Project has undergone agonizing environmental examination and repeated consultations under the Endangered Species Act. Despite all the delays and modifications, the Project continues to have broad-based bipartisan support from local and state officials. Your passage of this legislation will enable us to proceed with construction of the Project and to finally settle the Indian water rights claims. Construction of the Project is the only fair and equitable way to settle the Tribes' claims without ripping apart the cultural and economic fabric of our region.

STATEMENT OF CHAIRMAN JOSEPH A. PAKOOTAS, COLVILLE BUSINESS COUNCIL, CONFEDERATED TRIBES OF THE COLVILLE INDIAN RESERVATION

The Colville Confederated Tribes would like to present the following testimony into the record before the House of Representatives on Bill H.R. 3987, the Deer and Elk Protection Act.

The Colville Tribes are strongly opposed to H.R. 3987 which is a divisive piece of legislation and a blatant attempt to undermine tribal sovereignty. If passed, it would violate numerous laws, endanger the health of deer and elk, and undermine existing successful efforts by tribes and states to cooperatively solve resource and wildlife issues.

Our testimony today centers around three main points. One, the Colville Tribes have a long-standing federally recognized right to hunt off of the Colville reservation. Two, the language of this bill would abrogate this right to hunt off of the Colville reservation. The reasons why this right should not be abrogated are numerous and will be specifically detailed below.

Three, the findings contained in the bill are false and inaccurate.

Indian hunting rights, whether on or off reservation, have long been recognized as distinct tribal property rights stemming from the "reserved rights doctrine." In the specific case of the Colville Tribes, the right to hunt off reservation centers around use of the North Half reservation territory and the express retention of the

right to hunt in the North Half contained in Article 6 (six) of the 1891 agreement between the Colville Tribes and the Federal Government.

The original reservation of the Colville Tribes was significantly reduced through an agreement with the Federal Government in 1891. According to the terms of this agreement, the 1.5 million acre "North Half" of the Colville Tribes' reservation was granted to the Federal Government, consistent with certain limitations. Prominent among these was the explicit language in Article 6 (six) of the agreement that "the right to hunt and fish in common with all other persons on lands not allotted to said Indians shall not be taken away or in anywise abridged."

This agreement was approved by Congress through a series of statutes in 1892 and 1906 through 1911. Additionally, the Colville Tribes' off reservation hunting rights on the territory of the North Half were directly reaffirmed by the Supreme Court in the case of Antoine v. Washington. As stated by the Supreme Court, the Congressional ratification of the North Half agreement made its provisions the supreme law of the land, and as such precluded the application of State game laws through the force of the supremacy clause of the United States Constitution. Thus, Congressional statutory authorization of the North Half agreement and its provision granting the Colvilles' right to hunt off reservation in the North Half coupled with the subsequent Antoine decision establish an explicit off reservation hunting right for the Colville Tribes.

Regardless of the source and extent of the tribal right to hunt off-reservation, any abridgement of this property right would constitute a "taking" under the Fifth Amendment of the Constitution. As the United States Supreme Court recognized in its 1968 decision in Menominee, the Congressional abrogation of a tribe's right to hunt would give rise to a Fifth Amendment taking.

In regards to the compensation needed to "take" the Colvilles' right to hunt in the North Half, a cursory look at the details of the 1891 agreement point to a figure that would be staggering, even for the budget parameters of an entity as large as the Federal Government. According to the 1891 agreement, the Colville Tribes granted to the Federal Government 1.5 million acres for the mere price of one dollar per acre, coupled with the right to hunt and fish in the territory of the North Half, unabridged in any way, for perpetuity. Considering the loss of mere timber, mineral, and other resource extraction commodities, the price of one dollar per acre is absurdly inadequate. Add to this the loss of roughly fifty percent of the tribal reservation land base, and the value of hunting and fishing in Colville tribal culture and it is quickly apparent that the greatest benefit of the 1891 agreement from the tribal perspective was the retainment of the right to hunt and fish in the North Half. Thus, the amount of compensation needed to be appropriated from the Federal budget for the taking of the Colville Tribes's off-reservation hunting right in the North Half, coupled with the necessary compensation for the taking of all other Washington tribes reserved right to hunt would dwarf any perceived benefit from H.R. 3987.

That the language of H.R. 3987 would be an abridgement and complete taking of the Colvilles' right to hunt off reservation cannot be denied. Under the language of the bill, Colville tribal members hunting rights would be qualified by the State of Washington by requiring Colville tribal members to comply without their consent with any State law governing non-Indian hunters, including such items as time of hunting season, bag limits, and licensing requirements. Previous "right to hunt" language reserving to Indians in an area ceded to the United States "the right of taking fish at all usual and accustomed places, in common with citizens of the Territory" and "[t]he right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians, in common with all citizens of the Territory . . ." has been held by the Supreme Court to prohibit qualification by the State. In the specific case of the Colville Tribes and the right to hunt contained in the 1891 agreement, Article 6 presents an even stronger case since Congress' ratification of it included the flat prohibition that the right "shall not be taken away or in anywise abridged" (emphasis added). Thus, while holding no comment on the amount or type of qualification prohibited by other "right to hunt" language, the Colville "right to hunt" language contained in Article 6 clearly prohibits any State qualification.

Viewed conversely, to hold as H.R. 3987 proposes that Indians who are beneficiaries of the reserved hunting rights of treaty and other Federal agreements are subject to the same regulations and prohibitions as the State may impose on non-Indians, is to hold that Congress and the Federal Government preserved nothing which the Indians would not have had without such legislation. Such a finding would not only defy any logical interpretation of a negotiated, bargained agreement between tribes and the Federal Government regarding the ceding of land, but would also violate long standing judicial holdings on the interpretation of treaties and Federal-tribal agreements. Thus, the canons of treaty construction, coupled with the ju-

dicial recognition of the unqualified purity of the Colvilles' right to hunt, dictate that H.R. 3987 be analyzed as an abrogation and taking of Colville tribal property rights.

In addition to previous points, H.R. 3987 should be rejected due to the false and incorrect findings contained within the language of the bill. Any legislation, regardless of subject matter or interest groups affected, that is based upon inaccuracies of this size and scope must be discarded as inherently flawed. A technical analysis of these findings is attached for your review.

Technical Analysis of the Findings in H.R. 3987 The proposed legislation is inherently flawed because the findings upon which it is based are false and therefore incorrect. The first finding states that "dramatic economic changes have taken place in the State of Washington since Indian tribes signed treaties with the Federal Government and, as a result of those changes, Indians and Indian tribes in the State of Washington no longer rely on hunting deer and elk for subsistence."

We agree that dramatic changes, economic and otherwise, have occurred in Washington State since the mid-1800s. Indians in Washington are well aware of these changes. Prior to treaty signings, we lived our traditional ways on the lands and waters of our ancestors. By the turn of the century, we had all been put on reservations. At present, we are striving to retain our cultural and spiritual identity while adapting to the complex backdrop of a modern world.

These are indeed dramatic changes.

We do not agree, however, that Indian people no longer rely on deer and elk for subsistence as a result of such changes. In fact, this statement could not be further from the truth. The referenced economic changes have not "floated all boats equally" and unemployment on the Colville Reservation remains exponentially higher than non-reservation communities. In addition, many Colville tribal members who are employed do not make incomes that permit good acquisition on a regular basis from a grocery store. The proposed legislation implies that all or most Indians now have the means to purchase all their food. This is simply not true.

Diet supplementation with wild game is absolutely essential for many Colville families. Year in, year out, many of our people depend on deer and elk taken on the North Half.

In addition to playing an essential role in providing general dietary sustenance, deer and elk are also traditional cultural and religious foods of the Colville Tribes. The use of deer and elk meat is absolutely essential to many religious ceremonies of the Colville Tribes, while body parts such as hides, antlers, bones, and hooves have important ceremonial uses also. Further, many religious ceremonies of the Colville Tribes require relatively immediate access to deer and elk meat and body parts. Any application of State hunting law which would infringe upon these religious tenets of the Colville Tribes would be subject to First Amendment and Indian religious freedom protection.

The second finding of the bill states that "the consistent enforcement of laws and regulations pertaining to hunting deer and elk throughout the State of Washington on all lands outside of Indian reservations is necessary for the conservation of deer and elk and to protect public safety." This statement is true in principal but not in substance. It implies that State of Washington rules are the only ones that can be consistent. This is not true. Indian Tribes also believe in and practice "the consistent enforcement" of their laws.

The second finding is also not substantiated by harvest statistics or other related facts.

Human predation is typically the most significant direct form of mortality on ungulate populations, particularly in modern times. To combat this, conservation measures such as bag limits are often necessary to maintain herds. H.R. 3987 implies that tribal seasons are excessive and threaten herd sustainability statewide. Data clearly show, however, that the greatest pressure on Washington deer and elk populations is non-Indian harvest, not tribal harvest. In fact, the non-Indian, state harvest typically exceeds tribal harvest by several orders of magnitude.

Estimates of statewide deer harvest from 1988-1995 provided by the Washington Department of Fish and Wildlife show that tribal harvest constituted a mere 3.5 percent of the total combined tribal and non-tribal harvest. As examples, in 1995, Washington State non-Indian hunters took 37,765 deer while tribal hunters took 1,740. Over the entire eight year period (1988-95), state hunters harvested 376,160 deer and tribal hunters harvested 12,996. An identical situation exists with the statewide elk harvest. From 1988-1995, the tribal harvest made up 3.6 percent of the total combined harvest. In 1995, state hunters took 6,429 elk while tribal hunters took 286. Over the eight year period, the state harvest was 66,793 animals and tribal harvest was 2,377.

Even if tribal deer and elk harvest have been underestimated, tribal harvest levels would have to increase two hundred percent to equate with a ten percent change in the state harvest.

Clearly, tribal harvest constitutes a minuscule portion of the combined harvest. It also should be noted that in cases where the combined, localized tribal and non-tribal harvests were causes for concern, tribal and state managers have come together and worked out solutions.

For example, the Colville Tribes have voluntarily shortened our mule deer seasons on the North Half for the past two years in the interests of conservation.

Additionally, none of the figures on state deer and elk harvest levels figures include poaching losses. These poaching losses are significant in number and attributed almost entirely, if not completely, to non-Indians. Washington State estimates that 2,000 elk are taken out of season every year, which represents approximately six to seven years of tribal harvest, based on the 1988-1995 average.

In view of these facts, why is the consistent enforcement of state regulations necessary for the conservation of deer and elk? Under the "reasonable and necessary conservation" rule of earlier Federal court decisions, Indian hunting and fishing rights which normally may not be qualified by the states, may be regulated by the state in the interest of conservation. The State, however, must demonstrate that: (1) there is a compelling need in the interest of conservation; (2) state regulation is a reasonable and necessary conservation measure; and (3) its application to Indians is necessary in the interest of conservation. This avenue for conservation is still left intact if H.R. 3987 is halted. The Colville Tribes propose that this avenue continue to remain as the correct form for managing and conserving deer and elk within the borders of Washington State.

H.R. 3987 also overlooks the fact that states work with tribes as sovereign co-managers of their wildlife resources. Through the co-managing process with the State of Washington, tribes set and regulate seasons for their members and monitor tribal harvests. In many cases in Washington, tribal season frameworks are forwarded to the Department of Fish and Wildlife for comment and harvest data is shared. The Colville Tribes are no exception and have a twenty year history of sharing harvest data and season information with the State. The Colvilles also have an agreement with the State of Washington wherein certain species of fish and game on the Reservation are available for non-tribal harvest in the interests of conservation and recreational opportunity. This agreement also provides for joint law enforcement and animal damage control in boundary areas.

Overall, the Colville Tribes have a good working relationship with the Washington Department of Fish and Wildlife. The Tribe and the State are involved in several joint undertakings such as off reservation big game aerial surveys, research on the state threatened sharp-tailed grouse, peregrine falcon reintroduction, screening irrigation intake pipes to protect anadromous fish, and a mule deer research study proposal. The Tribe has also funded off reservation big game winter feeding programs and a state fish hatchery in northeastern Washington.

Another flaw in the findings of H.R. 3987 is that they assume that tribal season frameworks and bag limits are excessive and that tribal game management programs are inferior to those of a state. These assumptions demonstrate the depth of misunderstanding and lack of accurate information in the minds of many non-Indians regarding tribal hunting. To illuminate the fallacy of these assumptions, it should be known that tribes are comparatively small, homogenous, interrelated groups of people. As a result, tribal hunters tend to have similar goals and views on hunting and wildlife in general. Further, tribal managers are in direct contact with a significantly larger portion of their hunters than their state counterparts. Tribal managers are also in direct contact with policy makers (the tribal councils) at a level and frequency of access superior to that of their state counterparts. These facts provide tribes the opportunity to closely monitor harvest, to take action rapidly, and in general to be adaptable and proactive at a rate that is not available to that of the State.

As an example, in Washington State elk herds in the Blue Mountains used to have only three to four bulls per one hundred cows and few, if any, mature bulls. Such attributes in turn affected calf production, survival and recritment. These skewed demographics were found to be a result of years of heavy bull harvest under Washington State elk season frameworks rather than a result of tribal hunting.

This bill also does not mention, let alone address, other issues affecting deer and elk in Washington, particularly loss and conversion of habitat. These conditions are caused by over exploitation of forest products, improper grazing practices, urban and industrial development, and the overall crush of a growing human population and the demands put on the land as a result.

The American West is experiencing unprecedented population growth as people depart other areas to settle in this region. Not only is the West the fastest growing region in America, it rivals the growth rate of Africa and exceeds that of Mexico. Washington is no exception to this trend and is growing by 100,000 people a year. This State was once defined by low population densities living on rural lands held in large contiguous ownership patterns. Now many areas are seeing sharp increases in housing densities, human densities, roads, shopping malls, et cetera. This translates into less habitat for many forms of wildlife and more pressure on hunted species. This is particularly true in Washington which is the smallest western state with the second highest human population and the lowest percentage of public land.

Are not the wildlife resources of Washington, and the nation, better served through the cooperative efforts of tribal and non-tribal management entities to jointly address and solve resources problems? Would not the time and money spent in countering the divisive efforts of a few be better spent on protecting and improving critical habitat? Wouldn't it be better to bring people together to find solutions than to drive wedges between them while problems continue to multiply virtually unchecked? Our answer is an emphatic, resounding YES! We believe this is the best way to meet the resource challenges facing all Americans and we will continue to choose the path of cooperation and objectivity for the sake of our resources and that of future generations.

For the forgoing reasons, we urge you to oppose this bill.

Eluid Martinez
Commissioner, Bureau of Reclamation
Department of the Interior

Statement on H.R. 745, An Act to Deauthorize the Animas La Plata Project, and H.R. 3478, Colorado Ute Settlement Act Amendments of 1998
before the
U.S. House of Representatives, Committee on Resources,
Water and Power Resources Subcommittee
July 28, 1998

Thank you for the invitation to testify on H.R. 745, An Act to Deauthorize the Animas La Plata Project, and H.R. 3478, Colorado Ute Settlement Act Amendments of 1998. I appreciate the opportunity to present the Administration's views on these measures.

Mr. Chairman, the Administration fully supports providing wet water to the Colorado Ute Indian Tribes as a part of the final settlement of their water rights. However, the Administration does not support the approach included in the two measures before the Subcommittee today.

H.R. 745 would deauthorize 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 1501 et seq.)). And if enacted, it would direct the Secretary of the Interior to promptly seek to enter into negotiations with the Ute Mountain Ute Indian Tribe and the Southern Ute Indian Tribe to satisfy, in a manner consistent with all Federal laws, the water rights interests of those tribes that were intended to be satisfied with water supplied from the Animas-La Plata Project.

