UTE INDIAN WATER COMPACT

The State of Utah, the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, and the United States of America, acting through their respective representatives agree to a Ute Indian Water Compact as follows:

ARTICLE I
Purpose of Compact

The purpose of this Compact is to remove the causes of present and future controversy over the quantification, distribution, and use of all waters claimed by or through the Ute Indian Tribe.

ARTICLE II
Legal Basis for Compact

This Compact is made in accordance with the Constitution and Laws of the United States, the State of Utah, and the Ute Indian Tribe.

ARTICLE III
Water

There is hereby apportioned, confirmed, and recognized from the waters apportioned to the State of Utah from the Colorado River System to the United States of America in perpetuity, in trust, as Winters Doctrine water rights for the Ute Indian Tribe and others, the depletion of water in the amount of 248,943 acre-feet per annum, and the related gross diversion requirement of 470,594 acre-feet per annum, from all sources in accordance with and as more fully set out in the "Tabulation of Ute Indian Water Rights" attached hereto and on file with the Utah State Engineer. The priority date of October 3, 1861, is recognized for land groups 1 through 5, except for water supplied from storage in the Central Utah Project, and the priority date of January 5, 1882, is recognized for land groups 6 and 7, unless indicated otherwise in the Tabulation. Tables 1, 2, and 3 of the Tabulation list the total irrigable acreage, maximum allowable depletions and diversion requirements, respectively, for each of the land groups by stream. No water rights held in trust can be transferred from the lands listed in said groups without approval of the Secretary of the Interior.

As provided in the Tabulation attached to this Compact, the Tribe shall take from the Green River in lieu of other sources the 57,948 acre-foot depletion of water allocable to the Tribe’s group 5 lands. The parties further agree to share the net income from any sale or lease of such Green River water to third parties. The net income will be 80% to the Ute Indian Tribe and 20% to the State of Utah. The payment to the State of Utah will be made promptly upon the receipt by the Ute Indian Tribe of its payment of net income, and will be deposited in the Utah Division of Water Resources' Conservation & Development Fund. Any dispute relating to the calculation of such amounts will be subject to binding arbitration with no right of judicial review. The priority of such water rights for group 5 lands shall be October 3, 1861.

In addition to the water allocated under the previous paragraphs, there is hereby apportioned, confirmed, and recognized to the United States of America in perpetuity, in trust, for the Ute Indian Tribe the depletion of 10,000 acre-feet of water annually having a priority date of October 3, 1861, for municipal and industrial purposes, which shall be diverted from the Green River. To the extent that the Tribe or its members use water other than for irrigation purposes, the quantity so used shall be included within said 10,000 acre-feet unless a transfer of water from the land listed in the Tabulation is properly made.

No water allocated pursuant to this Compact shall be subject to loss or forfeiture under the laws of the State of Utah or otherwise. Further, the water allocated herein shall not be restricted to any particular use, but may be used for any purpose selected by the Tribe in accordance with the procedures provided for in this Compact.
The quantities of water apportioned hereby include all water rights of every nature and description derived from the reserved water rights doctrine, from all sources of water, both surface and underground, and includes all types and kinds of uses, whether municipal, industrial, recreational, in-stream uses, sale, exchange, lease, or any other use whatsoever, and encompasses all claims asserted by or through the Ute Indian Tribe, and all persons and entities other than the Tribe whose claims or rights are derived, directly or indirectly, from the reserved water rights of the Tribe. Thus, any water rights adjudicated or otherwise established in the future on behalf of any person or entity and based upon a claim, directly or indirectly, through any reserved water rights of the Tribe shall be included within and as a part of the water quantified by this Compact. Any state water rights acquired by the Tribe for land to which a reserved right is recognized herein shall be forfeited.

Included within the practicably irrigable acreages are (1) tribal lands and individual Indian allotments; (2) Uintah Indian Irrigation Project lands, which include tribal lands, allotments, and some private lands which were originally allotted lands, and (3) some few lands distributed to former tribal members terminated in accordance with the Ute Partition Act, approved August 27, 1954 (P.L. 83-671, 68 Stat. 868, 25 U.S.C. Sections 667-667aa). Nothing in this Compact shall enlarge or diminish the scope of or otherwise affect either the United States’ trust responsibility, if any, or the Ute Indian Tribe's responsibility, if any, to those persons who have been designated as mixed-bloods under the Act of August 27, 1954 (68 Stat. 868). The total acreage under irrigation or susceptible to sustained production of agricultural crops by means of irrigation is recognized as 129,201 acres, reduced by 7% to 120,157 acres to reflect roads, yards, fences, rights-of-way, and other non-productive lands. All lands in the Uintah Indian Irrigation Project are designated assessable or non-assessable. The Secretary of the Interior is authorized to change the designation from one to the other.

Nothing contained herein shall be construed to preclude the United States as Trustee for the Ute Indian Tribe, the Ute Indian Tribe, or any of its members from filing application with the Utah State Engineer for the appropriation of additional water under the laws of the State of Utah.