H.R. 3478 would amend the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100-585). If enacted, this bill would direct the Secretary of the Interior to provide for the construction of three facilities or features as components of a modified Animas-La Plata Project (Public Law 90-537), including a 260,000 acre-feet Ridges Basin Reservoir, a Durango pumping plant, and a Ridges Basin inlet conduit. It would direct the Secretary to allocate through the use of these facilities an average annual depletion of water for municipal and industrial uses (M&I) of 48,390 acre-feet for the Southern Ute Indian Tribe, Ute Mountain Ute Tribe, Navajo Nation, San Juan Water Commission and Animas-La Plata Water Conservancy District; to make available at the request of the Animas-La Plata Water Conservancy District of Colorado or the La Plata Conservancy District of New Mexico an annual average depletion of 6,010 acre-feet of water for agricultural irrigation; and, to transfer, upon the request of the State Engineer of the State of New Mexico, all of the interests of the Department of the Interior under a New Mexico State Engineer permit that were reserved to fulfill the purposes of the original Animas-La Plata

Project. The measure would make nonreimbursable all construction costs for the three facilities identified in H.R. 3478 and allocable to the Navajo Nation and to each Tribe's municipal and industrial water allocation It would limit the capital payment obligations of the San Juan Water Commission, Animas-La Plata Water Conservancy District, and the State of Colorado for the nontribal municipal and industrial water supplies attributable to its three constructed features to $29 million. It acknowledges that the uncommitted portion of the State's cost sharing obligations provided in the Animas-La Plata Cost Sharing Agreement, dated June 30, 1986, shall remain available to assist in the funding of other facilities and features of the original Animas-La Plata Project. The measure would require the Secretary to pay the annual operation, maintenance and replacement costs allocable to the Tribes' municipal and industrial water allocations from the Animas-La Plata Project or the Dolores Project until that water is first used by the Tribe or is used pursuant to a water use contract with the Tribe. H.R. 3478 includes a Congressional finding that applicable environmental laws are satisfied with respect to any review of the impacts of such construction on environmental and cultural resources for its three features without additional action, review, analysis or public comment on the modified Animas-La Plata Project. If enacted and implemented, H.R. 3478 would provide the final elements of a Water Rights Settlement Agreement for the Colorado Ute Indian Tribes (Tribes). Both Ute Tribes have stated that this arrangement would constitute an acceptable solution to them, at least in the near term.

Background

The Animas-La Plata Project, located in La Plata and Montezuma Counties in southwestern Colorado and in San Juan County in northwestern New Mexico, was described in a 1979 Bureau of Reclamation (Reclamation) Definite Plan Report, in a 1980 Final Environmental Statement, in a 1992 Draft Supplement to the Final Environmental Statement, and in a 1996 Final Supplement to Final Environmental Statement on the Project. This original Project would divert flows of the Animas, La Plata, and San Juan Rivers (by exchange) for irrigation, M&I uses. It would also provide for fish and wildlife mitigation measures, recreation facilities, and a cultural resources program.

The Project was authorized by the Colorado River Basin Project Act of September 30, 1968 (Public Law 90-537), as a participating project under the Colorado River Storage Project Act of April 11, 1956 (Public Law 84-485). That authorization was based on the feasibility report of the Secretary of the Interior transmitted to the U.S. Congress on May 4, 1966.

In 1988, Congress passed the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100-585) supplementing the authorization of the Animas-La Plata Project and adopting language to implement the 1986 Colorado Ute Indian Water Rights Final Settlement Agreement. The Southern Ute Indian and the Ute Mountain Ute Tribes, headquartered in Ignacio and Towaoc, Colorado, respectively, have reservation lands within the Animas and La Plata Rivers drainages, as well as in drainage basins of other streams tributary to the San Juan River. The Colorado Ute Indian reservations were created in 1868, resulting in the Tribes having potential priority dates for their water rights that precede the priority dates for most, if not all, of the non-Indian water rights.

For years, the Tribes pursued an equitable settlement of their water rights claims in these river drainages. In the early 1980's, discussions were initiated to achieve a negotiated settlement of the claims. After negotiations, the Tribes and other parties signed the Final Settlement Agreement on December 10, 1986. Specific legislation to implement the Settlement Agreement was enacted by the U.S. Congress on November 3, 1988. The Settlement Agreement provided the Southern Ute and Ute Mountain Ute Tribes with development funds in the amount of $20 million and $40.5 million, respectively.

The Federal government and the State of Colorado have fully funded these development funds. The Ute Mountain Utes used some of this money to construct a pipeline to supply up to one thousand acre-feet of potable water per year to Towaoc. In addition, Reclamation funded the construction of a $128 million project consisting of canals, laterals, and drains to deliver water from the Dolores Project to the Ute Mountain Ute reservation and has made 25 thousand acre-feet of irrigation water available to the Tribe annually through these works. In addition, a pipeline was built to deliver treated drinking water to the Ute Mountain Ute Reservation. Finally, the Agreement also settled the Tribes' water rights claims in a number of streams that are secure whether or not the Animas-La Plata Project goes forward. The Environmental Protection Agency is not aware of any public health threats related to the drinking water supplies of the Ute Mountain Ute or Southern Ute Tribes. The Environmental Protection Agency (EPA) has assisted many Tribes in the past with assuring safe drinking water, and stands ready to act wherever such issues arise.

The 1986 Settlement makes construction of the Animas-La Plata Project dependent upon compliance with other applicable laws, including the National Environmental Policy Act and the Reclamation statutes. The Agreement did not guarantee that the Federal government would be able to construct this project for the Tribes. Even though Congress has passed two statutes concerning its construction and has funded both studies and land acquisition, the project has not been built because of a variety of environmental, cultural resource, financial, economic, and legal concerns. These include disputes regarding the status of repayment and cost-sharing agreements executed in the late 1980s, and concerns regarding compliance with the State of New Mexico's water quality standards and the adequacy of environmental documentation.

In 1996, in an attempt to resolve the continuing disputes surrounding the original project, Colorado Governor Roy Romer and Lt. Governor Gail Schoettler convened the project supporters and opponents in a process intended to seek resolution of the controversy involved in the original Animas-La Plata Project and to attempt to gain consensus on an alternative to the original Animas-La Plata Project. The Department of the Interior and EPA participated in the Romer/Schoettler Process providing technical advice and assistance to the parties, but not as an advocate for any specific alternatives to the original Animas-La Plata Project. Although the Romer/Schoettler Process did not achieve consensus, the process produced two major alternatives. H.R. 3478 is based upon one of those alternatives.

The other alternative developed during the Romer/Schoettler Process proposes to provide wet water to the Tribes through the purchase of irrigated lands and other associated water rights near

the existing Ute Reservations in southern Colorado and would use or purchase water from existing projects or from expanded projects and delivery systems for the purpose of providing Indian-only water. This alternative is not contained in H.R. 3478. In fact, the Tribes have stated that they would not accept this alternative in settlement of their water rights claims.

The Administration fully supports providing wet water to the Tribes in exchange for a final settlement of their water rights claims. The Administration acknowledges the Tribes' significant efforts in the Romer/Schoettler Process that reflected a willingness to reexamine basic premises of the 1986 Settlement and an openness to reviewing and revisiting the available scientific and environmental information. While the Administration cannot support H.R. 3478, it is committed to a continuing dialogue with the Tribes and others in pursuit of an appropriate means to obtain a just and final settlement for the Tribes.

On July 20, 1998, Secretary Babbitt wrote to the Tribes to assure them where the Administration stands with respect to water rights for the Southern Ute Indian Tribe and Ute Mountain Ute Tribe. His letter stated that "We fully support providing wet water -- water beneficially usable by the Tribes -- to the Colorado Ute Indian Tribes as part of the final settlement of your claims. We also need to consider how the possible solutions would affect the municipal and industrial water supplies of the region's communities and protect the area's natural resources."

"While the Administration supports providing wet water for the Colorado Ute Indian Tribes and obtaining a final settlement of the water rights claims of the Tribes, the Administration does not support the [Colorado Ute Settlement Act Amendments of 1998] as introduced... The question now is where do we go from here. The Administration truly understands and respects the significance of your efforts and those of the Governor and Lt. Governor in the Romer/Schoettler Process. These efforts have greatly focused the issues. The Administration is prepared to enter into a good faith dialogue with the Tribes to identify the best mutually acceptable means to enable the Tribes to obtain wet water for the present and future."

To facilitate this dialogue, the Administration has named David Hayes, Counselor to the Secretary and Chairman of the Department of Interior's Working Group on Indian Water Rights, as the leader of this effort. He has contacted the Tribes to establish a meeting date at a location agreeable to them. It is our hope that the Tribes will agree to work with us in earnest to remove our differences and produce a consensus settlement approach that we can jointly present to the Congress for approval.

The Status of Animas-La Plata Project Features

H.R. 745 does not provide for an alternative to the original Animas-La Plata Project. Instead, it would deauthorize the entire Animas-La Plata Project and direct the Secretary to resume negotiations directly with the Tribes. While the Administration agrees that there is limited support for the original Animas-La Plata Project, we are not prepared to recommend complete deauthorization. Instead, the Administration believes that it is important to focus on the priority of delivering wet water to the Tribes and address the deauthorization issue with the Tribes and

other affected parties.

By contrast with the other measure, H.R. 3478 makes no effort to reconcile the original Animas La Plata Project with the modified Project and the features it directs the Secretary to construct. H.R. 3478 does not amend the Colorado River Basin Project Act of September 30, 1968 (Public Law 90-537) or reconcile the proposed construction of the three facilities identified in H.R. 3478. Instead, it appears that H.R. 3478 would divide the original Animas-La Plata Project into a different phasing than proposed in the preferred alternative in the 1996 FSFES. If this is true, H.R. 3478 would enable the original project to be built at some point in the future when and if additional water were to become available from the San Juan River Basin. As a result, this modified Animas-La Plata Project raises renewed concerns over the same unanswered environmental, fiscal, financial, economic and legal issues that have kept the project from coming to fruition for a decade. Such an outcome would be likely to produce additional delays and cannot be supported.

The modified Animas La Plata Project as outlined by H.R. 3478 presents one vital practical question: How is the Secretary of the Interior expected to deliver water to the Tribes for M&I purposes with construction of only these three facilities and with no pipelines or other conveyance facilities to deliver water? He cannot.

On July 17, 1998, I wrote a letter to Senator Campbell of Colorado following up on his June 24, 1998 legislative hearing on the Senate version of the Colorado Ute Settlement Act Amendments of 1998 stating the Administration "believes full consideration should be given to all alternatives, including appropriately sized storage, that might satisfy the Tribes' water rights. In undertaking that consideration, however, the full impact disclosure, alternatives analysis, and public involvement tenets of the National Environmental Policy Act (NEPA) should not be circumvented, nor should NEPA's procedural requirements be segmented."

Adequacy of Existing Studies to Support a Modified Animas-La Plata Project

The original Animas-La Plata Project's major features include two off-stream dams and reservoirs (Ridges Basin and Southern Ute Dams and Reservoirs); two major pumping plants (Durango and Ridges Basin Pumping Plants); three major water conveyance systems (Dry Side and Southern Ute Inlet Canals and Ridges Basin Inlet Conduit); and two diversion dams on the La Plata River (La Plata and Southern Ute Diversion Dams). It was described in a 1979 Definite Plan Report, in the 1980 Final Environmental Statement (INT FES 80-18) (1980 FES), and in the 1996 Final Supplement to the Final Environmental Statement (FSFES).

In April 1996, Reclamation published its FSFES on the Project. The purpose of the FSFES was to provide additional information concerning environmental effects initially described in the 1980 FES. It offered new information relevant to environmental concerns and having a bearing on the proposed action or its impacts. The FSFES also incorporated revisions as a result of public input since publication of the Draft Supplement Final Environmental Statement published in 1992. Additional information describes changes in the Project's environmental effects since

1980 as a result of design refinements, new information, Indian water rights settlement, and additional compliance requirements. Reclamation undertook the FSFES to analyze new information and to determine if refined, additional, or new environmental mitigation measures are needed if the Project as proposed were constructed. The document also is intended to provide information for compliance with Project land certification requirements, the Clean Water Act (CWA), and Reclamation's Indian Trust Assets (ITAs) policies and procedures.

The FSFES contains a preferred alternative for the original Animas-La Plata Project that would store water pumped from the Animas River into Ridges Basin Reservoir and would store water diverted from the La Plata and Animas Rivers in Southern Ute Reservoir.

The total water supply developed by the Project would average 191,230 acre-feet annually for agricultural irrigation and M&I uses. About 111,130 acre-feet of Project water would be delivered to 17,590 acres of non-Indian land currently being irrigated and 48,310 acres of Indian and non-Indian land not presently being irrigated. An annual M&I supply of 40,000 acre-feet would be available to non-Indian communities in Colorado and New Mexico. An annual supply of 40,100 acre-feet of M&I water would be provided to the Southern Ute Indian Tribe, Ute Mountain Ute Tribe, and Navajo Nation.

Reclamation participated in surveys of endangered fish in the San Juan River from 1987 to 1989. In February 1990, Reclamation reinitiated formal consultation with the U.S. Fish and Wildlife Service (Service) under Section 7 of the Endangered Species Act (ESA) based upon new information about Colorado squawfish. The Service then issued a draft Biological Opinion that stated the Project is likely to jeopardize the continued existence of Colorado squawfish and that no reasonable and prudent alternatives (RPAs) were identified to offset jeopardy to the endangered fish. From June 1990 through March 1991, Reclamation consulted with Federal, State, Tribal, and private experts and agencies to develop an RPA that would offset jeopardy to the endangered fish and allow construction of the Project to begin.

The Biological Opinion issued by the Service on October 25, 1991, contained an RPA which would allow construction of several Project features (including Durango Pumping Plant, Ridges Basin Inlet Conduit, Ridges Basin Dam and Reservoir, and other features) and initial annual water depletions for the Project of 57,100 acre-feet. At the same time, an approximately 7-year research study of endangered fish in the San Juan River (7-year research study) would be conducted, and Navajo Dam would be operated to replicate the natural hydrograph of the San Juan River and provide flows needed for the research period. Subsequently, consultation was reinitiated to address such new information as designation of critical habitat for endangered fish and listing of the Southwestern Willow Flycatcher. That consultation concluded with a final Biological Opinion and an RPA on the endangered fish from the Service dated February 1996, allowing an initial average annual water depletion of 57,100 acre-feet. Other requirements of this RPA are generally similar to those of the previous RPA. The seven-year research studies have been completed and provide new information about the needs of the endangered fishes and critical habitat in the San Juan River. This information, along with new hydrology information on the San Juan River and updated information on the water needs of the Navajo Nation, should

be evaluated by the Service to determine if additional measures are necessary to avoid jeopardy to endangered fishes in the San Juan River, while accommodating additional depletion needed for water projects.

As it did with respect to the original Animas-La Plata Project in September 1979, Reclamation typically provides Congress with a definite plan report (planning report) prior to a project receiving Congressional authorization to initiate construction. Among other things, a planning report must document economic feasibility and financial viability. The September 1979 report has not been updated to address a modified Project as set forth in H.R. 3478 or possible alternatives.

As noted above, the modified Project proposed in H.R. 3478 is scaled down from the original Animas-La Plata Project and differs in a number of other respects. There are changes in the water allocation among users, differences in the amount and timing of diversions from the Animas River, different return flow assumptions with respect to the Ute Indian water, among other changes. It is important to assess adequately the feasibility, financial responsibilities, benefits and costs and environmental impacts of any changes. We believe that it is important to discuss with the Tribes, the signatories of the Settlement Agreement, Congress and the public at large a range of alternatives means to deliver water to the Tribes, including alternative dam sizes and locations, pumping capacities, and various configurations as well as non-structural alternatives and other tools that may be available to meet the Tribes' needs, so that potential trade-offs and opportunities can be understood by all.

Circumvention of Environmental Laws

The Administration believes that as written Section 3(c) of H.R. 3478 would circumvent critical environmental laws, including the Endangered Species Act, Clean Water Act, and National Environmental Policy Act. The Administration cannot support any Congressional finding that applicable environmental laws have been satisfied with respect to environmental and cultural resources for the three features of a modified Animas-La Plata Project described in H.R. 3478. Any waiver of these laws for a modified Animas-La Plata Project would be unwise. In the end, the Congress, the public, the Tribes and the Nation will be better served by compliance with the applicable environmental laws.

Reclamation anticipates that focused and further analysis under the National Environmental Policy Act would be necessary because there is still a need to analyze alternatives and the modified Animas-La Plata Project that may be authorized in H.R. 3478 is different than that configured in the 1996 Final Supplement to the Final Environmental Statement. In addition, further Endangered Species Act consultation would be needed to consider the results of the seven-year studies that have been completed recently and the effects to river hydrology resulting from a modified project and the competing interests of water projects needed for the Navajo Nation. Reclamation and the U.S. Fish and Wildlife Service are prepared to move expeditiously on this analysis and to complete any additional studies through Indian Self Determination Act agreements with the Ute Tribes.

Cost Sharing and Cost Indexing

H.R. 3478 would exempt the modified Animas-La Plata Project from the basic requirements of Reclamation laws that are designed to ensure economic feasibility and appropriate financing of Reclamation water projects. The Administration cannot support waiver of these requirements.