The diversion and depletion requirements for the water rights apportioned under this Compact are set forth in Tables 1, 2, and 3 of the Tabulation, consisting of acreage, diversion, and depletion schedules. These requirements shall be utilized in evaluating any application undertaken pursuant to Section 73-3-3, Utah Code Annotated. The delivery schedules set forth in Tables 4, 5, 6, and 7 of the Tabulation shall determine the distribution of the water allocated hereunder. The Utah State Engineer, in a manner consistent with the agreements and covenants contained herein, shall have general administrative supervision of all surface and ground waters apportioned to the United States in trust for the Ute Indian Tribe and others, including measurement, apportionment, and distribution thereof, to the points of diversion from the main sources. The United States and the Tribe shall have general administrative supervision of all water apportioned to the United States, including measurement, apportionment, and distribution thereof, within the canal distribution systems from the various points of river diversion.

The United States on behalf of the Tribe, or the Tribe shall comply with the provisions of Section 73-3-3, Utah Code Annotated 1953, with regard to any change in the point of diversion, place, or nature of use; except that neither the United States nor the Tribe need make application to the State Engineer for change of place of use when the new place of use is within the same canal system.

Pursuant to the congressional legislation required to ratify this Compact under Article V hereof, and solely as a compromise for the purposes of this Compact, the parties agree that the Tribe may, under the terms of this Compact, voluntarily elect to sell, exchange, lease, use, or
otherwise dispose of the reserved water rights secured to the Tribe by this Compact, outside the boundaries of its reservation.

If the Tribe so elects to move any of its rights, or a portion thereof, off the reservation, as a condition precedent to such sale, exchange, lease, use or other disposition, that portion of the Tribe's water right shall be changed to a Utah State water right, but shall be such a State water right only during the use of that right off the reservation. Such right, during the period of use off the reservation, shall be fully subject to State laws, federal laws, interstate compact, and international treaties applicable to the Colorado River and its tributaries, including but not limited to the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of such waters.

None of the waters secured to the Ute Indian Tribe in this Compact may be sold, exchanged, leased, used, or otherwise disposed of into or in the Lower Colorado River Basin, below Lees Ferry, unless water rights within the Upper Colorado River Basin in the State of Utah held by non-federal, non-Indian users could be so sold, exchanged, leased, used, or otherwise disposed of under Utah State law, federal law, interstate compacts, or international treaties pursuant to a final, non-appealable order of a federal court or pursuant to an agreement of the seven States signatory to the Colorado River Compact. Provided, however, that in no event shall such transfer of Indian water rights take place without the filing and approval of the appropriate applications with the Utah State Engineer pursuant to State law.

Nothing in this Compact shall:
(1) constitute specific authority for the sale, exchange, lease, use or other disposition of any federal reserved water right off the reservation;
(2) constitute specific authority for the sale, exchange, lease, use, or other disposition of any tribal water right outside the State of Utah;
(3) be deemed or construed a congressional determination that any holders of water rights do or do not have authority under existing law to sell, exchange, lease, use, or otherwise dispose of such water or water rights outside the State of Utah; or,
(4) be deemed or construed to establish, address, or prejudice whether, or the extent to which, or to prevent any party from litigating whether, or the extent to which, any of the aforementioned laws do or do not permit, govern or apply to the use of the Tribe's water outside the State of Utah.

This Article is not intended to relieve the responsibility of the parties involved in the Midview Exchange Agreement.

ARTICLE IV
Enforcement

For purposes of compelling compliance with the terms of this Compact, each party waives the defense of sovereign immunity as to actions brought by any other party, including any defense under the Eleventh Amendment to the United States Constitution. The United States District Court for the District of Utah is hereby granted jurisdiction to adjudicate any claim made by a party to this Compact that any other party, or its officials, are acting to impair or violate any right or privilege in this Compact. The federal court jurisdiction provided for herein shall not be diminished by reason of a related state court proceeding. While the parties agree that the primary responsibility for protecting and preserving the Ute Tribe's reserved water rights rests with the United States and the Tribe, the State of Utah, through the State Engineer, shall use its best efforts to see that the reserved water rights of the Ute Tribe secured in this Compact are protected from impairment; provided, however, that nothing herein shall subject the State of Utah or its officers or employees to a claim for monetary damages in its efforts to so protect tribal water rights.
ARTICLE V
Ratification and Amendment

Each party acknowledges that in order for this Compact to constitute a final and permanent settlement of tribal reserved water rights, this Compact must be approved or ratified by the United States Congress, the Legislature of the State of Utah, and the Ute Indian Tribe through referendum of the Tribe’s membership. The parties shall use their best efforts to have the approvals or ratifications undertaken as expeditiously as possible. The parties hereto agree that the terms of this Compact have the force and effect of law and agree to adopt all statutes, regulations and ordinances that are, or may be, necessary to harmonize existing statutes, regulations and ordinances with this Compact, and agree that this Compact may be included within any general stream adjudication. The Secretary of the Interior is authorized to take all actions necessary to implement this Compact.

This Compact is the result of a voluntary compromise agreement between the Ute Indian Tribe, the State of Utah, and the United States of America. Accordingly, no provision of this Compact or its adoption as part of any pending general stream adjudication shall be construed as altering or affecting the determination of any issues relating to the claimed reserved water rights which may belong to other Indian tribes.

DATED:_________________________          UTE INDIAN TRIBE

By

STATE OF UTAH

By

UNITED STATES OF AMERICA

By

Enacted by Chapter 275, 2018 General Session