On August 15, 1985, the U.S. Congress in Public Law 99-88 appropriated $1 million for design and construction of the original Animas-La Plata Project. The use of those funds was contingent upon the completion by June 30, 1986, of a binding, Federal/non-Federal cost-sharing agreement satisfactory to the Secretary of the Interior. Consequently, in late 1985, the Project proponents and the States of Colorado and New Mexico entered into negotiations for a cost sharing agreement. The Federal and non-Federal entities signed the Cost Sharing Agreement on June 30, 1986, and the Settlement Agreement on December 10, 1986. A principal element of the Cost Sharing Agreement and the Indian water rights settlement agreement was dividing construction of the Project into two phases, Phases I and II, and associated cost-sharing obligations. The cost of constructing Phase I would be shared by Federal and non-Federal Project participants. Subsequently, Phase I was divided into Stage A and Stage B to accommodate the existing depletion limit of 57,100 acre-feet arising from endangered species concerns, while allowing for the possibility of additional water availability pending the outcome of the 7-year research study on endangered fish. Phase I, Stage A of the original Animas-La Plata Project was designed to have independent utility even if Phase B is never completed. It is not clear that the three facilities in H.R. 3478 would have any independent utility even if the balance of the original Animas-La Plata Project is never completed. Construction of Phase II would be the responsibility of non-Federal Project participants. In addition, the Settlement Act provided for the establishment of a Tribal Development Fund and other project arrangements. It also specifies that the Tribes, under provisions of Federal law, can lease or temporarily dispose of water to the extent permitted by State and Federal laws, interstate compacts, and international treaties.

Section 3(a)(3) of H.R. 3478 would limit the capital payment obligations for the San Juan Water Commission, Animas-La Plata Water Conservancy District and the State of Colorado for the nontribal municipal and industrial water supplies attributable to the three features included in the modified Project to $29 million. Section 4 (b) acknowledges that the uncommitted portion of the State of Colorado's cost sharing obligations provided in the Cost Sharing Agreement shall remain available to assist in the funding of other facilities and features of the original Animas-La Plata Project.

The proposed cap on the financial contribution of non-Indian beneficiaries is contrary to long-standing Reclamation law and policy that requires non-Indian M&I water users to pay or repay all costs allocated to serving them. For example, the 1986 cost-sharing agreement for the original Animas-La Plata Project required the non-Indian M&I water users and beneficiaries to adhere to Reclamation law and policy and pay all of their allocated costs. By contrast, H.R. 3478, would cap the obligations at about 10.8 percent of the estimated project costs, including funds provided on their behalf by the State of Colorado. Under such an arrangement, Federal taxpayers would bear a disproportionate financial burden.

H.R. 3478 would further increase the Federal government's cost-share by not allowing non-Federal adjustments for ordinary construction cost increases and inflation. Specifically, the bill does not include indexing language to adjust the repayment obligations from 1998 price levels plus or minus such amount, if any, as may be justified by reasons of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein.

Addressing Concerns of the Navajo Nation

The Navajo Nation's water rights in the San Juan Basin have not been quantified and the United States cannot allow those rights to be compromised through a process that could have the effect of distributing additional depletions from the original or a modified Animas-La Plata Project among non-Indian stakeholders at the expense of the Nation. Any legislation addressing water rights in the San Juan Basin must ensure that any depletions will not compromise the Navajo Nation's rights to waters of the San Juan River and its tributaries, nor its ability to secure water for the Navajo Indian Irrigation Project or for needed drinking water demands of the Navajo Nation.

H.R. 3478 raises additional concerns regarding the proposed transfer of the Department of the Interior's water rights in New Mexico under New Mexico Engineer Permit No. 2883. In particular, the legislation does not clearly provide that the proposed transfer shall not affect application of the Endangered Species Act and other federal law requirements for the use of this water and shall not detrimentally impact the Navajo Nation's unquantified rights to water in the San Juan River.

Ute Mountain Ute On-Farm Project

Subsection 4(a)(2) of H.R. 3478 provides that nothing in these amendments shall affect "the obligation of the Secretary of the Interior to deliver water from the Dolores Project and to complete the construction of the facilities located on the Ute Mountain Ute Reservation described in several appropriations Bills." As written, subsection 4(a)(2) could be construed to create an obligation for the Department to deliver water from the Dolores Project and to construct facilities for delivery of water on the Ute Mountain Ute Reservation.

The Administration does not support this effort to bootstrap an authorization for such on-farm project. The Department does not recognize an obligation to construct an on-farm project for the Ute Mountain Ute Tribe nor is there existing authorization for appropriations for such a project. This position was carefully presented in letters from John Duffy, Counselor to the Secretary, to Judy Knight-Frank, Chairperson of the Ute Mountain Ute Tribe, on May 19, 1994, February 21, 1995, and May 31, 1995.

Conclusion

The Administration strongly supports the objectives of providing wet water to Colorado Ute Indian Tribes and settling their water rights claims. While both bills attempt to accomplish these objectives, we cannot support either H.R. 745 or H.R. 3478 for the reasons noted above.

The Administration recognizes that Colorado Ute Indian Tribes' willingness to accept less water than would have been available under the 1988 Settlement Act is significant. The Administration has offered to Tribes an opportunity to enter into a good faith dialogue to identify the best mutually acceptable means to enable the Tribes to obtain wet water for the present and future. We
welcome these discussions with the Tribes on ways to effect wet water delivery and at the same time consider how possible solutions would affect the M&I water supplies of the region's communities and the protection of the area's natural resources. There are many voices seeking this end and numerous options and tools available to Congress and the Administration to achieve meaningful results. We want to engage the Tribes in that dialogue in hope of achieving a just and final resolution.

This concludes my remarks on H.R. 745 and H.R. 3478. I would be pleased to answer any questions you may have.

draft

Revised Animas-La Plata

A Report
To the San Juan Water Commission

(Based on a report prepared by
Dale Diamond for the Ute Mountain Ute Tribe)

Draft

Revised Animas La-Plata Project

Report Summary

This report is provided to the Commission for their information only. The report is based on a draft report prepared by Dale Diamond. Diamond is an engineer working for the Ute Mountain Ute Tribe under a § 638 Contract. His work has been the technical base used to develop the Revised ALP agreed to by the ALP proponent group. The Revised ALP is simply a modified Stage A Phase I of the Animas-La Plata Project as presented in the Final Supplement to the Final Environmental Statement by the United States Department of Interior, Bureau of Reclamation, April 1996. The ALP proponent group includes: the Ute Mountain Ute Tribe, Southern Ute Tribe, the Animas La Plata Conservancy District (all in Colorado), the La Plata Conservancy District, and the San Juan Water Commission (both in New Mexico).

This group announced the Revised ALP in July 1997 as a conceptual revision of the Animas-La Plata Water Development Project. The proposal is based on an allocation of the 57,100 acre feet per year depletion limit imposed by the U.S. Fish & Wildlife Service. The Service's opinions, from October 1991 and February 1996, conclude that amount of depletion is not likely to jeopardize the continued existence of the endangered Colorado Squawfish and Razorback Sucker. The water supply and depletion allocation of the Revised ALP is presented in Table 1.

The Revised ALP provides facilities for Animas River water diversion downstream of Durango near Gateway Park, pumping into Ridges Basin through an inlet conduit along Bodo Creek Draw and a 260,000-acre-foot-capacity reservoir. Stored water will be used through its release to the Animas River or by pumping directly from the reservoir. Project characteristics and estimated construction costs are presented in Table 2.

draft

Table 1

ALP Project Diversion and Depletion Alternatives
Revised ALP
Agreement of July 1997
Acre-feet per year (af/yr) average

(7/7/97)

Water User	Water Use	Depletion af/yr	Return Flow af/yr	Allocated Depletion af/yr
ALP Water Conservancy District	M&I	5,200	2,600	2,600
Colorado Non-Tribal Lands	IRR	6,540	1,310	5,230
Southern Ute Tribe	M&I	33,050	16,525	16,525
Ute Mountain Ute Tribe		33,050	16,525	16,525
Colorado Subtotal		77,840	36,960	40,880
San Juan Water Commission	M&I	20,800	10,400	10,400
New Mexico Non-Tribal Lands	IRR	975	195	780
Navajo Nation, Shiprock	IRR	4,680	2,340	2,340
New Mexico Subtotal		26,455	12,935	13,520
TOTAL		104,295	49,895	54,400
Ridges Basin Reservoir Evaporation				2,700
RPA Depletion and Grand Total				57,100

Table 2

ALP Project Diversion and Depletion Alternatives
Characteristics and Estimated Construction Cost of ALP Reconstruction Plan
(8/8/97)

General Dimensions		
Project Depletion in acre feet per year (af/yr)		57,100
Project Diversion or Water Supply (af/yr)		104,300
Capacity Ridges Basin Reservoir in acre feet (af)		260,000
Estimated Construction Cost		
Field Construction Cost		141,000,000
Construction Contingency		28,000,000
	Total Field Cost	$169,000,000
Engineering & Administration		51,000,000
	Total Construction Cost	**$220,000,000**
Cultural Resources Program		8,200,000
Recreation		13,900,000
Environmental Mitigation		19,900,000
	Total Capital Cost	**$262,000,000**

Revised Animas-La Plata Project

Function of the Animas-La Plata Project

The Revised ALP will capture the Animas River flood flow to provide a stable water supply year round for water users in Southwestern Colorado and Northwestern New Mexico. A small portion of the snowmelt floodwaters will be stored in an off-stream reservoir, Ridges Basin, outside of Durango, Colorado. This storage will provide water supplies to citizens during dry seasons and droughts. The stored water is made available by gravity release or by pumping directly from the reservoir.

Use of Project Water

ALP water beneficiaries include, within Colorado, the Southern Ute Tribe, the Ute Mountain Ute Tribe, and the Animas La Plata Conservancy District and, within New Mexico, the La Plata Conservancy District, the Navajo Nation (Shiprock), and the San Juan Water Commission.

The ALP Conservancy District will provide water to Durango and other water users in the area extending westerly to the La Plata River basin rural area. The two Colorado Ute Tribes are the senior Animas and La Plata River water right holders. Project realization is critical to resolve their outstanding water claims and to protect existing non-Indian water rights in these basins and on the San Juan River. Terms of the resolution are contained in the Final Settlement Agreement of 1986 and the Colorado Ute Indian Water Rights Settlement Act of 1988.

The San Juan Water Commission represents the Cities of Aztec, Bloomfield and Farmington, the San Juan County Rural Water Users Association, and San Juan County, New Mexico. These entities get their water from the San Juan drainage including the Animas River. The Navajo Nation receives water from the City of Farmington and by diversion in the Shiprock, New Mexico area, by the Navajo Tribal Utility Authority.

Additionally, the project provides indirect non-consumptive use. The reservoir will support recreational activities, boating, swimming, fishing, camping and picnicking. Low flow augmentation in late summer and in fall and winter drought periods will occur from releases for project purposes.

Extent of Project

Both the extent and the character of the ALP are proposed to change from the Definite Plan Report issued in September 1979. At that time the Bureau of Reclamation (Reclamation) described a project that provided 80,100 af/yr (diversion) of M&I water

supply and 118,000 af/yr of irrigation supply. The Revised ALP will provide approximately 96,800 af/yr of M&I water supply and 7,500 af/yr of irrigation supply. This change reflects the growing population's need for stable water supplies for M&I purposes in the San Juan Basin.

One significant change is that under the revised ALP, the depletion from the San Juan River and its tributaries will be reduced from 154,800 af/yr to 57,100 af/yr.

Limitations Imposed on the Project

The U.S. Fish & Wildlife Service Biologic Opinions concluded an initial ALP river depletion of 57,100 af/yr is a reasonable and prudent alternative (RPA) to the larger ALP project. This depletion limit was defined as Stage A Phase I of the ALP in the Final Supplement, Final Environmental Statement (FSFES) issued in April 1996. Navajo Dam operations were also modified, providing flows for fish research. When the research is competed and flow recommendations are released, Reclamation and the U.S. Fish and Wildlife Service will reinstate consultation under Section 7 of the Endangered Species Act to determine if additional ALP depletions are permissible.

Under the Revised ALP, river diversion is also limited to maintain dry season flows for protection of the downstream aquatic ecosystem and senior water right holders. Pumps may not be operated unless the established minimum flow required for these purposes is met or exceeded. This feature is incorporated in Reclamation's Animas-La Plata Study (ALPOS) model. This hydrological computer model was employed for ALP revision analysis.

Wetlands and wildlife habitat displaced by project facilities are committed to be replaced or mitigated within suitable purchased land and created conditions as required by federal law and described by Reclamation in the FSFES.

A principal force in limiting the project size and cost was the concern over cost expressed in Romer/Schoettler meetings, the press and to the ALP Proponents. The concerns expressed regarding water quality issues also significantly affected the decision to limit irrigation, thereby reducing the water quality influence of selenium.

Revised ALP, Diversion and Depletion

The proposed Revised ALP differs from Reclamation's Stage A Phase I, in the 57,100 af/yr allocation and the river diversion or water supply benefit. The depletion allocation is presented in Table 3 with comparable Reclamation figures.

The increased diversions in the Revised ALP over Reclamation's Stage A Phase I is due to an increase in return flow.

Major Physical Elements of the Revised ALP

Major Revised ALP proposed physical elements are a pumping plant with an intake structure below Durango's Gateway Park, a reservoir inlet conduit and tunnel east of Bodo Creek and Country Road 211, and a 260,000-acre-foot-capacity Ridges Basin Reservoir.

Intake Pumping Plant

The intake pumping plant lifts Animas River water over a ridge to Ridges Basin Reservoir. The plant, Durango Pumping Plant, is west of the Animas across from and downstream of Gateway Park. This location is at a higher elevation than downstream alternative, thereby affording a lower pumping lift. The location is close to Bodo Creek, which delineates a draw with reasonable slopes for Ridges Basin inlet conduit construction.

Intake grates, 100 feet along the Animas riverbank, conduct flow through fish screens and into a covered channel which leads to the pumping structure, sited 150 feet back. This reinforced concrete structure houses the pumps, electrical motor's pump control and servicing equipment. With a floor elevation 40 feet below river level, the structure interior provides 90 feet of vertical height for the installation and maintenance of 120 cubic feet per second (cfs) vertical spiral case turbine pumps. The exterior roof elevation is 30 feet above the existing ground level and 63 feet above the river level.

Table 3

Revised ALP Project Depletion Compared to USBR Stage A Phase I
Acre-feet per year (af/yr) average

Water User	Water Supply (Diversion) af/yr	Water Use	Return Flow af/yr	Revised ALP Depletion[1] af/yr	USBR Depletion Stage A Phase 1 af/yr
ALP Conservancy District					
Durango	2,500	M&I	1,250	1,250	1,250
Rural	2,700	M&I	1,350	1,350	3,350
Colorado Non-Tribal Lands	6,540	IRR	1,310	5,230	0
Colorado Ute Tribes					30,000
Southern Ute Tribes	33,050	M&I	16,525	16,525	
Ute Mountain Ute Tribe	33,050	M&I	16,525	16,525	
Colorado Subtotal	**77,840**		**36,960**	**40,880**	**34,600**
San Juan Water Commission	**20,800**	**M&I**	**10,400**	**10,400**	**16,400**
New Mexico Non-Tribal Lands	**375**	**IRR**	**195**	**180**	**140**
Navajo Nation, Shiprock	**4,680**	**M&I**	**2,340**	**2,340**	**3,660**
New Mexico Subtotal	**26,855**		**12,935**	**13,920**	**19,200**
TOTAL	**104,295**		**49,895**	**54,400**	**53,800**
Ridges Basin Reservoir Evaporation [2]				2,700	3,300
RPA Depletion				**57,100**	**57,100**

[1]Revised ALP consists of increased size physical facilities of Stage A, Phase I of the FSFES, April 1996, and an agreed allocation of water that complies with the reasonable and prudent alternative (RPA) depletion of 57,100 af/yr from the U.S. Fish and Wildlife Service Biological Opinion of February 1996.

[2]Ridges Basin Reservoir constructed for a capacity of 260,000-acre-feet in the Revised ALP. Initial operation at a reduced level to minimize pumping and evaporation. Sufficient capacity provided in the Animas intake pumping plant structure, the intake conduit and tunnel to accommodate additional depletion that may become available.

Excavation is planned to leave a maximum of natural terrain around the graded sump in which the plant will be erected so that from across the river a viewer would see only the portion of the structure that extends above the surrounding ground. Along side the plant in the same graded sump is a surge chamber to control pressure in the inlet conduit and to the east of the sump, the electrical switchyard serving the plant.

The plant design accommodates four large vertical spiral case pumps and seven smaller vertical turbine pumps. Only two of the four large units would be installed at this time. Reclamation's experience with the vertical spiral case pump design in handling silt-laden spring runoff flows is reported as highly favorable. Application of these units at this site along the Animas River enables the plant to obtain most project water supply form the peak river flow with a consequent reduction in pumping during the summer. The seven smaller pumps handle lower pumping rates, observing maintenance of dry season stream flows in the late summer, fall and winter.

Project operation with alternative plant sizes providing peak pumping rates of 180 cfs and 240 cfs were analyzed in the USBR hydrological model ALPOS. It was found that during a typical precipitation year, the peak pumping rate, with the 240 cfs plant, would be reduced by the end of May; by contrast, with the 180 cfs plant the peak pumping rate would not be reduced until mid-August. The 240 cfs size was selected for the Revised ALP. The higher rate of reservoir refill also enables the reservoir to regulate the water supply with less active storage. For the Revised ALP water supply of 104,300 af/yr use of the 240 cfs size pumping plant requires an active storage capacity of 66,000 acre feet. Application of active and inactive storage is discussed in the section below on Ridges Basin Dam.

Inlet Conduit and Tunnel

From the pumping plant the Bodo draw route to Ridges Basin extends 11,800 feet. The length includes 2,500 feet of tunnel which, at elevation 6,900 feet, cuts through the crest of the draw 80 feet beneath the ground surface. Reclamation has limited the maximum reservoir water surface safely below the crest of the draw and has placed the tunnel invert at the bottom of the active storage pool of the reservoir. At this level the tunnel can conduct stored water released by controlled gates back through the inlet conduit to a connection with the City of Durango water system. The tunnel also effects a reduction in pumping lift. Under the typical pumping condition, when the reservoir is at the 50 percent of active storage level, the reduction amounts to 5 percent of the energy required for an alternative without a tunnel along the same route.

Ridges Basin Dam

Ridges Basin Dam under the proponent agreement for the Revised ALP will be constructed to contain a reservoir of 260,000 af capacity. The inactive storage quantity of 145,000 af remained from the 1979 Definite Plan Report.

This large inactive storage quantity is compatible with:
- the elevation of the ridge at Bodo draw and the inlet conduit elevation
- the maintenance of a relatively constant recreation lake level

Less active capacity would:
- affect the means by which Durango could withdraw from the reservoir
- cause more seasonal variation in reservoir level

Recognizing that pumping to levels higher than the inlet conduit elevation requires more energy, ALP Proponents plan to initially operate the reservoir at the minimum level of inactive and active storage, which is 145,000 af plus 66,000 af, the level of 211,000 af. Relevant capacity and elevation figures are presented in Table 4, below.

Table 4

Ridges Basin Reservoir Capacity and Water Surface Elevation
Reservoir capacity in acre feet, elevation in feet above sea level
and maximum reservoir depth at dam for a Revised ALP

Reservoir Feature	Elevation feet	Max. depth feet	Capacity acre feet
Stream Bed	6,675	0	0
Top Inactive Storage	6,898	223	145,000
Top Active Storage	6,935	260	211,000
Total Storage	6,958	283	260,000

The dam crest elevation of 6,975 feet will allow for 9000 af of storm storage, selected by Reclamation as an alternative to a spillway, and 5 feet of freeboard. The height of the dam, streambed to crest, is 292 feet.

USBR design calls for a zoned earthfill dam with a crest width of 30 feet, an upstream slope of 3:1 (horizontal to vertical) and a benched downstream slope of 2:1 overall. A narrow impervious core is employed with an adjacent downstream gravel and sand vertical

drain. The core is constructed over a compacted foundation with a bentonite and cement cut off wall. A horizontal drain over the compacted fill of the foundation underlies the downstream earth shell to lead seepage from the vertical drain to the downstream toe of the dam.

The foundation under the upstream shell will be perforated with wick drains and preloaded as a first stage of construction. The wick drain design is intended to save foundation excavation. The outlet conduit is planned as a tunnel in the left (northerly) abutment.

Construction quantities included 2.4 million cubic yards of foundation excavation and 10.4 million cubic yards of zoned fill. Outlet works for emergency drawndown, release of storm storage and release to downstream users discharges into Basin Creek which joins the Animas River 6.5 miles downstream from the inlet pumping plant at Gateway Park.

Relocation of three gas pipelines, an electrical transmission line and County Road 211 and the construction of access roads is scheduled to precede dam foundation construction.

Material sources, borrow areas, haul roads and land acquisition for the Revised ALP are as described for the dam and reservoir for Stage A Phase I, FSFES, April 1996.

Operating and Service Facilities

Permanent operating facilities provided with project funds include a combination maintenance office and shop building with equipment storage yard, located near Ridges Basin Reservoir. Erected early in the construction schedule, it will serve as offices for the Resident Engineer and the inspection staff, the materials testing laboratory and inspection vehicles and equipment. A conference room for the construction committee meetings and for Resident Engineer-Contractor meetings would be located here.

Once construction nears completion, the maintenance building will be fitted with the furnishings, office equipment, shop and garage tools, and communication equipment required by the operating and maintenance staff. Motorized road and drainage maintenance equipment will be housed, serviced and dispatched from this location.

Temporary construction service facilities consisting of rental trailers will be supplied for use until the maintenance building is completed.

The pumping plant will contain sufficient telemetry, reporting and recording equipment to schedule operation and plant equipment maintenance according to plant function. The Animas River Intake (Durango) pumping plant operation is determined by the reservoir level and the time of the year river flow.

Cultural Resources

Archeological sites are likely to be disturbed by project construction and operation and Reclamation is committed to a preservation program. The program involves data recovery, analysis, technical publication and providing for storage and curator facilities for permanent maintenance of the artifacts collected and related information. An agreement among the State Historic Preservation Officers of Colorado and New Mexico and the Advisory Council of Historic Preservation provided that a mitigation program will be developed as the project progresses subject to the conditions cited in the Programmatic Memorandum of Agreement. The program would attempt to:

1. preserve in place archeological sites,
2. avoid Native American grave sites,
3. provide the opportunity for the Tribes and the public to actively participate,
4. repatriate materials encountered that are protected by the Native American Graves Protection and Repatriation Act.

Congressional authorization in 1980 increased the former 1% limit under the National Historic Preservation Act of 1974 to 4% of the project cost authorized to be spent by Reclamation without reimbursement. For the cost estimates of the report, 3.4% of the estimated construction cost is projected.

Recreation Facilities

A description of recreational facilities is contained in FSFES of April 1996. It included extensive boating facilities, day use facilities and dry campsites. An additional analysis and projected use study may be advisable to aid in setting the parameters for a specific design. For a facility close to a population of 150,000, an expected high rate of use may deem permanent high quality facilities as economic to reduce maintenance cost and the fees that need to be charged to cover operation. The extent of facilities may vary from the 1996 description. USBR presented a 1993 facility cost of $13.5 million which was 2.6% of the Phase I estimate project cost. For the Reduced ALP the recreation facility estimate amounts to 5% of the total capital cost.

Mitigation Facilities and Programs

Mitigation measures for which project funding is provided are described in FSFES of April 1996 and summarized in Table 5.

USBR Phase I estimates are used for the cost of mitigation facilities and programs. From the USBR detail for wetlands, the offset for loss of wetlands along existing La Plata basin irrigation canals was deducted since the Revised ALP project does not involve irrigation distribution.

Table 5

ALP Project Mitigation Measures by Classification

Classification	Measures
Aquatic, Trout Fishery Maintenance	Bypass flows Entrainment and escapement Fish stocking Monitoring
Ridges Basin Wetland Replacement	Lower Basin Creek wetland creation Upper Basin wetland creation
Wildlife Habitat Replacement	
Land acquisition:	CO Land Board Trust Additional elk habitat
Carbon Mountain, eagle nesting:	Buffer zone, Construction restrictions
River Recreation	Improve public access Suspend pumping on designated days
Water Quality Protection	Monitoring, assessment

Estimated Construction Cost Summary of Revised ALP

Estimated construction costs are based on USBR preliminary designs presented in the Definite Plan Report, Appendix A, September 1979, the 1993 ALP Construction Cost Estimate, selected 1993 dam drawings and selected 1995 pumping plant drawings. Modifications in facility sizes presented in this report were estimated based on quantity takeoffs for structures proportionally similar to the USBR designs. Conduit and roadway lengths were measured on topographical maps, at 1:1200 scale with Ridges Basin, otherwise at 1:24000 scale.

The estimated construction cost for the Revised ALP is presented in Table 6. Unit prices based on earlier years have been updated to April 1996 using the USBR Construction Cost Index weighted for earth dams and pumping plants. A construction contingency amount of 20%, considered appropriate for preliminary design level, is listed separately. Reclamation estimates have included this percentage within the itemized costs rather than listing it separately. The total field cost includes the 20%. To the total field cost 30% is added based on the following estimate of work remaining to be carried out.

Investigation, geological, materials, surveys	3%

Designs and specifications	8
Construction inspection	12
Proponent administration, legal, environmental compliance	4
Total	**30%**

Interest during construction is not included in Table 6. For project funds made available during the progress of construction no interest expense, no interest is incurred. Construction financing will be necessary for funds not available until completion. Assuming financing at 6.5% and a construction duration of four years, interest during construction will approximate 18% of the borrowed amount. Before undertaking construction, the Proponents should also have on hand a reserve fund to meet the financing expenses and the first year operating expenses.

Table 6

ALP Project Diversion and Depletion Alternative
Construction Cost Estimate for RLP Reconciliation Plan
(Revised from USBR Data of Oct. 1993 & July 1995 and Indexed to April 1996)

General Dimensions		
Project Depletion in acre feet per year (af/yr)		57,100
Project Diversion af/yr		104,300
Pumping into Ridges Basin af/yr		80,500
Capacity Ridges Basin Reservoir in acre feet		260,000
Estimated Cost in Millions of Dollars		
Intake Pumping Plant		
Intake Screens & Works		3.6
Pumping Plant		32.1
Land Acquisition		2.2
	Total Intake Pumping Plant	**37.9**
Inlet Conduit		
Pipeline		5.5
Tunnel		4.1
Outlet Works		1.7
Land Acquisition		0.1
	Total Inlet Conduit	**11.4**

Ridges Basin Dam & Reservoir		
Dam Structure		65.5
Outlet Works		6.0
Land Acquisition		4.7
Relocation Pipelines		10.2
Roads, Clearing		1.5
Initial Fill Reservoir		3.7
	Total Ridges Basin Dam & Reservoir	**91.6**
Subtotal Field Costs April 1996		**140.9**
Construction Contingency (20%)		28.2
	TOTAL FIELD COST	**169.1**
Engineering Design, Inspection and Administrative, Legal Costs (30%)		50.8
	TOTAL CONSTRUCTION COST	**219.8**
Additional and Environmental Costs		
Cultural Resources Program		8.2
Recreation Facilities		7.5
Mitigation Facilities and Programs		11.0
	Total Additional Costs	26.7
TOTAL CAPITAL COST (MILLION $)		**190.9**

Operating Cost

Operating cost in this report includes operating and maintenance personnel, equipment and repair cost and electrical power for pumping. Electric rate applied is $3.83 per month per kilowatt (kW) capacity (maximum demand during a six month period) and 8.9 mills ($0.0089) per kilowatt-hour (kWh) for energy. This is the current Colorado River Storage Project rate that would be paid for power delivered to the pumping plant site including transmission and switchyard facilities.

Personnel include a supervisor, records clerk, three pumping plant operators and four maintenance workers for the plant, dam, reservoir and recreation areas. Recreation area fee collectors, boat ramp and patrol personnel are assumed to be contracted separately and covered by the fees collected.

Annual payments are made to a fund for pumping and electrical equipment repair and

dam maintenance expense that is not incurred at predictable intervals. Operating costs for Revised ALP are summarized in Table 7 below.

Table 7

Summary of Annual Operating Costs
Power Cost, Personnel, Maintenance and Repair Cost
ALP Reconciliation Plan

Item	Quantity	Cost
Intake Pumping Plant		
Spring, Summer Demand	17,500kW	$ 402,000
Fall, Winter Demand	9,000kW	207,000
Energy for 80,500 af/yr	62,600MWh	557,000
Annual Power Cost		**1,166,000**
Personnel	9 persons	290,000
Equipment Operation	6 motorized	40,000
Repairs, Outside Services		
Dam and Reservoir		40,000
Pumps and Electrical		30,000
Annual Personnel, Maintenance, Repair Cost		**400,000**
Total Operating Cost		**$1,566,000**
Project Operating Cost for 104,300 af/yr Water Supply		$15.00/af

The costs summarized in Table 7 are for operating the basic project or providing a reliable water supply through regulation of the Animas River with Ridges Basin Reservoir.

STATEMENT OF LORI POTTER

Attorney
Kelly/Haglund/Garnsey & Kahn LLC
Denver, Colorado

H.R. 3478 AND H.R. 745

BEFORE THE SUBCOMMITTEE ON WATER AND POWER,
COMMITTEE ON RESOURCES

United States House of Representatives

JULY 28, 1998

STATEMENT OF LORI POTTER

ON H.R. 3478 AND H.R. 745

BEFORE THE SUBCOMMITTEE ON WATER AND POWER
COMMITTEE ON RESOURCES

JULY 28, 1998

Introduction

My name is Lori Potter. Thank you for the opportunity to testify on H.R. 3478 and H.R. 745. I am from Denver, Colorado. I am a lawyer and for the last ten years have represented national and local environmental and taxpayer groups seeking alternatives to the proposed Animas-La Plata project (ALP).

On behalf of all of those groups and their members, I want to thank Congressmen DeFazio and Petri for introducing H.R. 745, a bipartisan bill with 28 cosponsors, and for championing this issue in Congress for many years.

Animas-La Plata is widely known as "Jurassic Pork" due to its tremendous size and cost, its dismal benefit cost ratio, its fiscal and economic unfeasibility and its environmental impacts, all of which belong to an era of federal dam building which is long past. Animas-La Plata has consistently failed to meet minimum requirements for federal Reclamation projects, and Congress has consistently withheld funding for it. Both of the bills this Committee is considering recognize that the original Animas-La Plata has collapsed under its own weight. H.R. 745 alone takes the necessary step of deauthorizing the project Congress originally authorized in 1968.

My clients seek a taxpayer-friendly, environmentally-friendly alternative, to be sure. But our vision does not stop there. We also seek a solution that resolves the Indian water right issues that make this such a difficult problem. In discussions with all of the involved parties last year, we presented a list of 31 full or partial alternatives. Following that, we prepared a report that examines two alternatives - the use of existing federal facilities and the acquisition of existing water rights from willing sellers - in greater depth. In short, affected citizens are not just saying "no;" they are committed to being part of the solution here.

Therefore, we support H.R. 745, a bill designed to do two things: to direct the Secretary to negotiate an alternative solution with the affected Tribes, and to make it clear that the old Animas-La Plata project has been abandoned as unfeasible. The local, regional, and national organizations which have announced their support of this approach, and their opposition to ALP-Lite, include Taxpayers for Common Sense, National Wildlife Federation, Friends of the Earth, Earthjustice Legal Defense Fund (formerly Sierra Club Legal Defense

Fund), Environmental Defense Fund, Trout Unlimited, American Rivers, and many more. Copies of their letters to Congress and to the Administration are attached to my written statement.

My clients have opposed Animas-La Plata for many reasons relating to its impacts on the environment and the taxpayer, and now oppose ALP-Lite and H.R. 3478 because they simply perpetuate those same problems, as I will discuss later. I want to be very clear, however, that we do not oppose the settlement of Ute water claims. This is a very important distinction. Serious analysis of fiscally and environmentally responsible alternatives to meet Indian needs is long overdue.

Support for H.R. 745 as a Responsible Solution to the Current Impasse

One thing that I believe all of the involved parties can agree on is that none of us are satisfied with the status quo. It would be a very good thing for all of us to resolve the Indian issues. H.R. 745 starts by articulating what I think should be obvious to all: that the old Animas-La Plata is not the way to do that. H.R. 745 would deauthorize the old project for two basic reasons: One, it is environmentally and economically unfeasible. Congress has never funded its construction. It can never be built as originally proposed. It is time to acknowledge that. Two, in order to talk in good faith about compromise alternatives, it has to be completely clear that the full project is not a card under the table, waiting to be played someday. H.R. 3478 purports to reduce the size of the project but calls for a dam 92% the size of the original, and holds open the possibility of building the entire project. H.R. 745, on the other hand, accomplishes the twin goals of deauthorizing the original Animas-La Plata and examining reasonable alternatives.

H.R. 745 directs the Secretary to negotiate an alternative that is consistent with all federal laws. All parties should endorse nothing less than a resolution that complies with the law. That is, after all, what all of the project sponsors - federal, state, and local - committed to do in the 1986 Settlement Agreement.

In our view, an alternative consistent with all federal laws would resolve the Indian water rights issue and at the same time protect the traditional agricultural water users on the Animas River in New Mexico, such as Mr. Utton, who is testifying here today. The massive diversions and river depletions that Animas-La Plata and Animas-La Plata Lite cause threaten long-time, small-scale irrigators. A lawful alternative would ensure that the $11 million investment by the City of Farmington, New Mexico in an Animas River trail system, museum, and visitor gateway will stand as a monument to a living river, not to a river dried-up or depleted by ALP. A lawful alternative would also resolve the Indian water rights issue and at the same time not injure the river-based economy and water uses of Southern Colorado. The free-flowing Animas River is the heart of the City of Durango and a vibrant part of the outdoor-sports economy and the quality of life there.

In our view, there are alternatives that meet these goals: settling the Indian water rights matters while protecting both the river-based users and the downstream uses. Use of existing federal facilities is one. There are many such reservoirs -- Dolores, Navajo, Vallecito, Florida, to name just four -- which already deliver water to the tribes. Acquisition of existing water rights from willing sellers is another alternative. Our study of free market transactions and water rights listed for sale revealed that substantial quantities of water are available for purchase within and upstream of the reservations. There may well be more; as I stated earlier, we identified many additional possibilities. The virtue of H.R. 745 is that it provides a way to address all of these legitimate interests, and therefore, we hope, to bring closure to this matter.

History of Animas-La Plata and Grounds for Opposition to H.R. 3478

As you know, ALP was authorized by Congress 30 years ago, but final approval has never been given and construction has never begun. There are three important reasons why Congress has not funded ALP, and why it has remained on the drawing board for so long. One, the project has unacceptable environmental impacts. Two, it is economically and financially unfeasible; it depends totally upon a huge subsidy by the federal taxpayer benefiting local municipal water users who, under federal law and policy, should be paying for their own water development. Three, it is based on bad information and admitted gaps in data. These are the reasons that the environmental and taxpayer communities oppose Animas-La Plata and Animas-La Plata Lite, and consequently why we oppose H.R. 3478.

Environmental Impacts

Animas-La Plata has serious environmental problems. It diverts the flow of one of the last free-flowing rivers in the American west, the Animas River, and pumps the water 500 vertical feet up into Ridges Basin, where a storage reservoir would be built. This causes unacceptable environmental impacts on the river, downstream, and in the basin.

The Animas River is the heart of the City of Durango. It supports a thriving local rafting industry, and I attach to my statement a letter from the Durango rafting companies telling how building Animas-La Plata Lite will ruin their businesses. The Animas River is notable as a place where not only Olympic kayakers but families with small children can take a thrilling river trip. In the stretch of the river where the project's pumps would divert river flows, the Animas is a state-designated Gold Medal Trout Stream.

Farther downstream, the Animas feeds the San Juan River, a candidate for Wild and Scenic River designation and a magnet for water sports enthusiasts. Depletion of Animas River flows will likewise deplete flows in the San Juan, and has been determined to cause jeopardy to two species of endangered fish found there. Return flows from ALP irrigation uses would cause nearly continuous violations of New Mexico state water quality standards.

Ridges Basin, where Animas-La Plata project water would be stored, is critical winter habitat for one of Colorado's largest elk herds, and thus a place used by hunters. It is full of Indian burial sites and other archeological ruins protected by the National Historic Preservation Act but which would be inundated by the Animas-La Plata reservoir. It is home to bald eagles and other wildlife. Building Ridges Basin dam would also flood many acres of wetlands which are rare in the western United States.

Violations of Federal Law Affecting Animas-La Plata

The Bureau of Reclamation (Bureau) has a long and sorry history of whitewashing these environmental impacts, and an equally long history of being caught breaking the law. In 1991, citizen groups took the first of a series of actions against ALP. In each case, either a Court found or the Bureau admitted on its own that ALP was in violation of the law. First, we notified the Bureau that it was out of compliance with the Endangered Species Act. It was, as it and the Fish and Wildlife Service admitted. Then we found that the Environmental Impact Statement was completely inadequate and out-of-date, but citizens had to bring a lawsuit against the Bureau to get the agency to admit its violations and prepare a new study. We found that the Bureau claimed to be exempt from the Clean Water Act, had no permits, and did not qualify for an exemption, so it went back to square one on that, too. On a trip to Ridges Basin, we found the Bureau illegally dumping drilling fluid in Basin Creek, for which EPA cited it in violation of the Clean Water Act. The Bureau then began a program of excavating the Indian burial sites in Ridges Basin without proper authority. A federal court enjoined that, and a court-entered consent decree against excavation is still in effect today.

We notified the Bureau that its economic analysis of the project violated Departmental law and regulation by overstating the benefits and underestimating the costs and petitioned for an adequate study to be done. The Bureau did a new analysis which admitted that the project returned just 36 cents on each dollar. The Bureau withheld information about project impacts from inquiring citizens, and so another suit was filed, and again a Court found the Bureau in violation of the law. The Bureau produced another EIS which the EPA ruled unsatisfactory, and which still has not been approved. The Bureau violated public comment requirements on its programmatic agreement for archeological resources, which it offered only after citizens once again complained. On and on these violations went. Currently, a citizen lawsuit pending against the Bureau challenges it with violating the Reclamation Reform Act by failing to involve the public in amending the project repayment contracts. The Bureau has admitted in the case that once again its initial position of not offering public participation opportunities was unjustified.

Sufficiency Language

H.R. 3478 seeks to deal with environmental impacts not by addressing these many issues but with sufficiency language, calling the Bureau's efforts to date "adequate." With a record such as the Bureau has on Animas-La Plata, it should be no wonder why

sufficiency language is particularly unacceptable. To put it bluntly, none of the Bureau's Animas-La Plata compliance efforts has ever been adequate. H.R. 3478 would sweep the problems under the rug, not solve them.

Project supporters point to the documents previously prepared as supplying "adequate" compliance. The fact is, there has never been a satisfactory Environmental Impact Statement on Animas-La Plata. Whether in litigation or under scrutiny by sister agencies and the public, no one has found, and the Bureau has not contended, that any of its attempts at NEPA compliance are adequate. The EPA is the agency with legal authority over the NEPA process, and it has objected to the Bureau's attempts at producing a legally satisfactory EIS.

The fact is also that there has never been compliance with the Clean Water Act for Animas-La Plata. The project has never received a 404 permit or 402 water quality certification. The Bureau claims a little-known and rarely used exemption from those laws under section 404(r) of the Act for fully federal projects with a satisfactory EIS and a full 404(b)(1) analysis. This project is not fully federal, nor does it have a satisfactory EIS, nor is its 404(b) analysis adequate. The Corps of Engineers customarily implements the 404 permit process, and that agency is rarely if ever accused of blocking water development projects. Yet it has stated that there is doubt that any phase of Animas-La Plata, including ALP Lite, meets the 404(b) guidelines. The Corps' letter is attached to my written statement.

The final fact is, as to the Endangered Species Act, that the project has been illegally segmented and, to use the exact words of the Corps of Engineers from its letter, "proceeding with alternative 4a [i.e, ALP Lite] also seems to violate a tenet of Section 7 compliance against committing irreversible or irretrievable resources by an agency. This prevents any agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives which would avoid violating 7(a)(2) of the Endangered Species Act." To put it in other words, the ALP Lite plan to build a dam 92% as large as it would be for the full ALP project violates the ESA.

In 1986, all of the project participants, including the United States, signed two agreements which committed them to compliance with NEPA, Bureau procedures and law generally. Today, through H.R. 3478, the proponents are asking Congress, the Administration and the American people to disregard the law, to pretend it doesn't exist, and to overlook the violations which have already been identified.

The facts do not support sufficiency language, or adequacy language, or any other type of exemption or rider, however it is named. The facts support the conclusion that Animas-La Plata and Animas-La Plata Lite have fundamentally unacceptable environmental impacts.

Improper Federal Subsidies of Local Water Development

The economic history of Animas-La Plata is as wretched as the environmental history just described. In 1981, former Bureau water project planner and Senate Energy Committee staff director Dan Dreyfus candidly admitted that Animas-La Plata survived only because the Bureau "cooked the books" to make the economic figures look less bad than they were. The Inspector General of the Department of Interior audited the project in 1994, and concluded that it was neither economically feasible (*i.e.*, the costs exceeded the benefits) nor financially feasible (*i.e.*, beyond the repayment capabilities of the participants). After receiving a citizen petition to do so, the Bureau of Reclamation updated its own economic analysis of the project in 1995, and found that none of the repayment contracts covered project costs and that the benefit cost ratio was just 36 cents on each tax dollar invested.

Another cost which is hidden by H.R. 3478 is the cost of pumping Animas-La Plata project water from the Animas River 500 vertical feet up into Ridges Basin, and then pumping it again if the water is ever to be delivered to any customer. The market value of the power reserved for the ALP project is $6 million per year. These costs, too, are subsidized by the federal government, as the power will be supplied by federal hydropower facilities which presently are able to sell the power on the market and realize a benefit to the American taxpayer. The costs of operating ALP are so great that the project's costs would exceed its benefits even if it could be built for free, as the Bureau's 1995 economic analysis reveals.

H.R. 3478 not only perpetuates these problems but, in general, exacerbates them. S. 1771 puts a cap on state and local contributions. H.R. 3478 reduces, not only in absolute terms but as a percentage of total project costs, the state and local cost shares. H.R. 3478 proceeds without the benefit of an independent cost estimate for the project, a feasibility study, or any other of the standard tools for evaluating whether water project expenditures are reasonable. Whereas before Animas-La Plata was out of the reach of the state and local entities sponsoring the project because its costs were truly exorbitant, now Animas-La Plata Lite simply makes the vast majority of those costs nonreimbursable to the federal government. In other words, this white elephant project has become the burden of the federal taxpayer.

Animas-La Plata Lite is the Product of a Flawed Process

H.R. 3478 asks the American taxpayer to assume nearly the entire burden of building a huge, multi-million dollar water project. Ordinarily, before Congress will even consider such a proposal, it is preceded by the kind of thinking and planning dictated by sound water policy, reclamation law, and good common sense. For Animas-La Plata Lite, all we have is a 2 ½ page project description by the local project sponsors and an unverified, unsupported and highly optimistic price estimate also submitted by the sponsors. Has the Bureau independently calculated the cost? *No.* Has the Bureau calculated the benefit-cost ratio of the project? *No.* Has the Bureau determined whether the project is feasible from an economic and financial viewpoint? *No.* Has the Bureau fairly calculated the repayment obligations of the participating entities in accordance with applicable law and guidance?

No. Has the Bureau reported to Congress and the American people on the answers to any of these questions. *No.* ALP Lite has not received even the barest scrutiny, and would not withstand it if it did.

Conclusion

We ask the Committee to vote no on H.R. 3478. The environmental and economic problems of Animas-La Plata, and of its first phase, "Animas-La Plata Lite," are many. H.R. 3478 would perpetuate, not solve, those problems. It would sweep the Bureau of Reclamation's many violations of environmental and reclamation laws under the rug with sufficiency language. It would foist off on the federal taxpayer a huge, uncapped financial burden where the economic returns to the country's investment are only pennies to the dollar. It would dignify a process which excluded the public and denied full and accurate information to this Congress and the American people.

The Animas-La Plata Lite proposal and H.R. 3478 came about only after Animas-La Plata languished, unfunded and unbuilt, for 30 years. Animas-La Plata Lite is a kind of tacit admission of what we have known for a long time: that the full project is a dinosaur which belongs to another age, and which should not show up on the Bureau's screen in the 21st century. H.R. 3478 does not deauthorize the original project as it should; instead, it expressly keeps the old project alive. H.R. 3478 sizes the so-called "reduced" or "Lite" dam and reservoir at fully 92% of their full-project size. Project participants make no secret of their plans to revive the full project -- but not to pay for it themselves -- in the future. We ask the Committee to deauthorize the original project.

There is another course. There are alternatives to a big reservoir 500 feet up on a mesa evaporating, with no pipelines to anywhere. Commissioner Martinez recognized this in the official biography he gave to the House of Representatives when he testified on the Energy and Water Appropriations bill on March 25, 1998. Here is what was said, *"Commissioner Martinez has overseen a marked change in the Bureau of Reclamation from a large water project construction agency to a water conservation agency which seeks non-structural solutions to America's Western water needs. He has encouraged the Bureau to move into new areas such as water recycling and exploration of water transfers."*

This is precisely what the citizens' groups who oppose H.R. 3478 have suggested to the Bureau. There are non-structural alternatives to Animas-La Plata. There are existing Bureau reservoirs on rivers which flow through the reservations or have delivery facilities to the reservations. For example, the Dolores Project already delivers water to the Ute Mountain Ute reservation, and the Pine and Florida projects store water upstream for the Southern Ute reservation. There are water rights to be acquired on the open market, through willing seller transactions. There is water to be conserved, recycled, salvaged, and marketed. We need the Bureau to have the same modern-day perspective on Animas-La Plata as it apparently does on other water issues in the west. We ask the Committee to tell the Bureau to do its job and look seriously at alternatives.

American Rivers * American Whitewater Affiliation
Animas River Agricultural Water Users Association * Cedar Hill Clean Water Coalition * Earthjustice Legal Defense Fund * Environmental Defense Fund * Forest Guardians Friends of the Earth * Four Corners Action Coalition * National Audubon Society National Wildlife Federation * Native Environmental Justice Advocacy Fund Rio Grand Restoration * San Juan Citizens Alliance * Sierra Club Southern Utah Wilderness Alliance * Southern Ute Grassroots Organization Taxpayers for the Animas River * Taxpayers for Common Sense The Wilderness Society * Trout Unlimited * U.S. Public Interest Research Group Utah Rivers Council * Western Colorado Congress

June 22, 1998

Dear Representative:

We are writing to urge you to oppose H.R. 3478, the Colorado Ute Settlement Act Amendments of 1998. H.R. 3478 would authorize a purportedly downsized "alternative" to the Bureau of Reclamation's Animas-La Plata (ALP) water project, a $754 million boondoggle in southwestern Colorado. Popularly known as "ALP Lite", this proposal continues the fiscal, environmental and legal problems that stalled the original project and creates several major new ones. Consider the following:

• **H.R. 3478 does not deauthorize the original ALP.** ALP Lite is basically Phase I of the old ALP. Laws authorizing construction of the full project would remain in effect, and project supporters make no secret of their intention to construct as much as the $754 million project as possible. In fact, the reservoir planned for ALP Lite would be ridiculously oversized and largely useless without construction of the full project.

• **H.R. 3478 places an even greater and more unfair burden on federal taxpayers.** H.R. 3478 introduces a huge new subsidy for non-Indian municipal water users, capping their repayment obligation, estimated at $65 to $103.1 million under the original ALP, at $13 million regardless of actual project costs. In addition, H.R. 3478 places NO LIMITS on the amount of federal money that may be spent to complete the project.

• **H.R. 3478 violates federal Reclamation financing law and policy.** Under Reclamation law and policy, municipalities are responsible for fully repaying the costs of federally developed municipal and industrial water. H.R. 3478 shifts large amounts of these costs away from project beneficiaries to federal taxpayers and/or power users for speculative water development. This giveaway flies in the face of long-standing federal water project repayment policy.

• **H.R. 3478 exempts ALP Lite from requirements of the Clean Water Act, the Endangered Species Act, and the National Environmental Policy Act.** The Animas-La Plata project has been halted for years by its failure to comply with federal environmental laws. H.R. 3478 attempts to resolve ALP's legal problems not by reducing

environmental impacts, but by exempting ALP Lite from applicable laws. This is especially egregious given that all project participants pledged to comply with all laws in the 1986 Settlement Agreement, and the Environmental Protection Agency has recently found that the Bureau's attempt at NEPA compliance is "unsatisfactory."

• **ALP Lite still harms the environment.** The project would deplete one of the West's last remaining free-flowing rivers and adversely impact a Gold Medal trout fishery, an Olympic whitewater training site, and endangered fish species native to the region. In addition, the reservoir for ALP Lite would inundate Colorado's Bodo Wildlife area, wintering habitat for the state's second largest elk herd. Finally, the project would consume enormous amounts of federally generated hydroelectric power in order to pump water more than 500 feet uphill. Under H.R. 3478, further expansion of the project could result in all of the environmental impacts of the original ALP.

• **H.R. 3478 would not deliver a drop of water to either Ute Reservation.** In fact, it reduces the Ute Tribes' water allocation by one third while providing new, taxpayer subsidized benefits to non-Indian water users. Less costly and less environmentally damaging alternatives to meet federal obligations to the Tribes have been identified. In particular, the Citizen's Coalition and the Southern Ute Grassroots Organization have developed an alternative that would provide the full amount of water in the Settlement Agreement and allow the Tribes to develop it where it is needed.

• **ALP Lite is not a feasible project.** The Inspector General found that the original ALP was neither economically nor financially feasible, and the Bureau admitted that the project would return just 36 cents for each taxpayer dollar spent. There is no comparable analysis of the economic, financial, and environmental feasibility of ALP Lite, despite the fact that these fundamental issues are the primary reason why Congress has consistently refused to fund the original project. H.R. 3478 attempts to preempt feasibility questions by introducing new subsidies for project beneficiaries and waiving standard procedural requirements.

H.R. 3478 is not an "alternative" to ALP. It is a ploy -- a Trojan horse intended to override appropriate planning procedures and force a construction start not by honestly addressing ALP's economic, financial and environmental problems, but by waiving the project's performance requirements and making federal taxpayers foot the bill. Again, on behalf of taxpayers and environmentalists, we strongly urge you to oppose H.R. 3478.

Sincerely,

Vawter Parker

Vawter Parker
President
Earthjustice Legal Defense Fund

Carl Pope

Carl Pope
Executive Director
Sierra Club

Brent Blackwelder
President
Friends of the Earth

Daniel P. Beard
Senior Vice President
National Audubon Society

Douglas Siglin
Vice President for Conservation
American Rivers

Steve Moyer
Vice President for Conservation Programs
Trout Unlimited

Sage D. Remington
Director
Native Environmental Justice Advocacy Fund

Ray C. Frost
Chair
Southern Ute Grassroots Organization

Mike Matz
Executive Director
Southern Utah Wilderness Alliance

Richard J. Bower
Executive Director
American Whitewater Affiliation

David R. Conrad
Water Resources Specialist
National Wildlife Federation

Jim Martin
Senior Attorney
Environmental Defense Fund

Anna Aurilio
Staff Scientist
U.S. Public Interest Research Group

Jill Lancelot
Legislative Director
Taxpayers for Common Sense

Susan Gunn
Director of Budget and Appropriations
The Wilderness Society

Janine Fitzgerald
President
San Juan Citizen's Alliance

Carl Weston
Colorado Vice President
Four Corners Action Coalition

Tom Perlic
Executive Director
Western Colorado Congress

Zach Frankel
Executive Director
Utah Rivers Council

Orien Utten
President
Animas River Agricultural Water Users Association

John Horning
Watershed Protection Program
Forest Guardians

Bill Claesgens
Cedar Hill Clean Water Coalition

Steve Harris
Rio Grande Restoration

Mike Black
Taxpayers for the Animas River

FLEXIBLE FLYERS – RIVERS WEST
PERFORMANCE VIDEO AND INSTRUCTION
FOUR CORNERS RIVER SPORTS – WATERMELON ADVENTURES
SOUTHWEST WHITEWATER – MILD TO WILD
PEREGRINE RIVER OUTFITTERS – OUTLAW RIVER AND JEEP TOURS
REFLECTIONS RAFTING PHOTOGRAPHY

June 19, 1998

U.S. Senate
U.S. Capitol
Washington, D.C.

Dear Senator:

We write to urge you to vote against the S. 1771, the Colorado Ute Settlement Act Amendments of 1998. This legislation authorizes a supposedly "downsized" version of a Bureau of Reclamation's Animas La Plata (ALP) water project, known as "ALP-Lite".

We are the owners of commercial rafting companies or whitewater-related businesses in the Durango, Colorado area. We oppose additional funding for, and construction of, Animas La Plata in any form for at least three reasons:

- If the Animas La-Plata "Lite" project is built as currently planned, the resulting water depletion's in the Animas River will either ruin our businesses or, at the least, cut substantially into our already short season for running river-trips.

- The project would ruin the whitewater stretch of the Animas River in Durango. As a result, Durango may no longer be able to host two annual international boating events which add greatly to our tourism and to the town's splendid reputation as one of the nation's recreational boating capitals.

- The cement intake vanes and pumping plant to be constructed in the Animas River would be dangerous to our customers and unsightly to all.

In considering your vote for this project, we ask you to contrast the completely uneconomical nature of ALP, with the vibrant, booming tourism economy of southwestern Colorado. Please consider that this project will <u>not</u> deliver any water to the Indian reservations which are the supposed beneficiaries, but it <u>will</u> deplete up to half the flow of a beautiful, free-

flowing river. The Animas River was recently recognized as one of Colorado's top trout-fishing streams, winning Gold Medal status from the Colorado Division of Wildlife. Lastly, the Animas River is one of the most treasured assets of this community and is a central part of our livelihoods.

We ask you to oppose S.1771 and any further authorization of the Animas La Plata water project.

Yours truly,

Robin Fritch, Owner
Flexible Flyers

Joseph Goodwin, Owner
Rivers West

Kent Ford
Performance Video and Instruction, Inc.

Nancy Wiley, Owner
Four Corners River Sports

Betsy Richards
Watermelon Adventures

Bob Rusk
Southwest Whitewater

Alex Michel, Owner
Mild to Wild

Thomas C. Klema, Owner
Peregrine River Outfitters

Keith Harper
Outlaw River and Jeep Tours

William Boudreaux
Reflections Rafting Photography

February 13, 1998

The Honorable Bruce Babbitt
Secretary of the Interior
Department of Interior
1849 C Street NW
Washington, DC 20240

The Honorable Carol M. Browner
Administrator
U.S. Environmental Protection Agency
401 M Street SW
Washington, DC 20460

Kathleen A. McGinty
Chair
Council on Environmental Quality
Old Executive Office Building, Room 360
Washington, DC 20502

Dear Secretary Babbitt, Administrator Browner, and Ms. McGinty:

As leaders of the nation's largest environmental and conservation organizations, we are writing to urge you to oppose hasty legislation to authorize another version of the Animas-La Plata (ALP) water project in Colorado. Even project supporters have admitted that the original version of this project cannot be built, but they are nonetheless pressing in Congress for a new appropriation and authorization for something called "Animas-La Plata Lite." This "alternative," however, is essentially Phase I of the old project in a new package. We would like the opportunity to discuss this issue with you at your earliest convenience.

As you know, Animas-La Plata has been stalled for years as a result of its violations of federal environmental and project financing laws and its $754 million price tag, a price that increases every year. Animas-La Plata Lite has many of the same problems as the original version of ALP as well as several new ones. Most importantly, the project proponents have indicated a desire for sufficiency language in any authorizing legislation for ALP Lite. The environmental community will vigorously fight any attempt to waive federal environmental laws.

ALP Lite still will not deliver to Ute tribal lands any of the water required by the 1988 agreement settling the Ute tribes' water rights. Non-Indian water users in the region will receive taxpayer subsidized benefits from the project which are large and unprecedented. ALP Lite will still build a massive dam and reservoir and will divert a substantial portion of the Animas River, one of the last free-flowing rivers in the West. Dewatering the Animas River also will hurt its gold medal trout fishery and Olympic whitewater training area. The inundation of Ridges Basin near Durango will flood wetlands and vital elk winter habitat.

Although project proponents claim that Animas-La Plata Lite is only one third the size of the original project, the dam they propose to build is almost exactly the size of the original plan. Some subsidized irrigation water for non-Indian interests is seemingly cut out of Animas-La Plata Lite, yet many proponents admit they plan to add it back in the future. Finally, ALP Lite proponents are proposing that federal power revenues be diverted to subsidize the construction costs of the project for non-Indian interests. This is a whole new class of federal subsidy.

The Animas River Citizens Coalition (ARRC), an alliance of taxpayer, conservation, and grassroots groups, has released its own conceptual alternative to ALP. The Citizens Coalition's proposal would fully satisfy the entitlements of the Ute tribes by providing for the free market acquisition of land and water rights over a period of thirty years in the area of the reservations, as well as new water supply and storage from improved efficiency and expansion of existing facilities. The total cost of acquisition is estimated at $115 million. This approach has been used before, for example in the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988.

We urge you to consider our views in your current ALP alternatives analysis. The original Animas-La Plata project has been abandoned for its host of problems. An appropriate alternative will require us to get beyond the economic and environmental issues by which ALP--in all its forms--is plagued. ALP Lite cannot solve these problems; it presumes the use of sufficiency language to legislate them away at large and unjustifiable costs to the environment and taxpayers. We look forward to discussing these issues with you soon.

Sincerely,

Vawter Parker
President
Earthjustice Legal Defense Fund

Brent Blackwelder
President
Friends of the Earth

Rebecca R. Wodder
President
American Rivers

Rodger Schlickeisen
President
Defenders of Wildlife

Fred D. Krupp
Executive Director
Environmental Defense Fund

Paul Hansen
Executive Director
Izaak Walton League

Deb Callahan
President
League of Conservation Voters

Mark Van Putten
President and CEO
National Wildlife Federation

Gene Karpinski
Executive Director
U.S. Public Interest Research Group

Phil Clapp
Executive Director
National Environmental Trust

Carl Pope
Executive Director
Sierra Club

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO, CALIFORNIA 95814-2922

REPLY TO ATTENTION OF

REC'D OCT 3 1 1996

October 11, 1996

Regulatory Branch (199275144)

Mr. Dave Ruiter
Project Manager
Environmental Protection Agency, Region VIII
Attn: EPR-EP
999 18th Street, Suite 500
Denver, Colorado 80202-2466

Dear Mr. Ruiter:

This concerns the Final Supplement to the Final Environmental Impact Statement on the Animas-LaPlata Project (ALP) proposed by the Bureau of Reclamation (BOR). We understand that your agency has received an extension of time to comment on the document.

The Corps of Engineers, Sacramento District does not have a decision-making responsibility regarding the ALP because the BOR is evaluating this project in accordance with the Section 404(b)(1) guidelines (the guidelines) and seeking a Section 404(r) exemption. Ultimately, Congress will decide if this project may proceed. This may occur even if compliance with the guidelines is not be shown in the documents required by the National Environmental Policy Act (NEPA).

The Sacramento District has not been extensively involved in the preparation of BOR's NEPA documents. We understand that the Environmental Protection Agency, Region VIII (EPA) has been an active participant. We acknowledge the EPA's expertise in guidelines application and are satisfied with this arrangement. I am providing the following comments for your use in responding to the BOR's current Final Supplement to the Environmental Impact Statement for the ALP.

The ALP and its action alternatives would have significant adverse impacts on the aquatic environment. According to its guidelines evaluation, the BOR determined that alternative 4a (Phase I, Stage A) complies with the guidelines. However, this alternative does not meet the overall purposes designated for the project. This alternative represents an initial project which would provide only a portion of the water supply. According to the BOR, the remaining aspects of the project do not comply with the guidelines, primarily because of non-compliance with Section 7 of the Endangered Species Act and correspondingly, subpart B, 230.10 (b)(3) of the guidelines.

Segmenting a project in this manner is disconcerting. Finding that one initial portion of the project complies with guidelines, when it does not meet the overall purposes, while the remaining aspects of the project must await another Section 7 Biological Opinion, leads to doubt about the BOR's ability to show compliance with guidelines at this time for any aspect of the project. The BOR indicates that Phase I, Stage A has independent utility but it does not meet the ALP's purposes and needs as identified by the BOR, especially the Settlement Agreement.

Proceeding with alternative 4a also seems to violate a tenet of Section 7 compliance against committing irreversible or irretrievable resources by an agency. This prevents any agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives which would avoid violating section 7(a)(2) of the Endangered Species Act. We assume that the Fish and Wildlife Service will reconcile this dilemma.

The BOR states that non-Federal sponsors will build Phase II. We are uncertain whether the BOR will be responsible for this work or if the other sponsors will be required to obtain Department of the Army permits. Currently, the BOR has determined that Phase I, Stage B and Phase II do not comply with the guidelines. Will the BOR do another guidelines application and seek another Section 404 (r) exemption for aspects of the project beyond Phase I, Stage A?

The BOR, not only does not specify, but admits that uses for the Indian Tribes' municipal and industrial (M & I) water supply have not been identified. This omission prevents a showing of compliance with the guidelines because impacts of these uses can not be addressed, and alternatives for these purposes, can not be formulated and assessed. For example, if this water were intended for sale to other downstream users, an existing reservoir might be used for storage thereby obviating the need for another storage reservoir and its concomitant effects on the aquatic environment.

The mitigation requirements for the ALP are enormous, requiring considerable monitoring. The mitigation for this project must be appropriate to the scope and degree of the environmental impacts, and practicable. Typically, if mitigation to ensure compliance with the guidelines can not be reasonably implemented or enforced, then the proposed work should not

proceed. Many aspects of the mitigation constitute only monitoring of adverse effects. Granted monitoring is important, but does the BOR accept responsibility for actually mitigating for the adverse effects if the monitoring reveals problems? Practicable mitigation beyond the monitoring requirement is not identified for many significant adverse effects (especially, on water quality) reflected in the Final Supplement. The BOR should be more forthcoming with regard to potential remedial mitigative actions that would be required and whether they are practicable.

If you have any questions about these comments, please write to the following address. You may also telephone me at (970) 243-1199.

Sincerely,

Grady L. McMure
Chief, Northwestern Colorado
Regulatory Office
402 Rood Avenue, Room 142
Grand Junction, Colorado 81501-2563

Statement

from
Mark Duncan, Chair of the San Juan Water Commission and Chairman Pro Tem of San Juan County Commission, New Mexico
and
Jim Dunlap, Vice-Chair of the San Juan Water Commission and President of the National Rural Water Users Association

before the
Subcommittee on Water and Power of the House Resources Committee
on
H.R. 3478 and H.R. 745

July 28, 1998

Chairman, and Members, I am Mark Duncan, Chairman of the San Juan Water Commission in New Mexico. Today I seek your support for H.R. 3478, the Colorado Ute Settlement Act Amendments of 1998. Members, the Commission has valued the leadership you have provided for the development of our New Mexico resources represented by the Animas La Plata Project. All have recognized the cooperative rather than combative effort by the Tribes, Colorado and New Mexico, as well as the local water agencies, to resolve by negotiation rather than litigation our competing needs for stable water supplies. This cooperation has enabled us to serve the best interests of the region while preserving the environment and allowing for economic and cultural growth.

In 1986, the Cities of Aztec, Bloomfield and Farmington, the San Juan County Rural Water Users and San Juan County recognized the water needs of New Mexicans would be served by securing the New Mexico water dedicated to the Animas-La Plata Project. These farsighted leaders organized the San Juan Water Commission to further this and other water interests. The Farmington City Council, in fact, recently reaffirmed its commitment to the Animas-La Plata Project and the Revised ALP in a resolution (attached).

NEW MEXICO NEEDS AN ASSURED WATER SUPPLY

The need for the ALP - revised or original - is clearly summed up in one fact - the San

Juan Water Commission entities are today using the water allocated for the ALP. Almost all of the 14 member entities are taking water under state permits, which were issued in 1996, for the ALP water supply. These entities could be struggling to obtain enough water now if it weren't for the ALP supply. The Repayment Contract between the SJWC and the Bureau of Reclamation, and the 1996 diversion permits from the State of New Mexico, allow the member entities to take water from the natural flow in the Animas River, as long as it is available. The trouble is that when we have another drought, a water year like 1977 or even a year like 1996, there will not be water for the towns and rural associations to take. The situation will only get worse as San Juan County – now about 110,000 people – continues to grow. In a dry year, we could be out of a physical wet water supply by early June, and the shortage could continue until October.

That's why we need the storage facility that the ALP will provide. Ridges Basin, the ALP site, is the best site remaining in the San Juan Basin. Any other site could be more damaging environmentally and lose more New Mexico water by evaporation. To build equivalent storage in New Mexico would require development of at least three sites. The three sites identified will not provide as much storage, or any increased water storage for the future. They would consume 5077 AFY (acre feet per year) of our 10,400 AFY of depletions as evaporation! In Ridges Basin, the New Mexico water share requires less than 500 AFY for evaporation and is accounted for in a separate joint allocation among the supporters of this legislation. Our construction cost estimates for the three sites range from $180 million to $240 million.

The Revised ALP will give New Mexico enough depletions, 10,400 AF, to meet our immediate direct flow needs. It will also provide the Commission's estimated New Mexico non-Indian storage needs of 9,400 AF for the extremely dry year.

H.R. 3478 MEETS TRIBAL PROMISES

The second reason for supporting the Revised ALP is that it settles the Ute Indian claims on the Animas and La Plata Rivers. This is important to New Mexico, from the La Plata irrigators, who will be assured of their current water rights, to the entire state of New Mexico, which needs Animas water to have any hope of fully developing its allocation of Colorado River water under the Upper Colorado River Compact. The Revised ALP is a safeguard for other water in New Mexico, notably the San Juan-Chama water, which is promised to the Jicarilla Apache Indian Tribe and the pueblos, towns and cities of the Rio Grande corridor, including the City of Albuquerque.

The Navajo Nation benefits from the Revised ALP, and will benefit even more, when requested changes are added to the legislation. The Navajo Nation community of Shiprock needs and will receive depletions of 2,340 AFY from this proposed revision. The proposed change, adding an authorization for an augmentation water line for Shiprock's increasing municipal demand, is essential for the Navajo Nation community.

More important, we hope that the revised project will allow the Navajo Nation to continue in its joint effort with New Mexico to quantify and settle its water claims. From a practical point of view, all of us must honor and complete the Ute Indian Water Rights Settlement if we expect to reach settlement of the Navajo Nation claims. If the Congressionally approved Ute settlement cannot be fulfilled, the Navajo Nation will have no incentive to continue negotiations.

PROPOSED NEW MEXICO/NAVAJO NATION AMENDMENTS

The Commission asks the following language be substituted in H.R. 3478 as follows.

§3 (c) (i) of H.R. 3478 is amended to read:

" (i) NEW MEXICO AND NAVAJO NATION WATER MATTERS

1. *Assignment of Water Permit - Upon request of the State Engineer of the State of New Mexico, the Secretary shall, in a manner consistent with the applicable State Law, assign, without consideration, to the New Mexico Animas-La Plata Project beneficiaries or the New Mexico Interstate Stream Commission any portion of the Department of the Interior's interest in New Mexico Engineer permit number 2883, dated May 1, 1956, in order to fulfill the New Mexico purposes of the Animas-La Plata Project, provided that this permit assignment shall not affect the application of the Endangered Species Act to the use of the water.*

2. *Navajo Nation Municipal Pipeline - After the date of enactment of the Colorado Ute Settlement Act Amendments of 1998, the Secretary shall provide for the construction of a water line to augment the existing antiquated system that conveys municipal water supplies of the Navajo Nation from Farmington, New Mexico, to the Navajo Indian Reservation at Shiprock, New Mexico. Prior to such construction, the Secretary shall initiate and complete appropriate environmental compliance with respect to the Navajo Nation municipal pipeline. Construction costs allocated to the Navajo Nation for the Navajo Nation Municipal Pipeline shall be non-reimbursable.*

3. *Protection of Navajo Water Claims - Nothing in this Act shall be construed in any way to quantify or otherwise adversely affect the water rights and the claims of entitlement to water of the Navajo Nation."*

Since the legislation was introduced in March, other interested parties have reviewed it, as have we, and a few improvements could be made to the language. The basic intent is exactly the same, but as you know, when you are very close to something like

legislation, you often do not see all the ramifications yourself. We believe the amendments will clarify the legislation and more accurately reflect what we intended:

The paragraph dealing with the Navajo Nation Municipal Pipeline was added to reflect the needs of the Shiprock community for a new pipeline to utilize the Navajo Nation's ALP water.

The paragraph that is now the third paragraph has been included to make clear that this Act is not intended to affect or bar the water claims of the Navajo Nation.

Also, §3(b)(4) of H.R. 3478 should also be changed to clarify that the only depletions the ALP beneficiaries would have a say over would be the depletions intended for the Animas-La Plata Project. The beneficiaries would not presume to control depletions in the system that are intended for other water-short projects as a result of limitations imposed by the U.S. Fish & Wildlife Service such as the Jicarilla Apache Tribe settlement and the Navajo Indian Irrigation Project.

NAVAJO NATION ISSUES

The proposed amendments above resolve the Navajo concerns. The amendments were developed in conjunction with the Navajo Nation and other project beneficiaries. The amendments make clear that the legislation will have no effect on the ultimate resolution of the Navajo Nation's water rights, and that the use of water following the assignment of New Mexico State Water Permit No. 2883 from the Department of Interior to the San Juan Water Commission will continue to be subject to the Endangered Species Act. The amendments also authorize a new domestic water pipeline to augment the antiquated water pipeline from Farmington, New Mexico, to Shiprock, New Mexico, on the Navajo Nation. The Navajo Nation seems satisfied, so we hope all others will accept a solution crafted by the parties directly involved.

H.R. 745

In 1958 the Department of the Interior was assigned (New Mexico Permit 2883) 49,510 acre feet of New Mexico water. By delaying the development of this water, San Juan County alone has foregone a gross economic benefit estimated at $740 million. Now to abandon non Indian interests and negotiate with only the Tribes will further deprive 110,000 New Mexican's of their water resources, as committed in 1958 and reaffirmed with the execution of contract No. 0-07-40-R1080 with the San Juan Water Commission on January 8, 1990. H.R. 745 should not leave this committee.

BRINGING AN END TO A DECADE OF CONTROVERSY

In January of 1990, the citizens of San Juan County spoke clearly supporting the Animas La Plata Project -- they voted overwhelmingly in favor of San Juan County

participation. The original ALP represented the best way to provide the water storage needed in the dry seasons and years in an economically and environmentally responsible way. However, times have changed and we have had to propose a Revised ALP. Today we, the beneficiaries, have forged this compromise that both becomes a key part of the settlement of Ute claims and benefits all non-Indians in the San Juan Basin. Both the original Congressionally authorized ALP water project and the Revised ALP being considered today help meet our urgent New Mexico water supply needs.

When the ALP Project was originally conceived, irrigation was the dominant purpose, not municipal and industrial (M&I) use. In 1979, when the Bureau of Reclamation (BOR) expanded the Project's M&I water uses in its Definite Plan Report, the San Juan Water Commission did not exist. Now we exist, and our mission is to meet the M&I needs identified for wet water supplies. The San Juan Water Commission represents the non-Indian beneficial users of the New Mexico M&I water. In addition to construction of the storage facility, other essential items in this legislation will help serve the water users of San Juan County. The legislation requires that the interests in state water permits held for the New Mexico beneficial users by the Department of Interior be assigned, upon the request of New Mexico, to those who will beneficially use the water. This permit assignment will place the New Mexico entities on a footing similar to the Colorado entities. New Mexicans are dependent upon the ALP permits for current water use. It simply makes sense to return the ALP permit itself to the State of New Mexico and more directly to the people who will beneficially use the water.

Further, in the legislation we seek an acknowledgment of the mountains of existing environmental and cultural resources work already done for the full ALP Project. An acknowledgment that the existing work will be used for the Revised ALP. In the past decade the Project, including the facilities requested, have been under intense scrutiny. No one is seeking a waiver of federal laws. The American taxpayer deserves the maximum value out of the time and the $53 million already spent in these studies. Even the suggestion that a whole new round of environmental and cultural evaluations are necessary should not be allowed. The Environmental Protection Agency, despite many opportunities, refuses to comment on the Final Supplemental Environmental Impact Statement even though the Agency participated in the Statement development. We have complied with the ESA and other federal requirements every step of the way, and now we are simply asking recognition of that fact. The approximate $53 million taxpayer dollars spent should not be wasted or repeated. The American taxpayer should not have to pay for existing studies, again. Our request is that the Bureau of Reclamation be allowed to construct the facilities. New Mexico will share in the use of the planned facilities - the inlet and outlet conduits, the pumping station, and the reservoir itself. The characteristics and cost of these facilities are outlined in the April 1996 Final Supplement to the Final Environmental Statement. These are the same facilities described and approved for use in the 1991 and 1996 U.S. Fish & Wildlife Service Biological Opinions. These facilities are more fully described as Stage A, Phase I with a reduction in reservoir size, elimination of certain facilities to transfer M&I water into the La Plata Valley, and an increase in pumping capacity to better utilize the

spring flood water, thereby avoiding conflicts in dry years with downstream senior water rights.

A little history may help illustrate my point. In 1980, the U.S. Fish & Wildlife Service found that the fish were not jeopardized by the ALP as proposed. Ten years later the Service changed its opinion, and we, along with other supporters, including those with different San Juan Basin water development interests and the States, sat down and worked to find a reasonable and prudent alternative to jeopardizing the fish. To get the Project back on track quickly we could have simply taken action to avoid further jeopardy, instead, we took a major additional step, recovery of the species, which will enable our children to realize the full benefit of their New Mexico water resources. Thus, we have made recovery one of the goals of the Recovery Program in the San Juan Basin, going beyond the lesser legal target of "no jeopardy." In this process to develop a recovery plan, we encouraged all the stakeholders and interested parties to participate. The environmentalists chose not to participate and issued a formal letter declining the invitation. The efforts to recover the fish have led to delays, but at least now we have a better understanding of the potential effects of the Project. With that understanding, my fellow ALP participants and my Commission deliberately decided to use the extensive biological and environmental material for the original project to develop the revised project represented by this amendment.

Opponents have claimed the ALP will destroy the Animas River and the small agricultural irrigation that exists. In fact, the revised project will divert only 14% of the almost 600,000 acre feet average annual flow. The bulk of pumping will occur during the high flow months of May and June, thereby not endangering the downstream agricultural or M & I needs.

In its testimony, before the Senate Committees, the Administration completely ignored its contractual obligations to the San Juan Water Commission and other non-Indian communities. Also forgotten was the commitment to assist New Mexico in developing its Compact allocation embodied in the federal appropriation of 49,510 acre feet of New Mexico water in New Mexico Permit No.2883. In 1986 the other non-Indian beneficiaries of the Animas-La Plata Project, as well as the Commission, executed a cost-sharing agreement to fund our fair share of the project. The San Juan Water Commission and the Department of Interior executed a contract on January 8, 1990, under which the federal government promised to provide water to the Commission through the Animas-La Plata Project. Pursuant to the contract, No. 0-07-40-R1080, the Commission agreed to pay its fair share for the project facilities. The mutual promises were not reflected in the Administration's Senate testimony.

Recent economic studies suggest Northwest New Mexico has lost economic activity equal to the current cost of the full original project ($740 million) due to the delays. If we had been free to develop our water, there would have been that much benefit to ourselves, the State and the U.S. Economy.

The omission is even more outrageous given the fact that the non-Indian parties made the greatest sacrifices to create the compromise embodied in the Revised ALP. The non-Indian irrigators, for example, gave up more than 90 percent of the water depletions they were promised. The San Juan Water Commission sacrificed its 5,000 acre-feet in depletions reserved for growth to enable the Colorado Ute Indian Water Rights Settlement to move forward. Though the Administration is insensitive to the realities and insulting to those who worked to forge the Revised ALP, we are hopeful that the Congress is not.

DETAILS OF THE REVISED PROJECT ARE AVAILABLE

Claims by the Administration that it is unfamiliar with the specifics of the Revised ALP are indefensible. Dale Diamond, a professional engineer, worked in the Durango office of the Bureau of Reclamation for almost two years, refining the Bureau's Phase I, Stage A plan into the Revised ALP. He was employed by the Ute Mountain Ute tribe under a contract pursuant to P.L. 93-638 (The Indian Self-Determination and Education Assistance Act) and worked extensively with the Bureau of Reclamation staff in the Durango Project Office. The Commission used Mr. Diamond's work as a basis for a public report on the Revised ALP (attached), which itself has been available to the public since October 4, 1997.

DELIVERY OF UTE TRIBAL WATER SUPPLIES

Concerns regarding delivery of ALP water to the reservations is misplaced. Frankly, although we cannot speak for the Tribes, we believe the Tribes decision to support the Revised ALP even without delivery to the reservations is their call. The Tribes, through their elected officials, determined that the Revised ALP is an acceptable compromise, and the Commission respects that decision. The two Tribes agreed that the Revised ALP would settle their reserved water rights claims, and that should be the focus.

ALP LIGHT DOES NOT VIOLATE LONG STANDING BOR-DOI LAW AND POLICY

Charges were leveled that the Revised ALP project constituted a "new" federal subsidy and violated Reclamation Law and Policy. Yet we can site numerous examples to the contrary. It is unfortunate and unfair for the Administration who on one hand speaks about the need for a "new era" in Reclamation, to rely on such lame justification for opposing the Revised Animas-La Plata Project as . . . "contrary to longstanding Reclamation Law and Policy that requires non-Indian M&I water users to pay or repay all costs allocated to serving them" . . ., how the Administration rationalizes this position when viewed with the following is incredible!

In one recent example, the Secretary was directed to work with a non-Indian rural entity to plan, design and construct a water supply system for the Fort Peck Rural County Water District. The federal share was 75 percent of the cost, and it was deemed non-

reimbursable. Also in the Fort Peck Rural County Water Supply System Act of 1996 (P.L. 104-300), the Congress limited federal spending on NEPA compliance to roughly $50,000, a nominal amount that would allow very little study.

The Mid-Dakota Rural Water System (P.L. 102-575, Title XIX) provides rural domestic water in Central South Dakota. It provides for up to 85 percent of the cost of the project to be provided through grants as well as loans. The grants and loans were to be made on terms equivalent to the terms applied by the Secretary of Agriculture in providing assistance to the project for the conservation and use of water under the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 (a)). This is hardly "traditional" Bureau policy, but it was approved by Congress and became law.

The Garrison Diversion Unit Reformation Act of 1986 (P.L. 99-294) also provided significant direct payments for M&I water systems in the context of a reformulation of an old irrigation project. Congress re-authorized the project to change the emphasis from irrigation to M&I uses and provided a $200 million grant program for the M&I components. It also had an Indian irrigation component, which the Bureau supported along with the M&I parts of the project. In the bill, the Secretary was authorized to construct, operate and maintain "municipal, rural, and industrial water systems throughout the State of North Dakota." No systems were specified in the legislation, yet the Bureau supported it. In the case of the Revised Animas-La Plata Project, however, the Bureau is concerned about the unspecified use of water under the project. Section 1 of the legislation recognizes that the reformulated project is the result of compromise, not unlike the Revised ALP, and recognizes the federal government's responsibility to implement the compromise developed at the local level. The Revised Animas-La Plata Project, the product of the Romer Process, is entitled to the same deference and consideration.

As a final example, the Mni Waconi Project (P.L. 100-516) authorized joint facilities to fully provide the Pine Ridge Reservation and the Lyman-Jones and West River rural water systems with water. The cost of the joint facilities, which would be equivalent to the facilities listed in H.R. 3478, were "to be allocated to the Ogalala Sioux Rural Water System" and thus non-reimbursable. For the solely non-Indian facilities, the Secretary was authorized to provide 65 percent of the cost. This clearly is not a project that follows "traditional" Reclamation law and policy, and yet it was passed into law. Moreover, the Congress amended this generous act to be even more generous to the non-Indian participants in 1994, which was under this Administration. The amendments (P.L. 103-434) added two additional Indian tribes, and they also increased the amount of the federal grant from 65 percent of the cost to 80 percent of the cost, and the costs continue to be non-reimbursable.

The above show that over the past 20 years there has been no consistency in long-term policy or law in resolution of controversial project such as ALP. The policy has been to look at resolution of a local or regional problem, a resolution assuring it is responsible and equitable to the affected parties. The current objections to the Revised

ALP are not grounded in Reclamation law or policy rather they are but a poor attempt to ignore the hard work and compromise by the ALP beneficiaries.

In closing, the San Juan Water Commission is charged with securing stable water supplies for 110,000 New Mexicans. We have compromised and sacrificed in the best interest of the Four Corners Region. The Commission looked during the Romer/Schoettler process, and found no alternative water supply that met our and our neighbors' needs more economically or that complied with the enormous federal, state and local requirements. Now is the time to start ALP construction. 1998 is predicted to be a "dry" year. If this storage project does not go forward, where will the wet water for our New Mexico communities be obtained? Keep the federal promise to the Tribes, the States of Colorado and New Mexico, and the Nation, and build the Revised ALP.

Mark Duncan, Chairman, San Juan Water Commission
Jim Dunlap, Vice Chairman, San Juan Water Commission

RESOLUTION NO. 98-921

A RESOLUTION SUPPORTING THE ANIMAS-LA PLATA "LIGHT" PROJECT AND URGING NEW MEXICO'S CONGRESSIONAL DELEGATION TO SUPPORT LEGISLATION AUTHORIZING AND FUNDING SUCH PROJECT

WHEREAS, the City of Farmington has previously voiced its support for the original Animas-La Plata Project, and

WHEREAS, opposition from environmentalists and others to the original Animas-La Plata Project led the proponents and beneficiaries of the project to negotiate and propose a modified, lower-cost, more environmentally sound version of the project commonly called "Animas-La Plata Light", and

WHEREAS, the Animas La Plata Light Project as it is presently being proposed will provide additional water storage beneficial to the City of Farmington's long term water needs, and

WHEREAS, Congress is considering Senate Bill 1771 which would adopt certain amendments to the Colorado Ute Water Rights Settlement Act and authorize the Animas-La Plata Light Project.

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the City of Farmington, New Mexico that the City of Farmington supports the authorization and construction of the Animas-La Plata Light Project and urges the New Mexico delegation to the United States Congress to support Senate Bill 1771, the Colorado Ute Water Rights Settlement Act amendments of 1998, authorizing this project, and to support other legislation appropriating funds to design and construct the Animas-La Plata Light project.

PASSED, APPROVED, SIGNED AND ADOPTED this 14th day of July, 1998.

William E. Standley, Mayor

SEAL

ATTEST:

Mary L. Banks, City Clerk

entire report available

Revised Animas-La Plata

A Report
To the San Juan Water Commission

(Based on a report prepared by
Dale Diamond for the Ute Mountain Ute Tribe)

entire report available

Revised Animas La-Plata Project

Report Summary

This report is provided to the Commission for their information only. The report is based on a draft report prepared by Dale Diamond. Diamond is an engineer working for the Ute Mountain Ute Tribe under a § 638 Contract. His work has been the technical base used to develop the Revised ALP agreed to by the ALP proponent group. The Revised ALP is simply a modified Stage A Phase I of the Animas-La Plata Project as presented in the Final Supplement to the Final Environmental Statement by the United States Department of Interior, Bureau of Reclamation, April 1996. The ALP proponent group includes: the Ute Mountain Ute Tribe, Southern Ute Tribe, the Animas La Plata Conservancy District (all in Colorado), the La Plata Conservancy District, and the San Juan Water Commission (both in New Mexico).

This group announced the Revised ALP in July 1997 as a conceptual revision of the Animas-La Plata Water Development Project. The proposal is based on an allocation of the 57,100 acre feet per year depletion limit imposed by the U.S. Fish & Wildlife Service. The Service's opinions, from October 1991 and February 1996, conclude that amount of depletion is not likely to jeopardize the continued existence of the endangered Colorado Squawfish and Razorback Sucker. The water supply and depletion allocation of the Revised ALP is presented in Table 1.

The Revised ALP provides facilities for Animas River water diversion downstream of Durango near Gateway Park, pumping into Ridges Basin through an inlet conduit along Bodo Creek Draw and a 260,000-acre-foot-capacity reservoir. Stored water will be used through its release to the Animas River or by pumping directly from the reservoir. Project characteristics and estimated construction costs are presented in Table 2.

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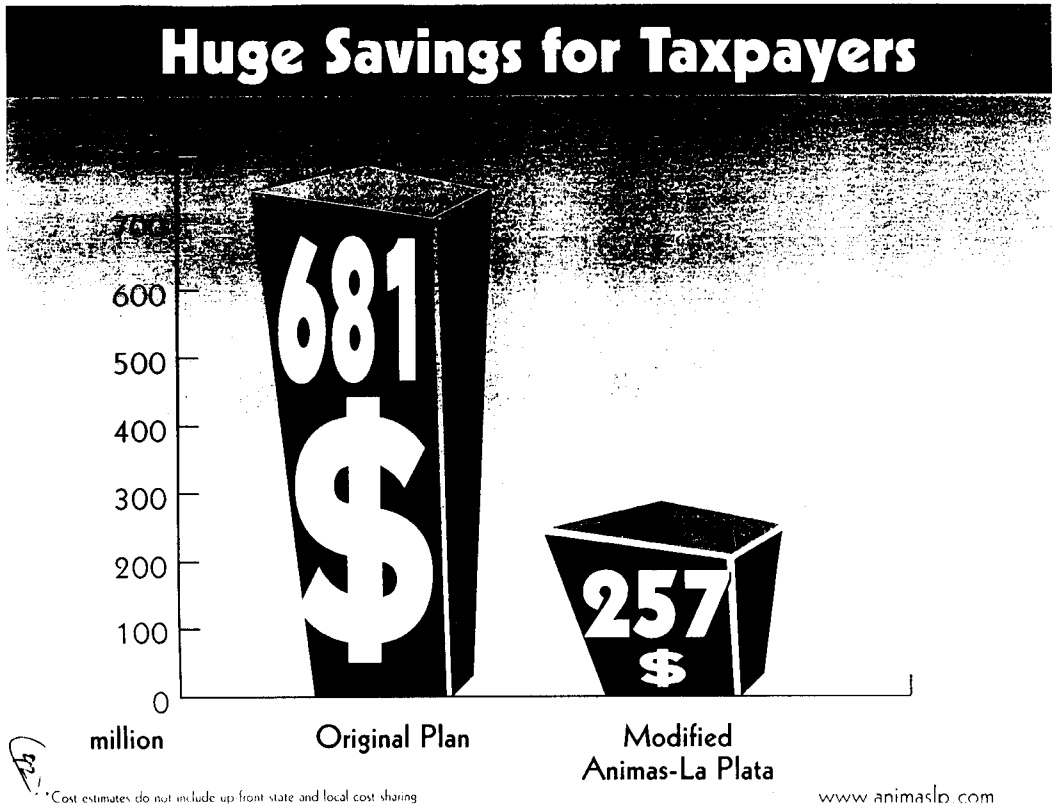
PASSED, APPROVED, SIGNED AND ADOPTED this 14th day of July, 1998.

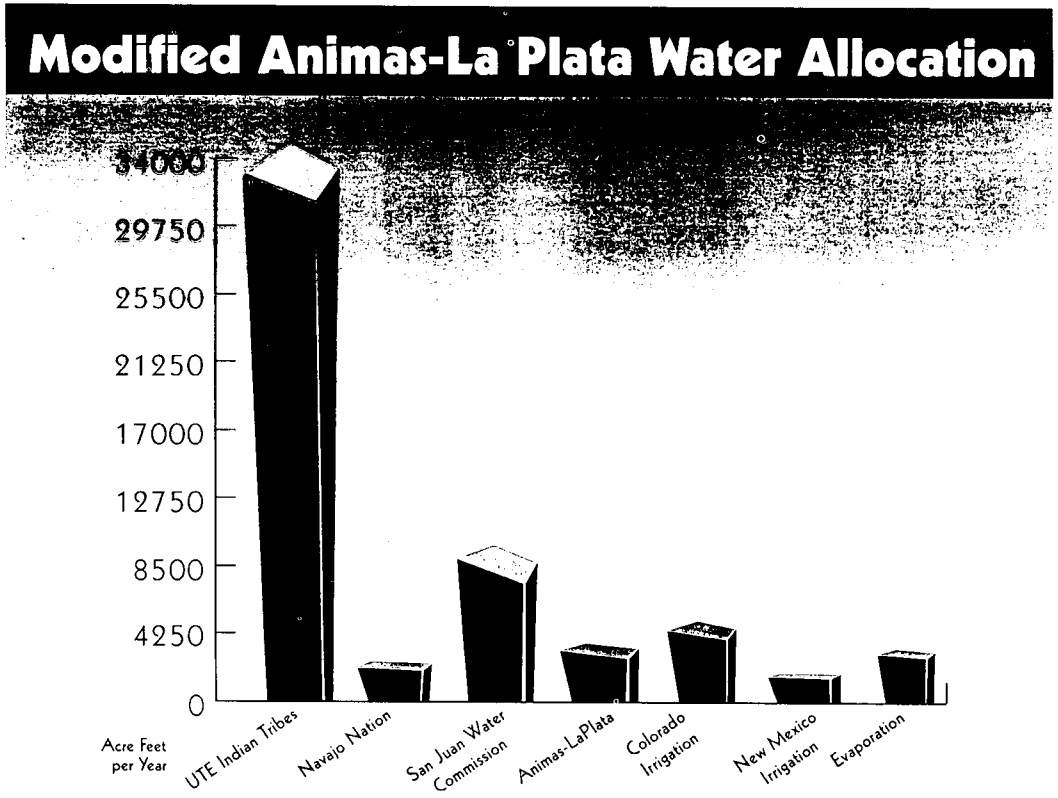
William E. Standley, Mayor

SEAL

ATTEST:

Mary L. Banks, City Clerk


Huge Savings for Taxpayers
700
600
500
400
300
200
100
0
million
681
$
257
$
Original Plan
Modified
Animas-La Plata
*Cost estimates do not include up-front state and local cost sharing
www.animaslp.com


Modified Animas-La Plata Water Allocation
34000
29750
25500
21250
17000
12750
8500
4250
0
Acre Feet per Year
UTE Indian Tribes
Navajo Nation
San Juan Water Commission
Animas-LaPlata
Colorado Irrigation
New Mexico Irrigation
Evaporation

FULL ANIMAS-LA PLATA PROJECT

Phase One Facilities

Ridges Basin Dam and Reservoir
Durango Pumping Plant
Ridges Basin Inlet Conduit
Ridges Basin Pumping Plant and Transmission Facilities
Long Hollow Tunnel
Durango Municipal and Industrial Pipeline
Shenandoah Pipeline
Recreation, Fish and Wildlife and Cultural Resources Phase One
Dry Side Canal Phase One
Operation and Maintenance Facilities Phase One
Southern Ute Inlet (partial)
Southern Ute Diversion Dam
Red Mesa Pumping Plant, Laterals and Transmission Facilities
Alkali Gulch Laterals Phase One
La Plata New Mexico Laterals Phase One
Dry Side Laterals Phase One
Drains Phase One
New Mexico Interim Facilities

Phase Two Facilities

Southern Ute Dam and Reservoir
Southern Ute Inlet (partial)
New Mexico Irrigation Canal
Ute Mountain Ute Pumping Plant, Laterals, and Transmission Facilities
Drains Phase Two
Recreation, Fish and Wildlife and Cultural Resources Phase Two
Dry Side Canal Phase Two
Alkali Gulch Laterals Phase Two
Alkali Gulch Pumping Plant and and Transmission Facilities
Dry Side Laterals Phase Two
La Plata New Mexico Laterals Phase Two
O & M Facilities Phase Two
Southern Ute Pumping Plant, Laterals, and Transmission Facilities
Third Terrace Pumping Plant and Transmission Facilities
La Plata Diversion Dam

S. 1771-H.R. 3478

Ridges Basin Dam and Reservoir
Durango Pumping Plant
Ridges Basin Inlet Conduit

LE No. 288 07/27 '98 13:13 ID:
TOTAL P.02

STATEMENT OF GAIL H. KLAPPER
MEMBER/DIRECTOR, COLORADO FORUM
ON H.R. 3478, COLORADO UTE SETTLEMENT ACT AMENDMENTS OF 1998, AND H.R. 745, A BILL TO DEAUTHORIZE THE ANIMAS-LA PLATA FEDERAL RECLAMATION PROJECT
HEARING
BEFORE THE HOUSE RESOURCES COMMITTEE
SUBCOMMITTEE ON WATER AND POWER
UNITED STATES HOUSE OF REPRESENTATIVES
July 28, 1998

I am writing this letter on behalf of the Colorado Forum, a statewide association of business leaders in Colorado who come together to focus on a limited number of public policy issues. The effective resolution of the Native American water rights question in Southern Colorado has been on our agenda for more than 15 years. We have been advocates of providing "wet water" to the Indians through the Animas La Plata water project and have diligently worked to identify a consensus position among all of the interested parties.

Colorado Forum members were optimistic that a solution to this problem had been reached through the Romer/Schoettler process which brought all of the voices to the table. We are very disheartened that representatives of the Department of the Interior did not express their concerns during the negotiations and have chosen, instead, to undermine the opportunity for a negotiated settlement through the legislative process.

It is important to note that Governor Romer and Lieutenant Governor Schoettler responded to requests from the Administration to help negotiate a solution to the water rights issues. The goal was to identify a project that was less expensive and less environmentally damaging than the original Animas La Plata proposal. Romer and Schoettler worked for many months with all of the vested interests to accomplish that purpose, believing that the result of the process would be supported by the Administration. It is insulting and inappropriate for the Administration, which was at the negotiating table throughout the conversation, to now begin a new search for alternatives when the Tribes and most other interests in the negotiating process have reached agreement on a proposal through long and difficult work.

Our organization operates by virtue of 100% consensus--everyone has to agree before we move forward on a particular issue. In this case, all 58 members of the Colorado Forum, most of whom are not directly affected by this problem and do not reside in the Southwestern part of the state which is directly impacted by the A-LP project, agree that the Romer/Schoettler process was a legitimate effort to arrive at a revised project that everyone could accept. If the Administration is now having second thoughts about how this settlement is configured, it now needs to come forth with specific amendments or suggestions to address their concerns. In the meantime, Congress should move forward with prompt consideration of H.R. 3478.

UTE MOUNTAIN UTE TRIBE

SOUTHERN UTE INDIAN TRIBE

July 23, 1998

Honorable Don Young, Chairman
Committee on Resources

Honorable John Doolittle, Chairman
Subcommittee on Water and Power

Honorable George Miller, Ranking Member
Committee on Resources

Honorable Peter DeFazio, Ranking Member
Subcommittee on Water and Power

Dear Congressmen:

We are writing in support of H.R. 3478, a bill to amend the Colorado Ute Indian Water Rights Settlement Act to provide for a final settlement of the claims of the Colorado Ute Indian Tribes and for other purposes. We respectfully request that our letter be made part of the official record of the hearing on this bill held July 28, 1998.

We are former Chairmen of the Southern Ute and Ute Mountain Ute Indian Tribes. It is vitally important that the decades-long effort by our Tribes to obtain a firm supply of water for our present and future needs be recognized by the United States Congress, as our legitimate water rights claims have been recognized by the courts. The commitment by the elected leadership of our Tribes to establish this trust resource must be respected.

However, opponents of the Animas-La Plata Project believe they know how to resolve the Tribes' claims better than the leadership chosen by the Ute people. Opponents seek to convince Congress that they ***do support*** the Tribes right to water, but at the same time they refuse to accept that the two Ute Tribes have long been committed to water resource development in the Four Corners area. Without capturing the wet water which is gold in this arid West, our Tribes are left with a paper water right of little benefit to our children and grandchildren.

Opponents of the project, ***even a project without irrigation components***, also fail to recognize or respect our commitment to fulfilling our water rights claims **without** taking water from existing users who are our friends and neighbors. They continue to argue that there must be a cheaper, better way to fulfill our claims, yet their proposal would pay the Tribes money and redistribute an already short supply of existing water resources.

Page Two

H.R. 3478 represents a truly good faith effort to respond to concerns voiced about Animas-La Plata's costs and impacts, and its depletions of water from the Animas River have been approved by the U.S. Fish and Wildlife Service. Two years ago, Congress directed the Secretary of the Interior to build the limited facilities in H.R. 3478 *without delay*. It didn't happen.

The Colorado Ute Tribes have played strictly by the rules since 1988 when the Settlement Act was signed into law. It's time for the federal government to play by the rules, which include satisfying their trust responsibility to the Southern Ute and Ute Mountain Ute Indian Tribes.

Thank you.

Leonard C. Burch
Southern Ute

Ernest House
Ute Mountain Ute

Chris A. Baker, Sr.
Southern Ute

Terry Knight
Ute Mountain Ute

Albert Wing
Ute Mountain Ute

UTE MOUNTAIN UTE TRIBE

Towaoc, Colorado 81334
(970) 565-3751

July 27, 1998

Honorable Don Young
Committee on Resources

Honorable John Doolittle, Chairman
Subcommittee on Water and Power

Honorable George Miller, Ranking Member
Committee on Resources

Honorable Peter DeFazio, Ranking Member
Subcommittee on Water and Power

Re: Tribal Elder Support for the Colorado Ute Indian Water Rights Settlement Act Amendments of 1998

Dear Congressmen:

The undersigned Tribal Elders of the Ute Mountain Ute Tribe wish to express our complete and unwavering support for efforts of the elected leaders of both the Ute Mountain Ute and Southern Ute Indian Tribes. We have placed our faith in our leaders to get the water which the United States promised to us when we were placed on the Reservation back in the 1860's. Because the government wanted us to be farmers, and no longer roam the western half of Colorado as we had for hundreds of years, they told us the water would be free. The government told us this because when the settlers came to the area, they used up all the water in the streams and built dams to capture it, leaving none for the Tribes.

In 1986, and again in 1988, the Tribal Council explained to us how the United States planned to settle our water rights by giving us water from two government projects in the area. The Council told us that if we accepted the water from these projects, we could maintain the strong relationships built up with our non-Indian neighbors over the past 100 years. Even though the promise of free water was being broken, at least we would finally get water. We saw the 1988 Act of Congress and were very happy to see progress being made.

Unfortunately, we understand the promise made in 1988 has essentially been broken also. One of the projects which was to give us water, the Animas-La Plata Project, has yet to be built. The Tribal Council told us the delay in construction, which was mainly caused by making sure all of the government's environmental laws were followed, has in turn caused such an increase in cost that we had to look at a smaller project. This, they told us, was the only way to get water for the future of the Tribe--our youth. These younger tribal members are electing to stay on our Reservation in large numbers and it is vital for their future, and that of the Tribe, to have water for the arid homelands chosen for us by the United States.

Although we wish the original promise made in 1988 had been kept, we will support this scaled-down project and settlement since the water will now be provided free of cost. At least the United States can keep the promise of free water it made to us so many years ago. If the Tribal Council is not successful on this last, best chance to get this solved, we understand the court process and know it is our only remaining option. We do not want to be forced to do that. Please hear our hopes and prayers and bring the Colorado Utes the water they so desperately need and have waited so long for. Because we respect your wisdom to make the right decision, we remain,

very truly yours,

Geraldine Kenepley

Donna Weeks

Ida Geog

Dorothy Ketchum

Mary Wilson

Thomas Howe Sr

Louis Salt

Gladys Pete

Mande Washington

Mary Howe

Frances Wall

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