

Chapter 21 Ute Indian Water Compact

73-21-101 Title.

This chapter is known as the "Ute Indian Water Compact."

Enacted by Chapter 275, 2018 General Session

73-21-102 Approval of Ute Indian Water Compact.

The Ute Indian Water Compact, located at Section 73-21-103, providing for the execution by the State of Utah, the Ute Indian Tribe of the Uintah and Ouray Reservations, Utah, and the United States of America, through their various representatives, is hereby authorized, confirmed, ratified, and approved for the State of Utah.

Enacted by Chapter 275, 2018 General Session

73-21-103 Text.

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

73-21-104 Tabulations.

The tabulations described in Sections 73-21-103 and 73-21-105 are on file and more fully described at the state engineer's office.

Enacted by Chapter 275, 2018 General Session

73-21-105 Tabulation of Ute Indian Water Rights.

PURPOSE

This tabulation of Ute Indian Water Rights is prepared pursuant to and in accordance with the Ute Indian Water Compact of 1990 between the Ute Indian Tribe of the Uintah and Ouray Indian Reservation, Utah, the State of Utah and the United States of America concerning the water rights of the Ute Indian Tribe. The purpose of this Tabulation is to fully identify and define all federal reserved water rights of the Ute Indian Tribe.

FORWARD

In December, 1960 the Ute Tribe submitted to the Utah State Engineer a report entitled Water Right Claims, Uintah and Ouray Indian Reservation, Utah, prepared by E.L. Decker, tribal engineer, and commonly referred to as the Decker Report. This report was prepared to identify both the Tribe's present irrigated acreage and also those lands that are susceptible to irrigation, for which a water right was claimed under the doctrine expressed in *Winters v. United States*, 207, U.S. 546 (1908). The acreages listed in the Decker report, as amended, were used as a basis for this Tabulation.

The Decker Report divided the lands into seven different groups for identification purposes, which are incorporated herein:

Group (1): Lands included within the Uintah Indian Irrigation Project, the water right to which has been certificated by the State of Utah and included within Federal Court Decrees adjudicating water rights of the Lakefork, Yellowstone, Uinta and Whiterock Rivers.

Group (2): Lands included in the Uintah Indian Irrigation Project, the water right to which has been certificated by the State of Utah, served from the Duchesne River, including the townsites of Duchesne, Randlett and Myton.

Group (3): Lands that are or can be served from the Duchesne River through the facilities of the Uintah Indian Irrigation Project which lands have not been certificated by the State of Utah.

Group (4): Lands which have been found to be productive and economically feasible to irrigate from privately constructed ditch systems on the Duchesne River or its tributaries above the Pahcease Canal.

Group (5): Lands which have been found to be susceptible to irrigation and are proposed to be developed within the Central Utah Project.

Group (6): Lands lying east of the Green River served from the White River for which Applications to Appropriate Water were once filed with the State of Utah.

Group (7): Lands lying east of the Green River which have been found to be productive and economically feasible to irrigate from privately constructed ditch systems now in operation or to be constructed along the Green River, White River, Willow Creek, Bitter Creek, Sweet Water Creek and Hill Creek.

A summary of the Ute Indian Tribe's total irrigable acreage, maximum allowable depletion and diversion requirement for each of the land groups, by streams, are contained in tables 1, 2, and 3, respectively.

Delivery schedules specifying the quantity of water to be diverted from the various streams are shown in tables 4 through 7. The quantity of water to be diverted into the various canals and/or ditches shall be determined based on the irrigable acreage as shown in the acreage tabulation, times the flow rate per acre corresponding to the period of time on the appropriate delivery schedule. The delivery schedules may be modified by mutual consent of the Tribe, State and other affected water users or through the pending general adjudication process. No delivery of water shall be made to lands until the lands are developed or an appropriate change application is filed

and approved. For the Group 1 lands the diversion requirement was established at 3.40 acre-feet per acre under the 1980 Ute Indian Water Compact, of which 3.00 acre-feet per acre was to have been supplied from direct streamflow in accordance with the appropriate delivery schedule and the remaining 0.40 acre-feet per acre was to have been supplied from storage under the proposed Uintah and Upalco Units of the Central Utah Project. Such water delivered from storage (0.40 acre-feet per acre) was to assume, or if developed in the future will assume, the priority date of the Bureau of Reclamation water rights to accomplish the equitable allocation of water to all subscribers of the projects. Under the 1990 Compact such water will not be developed or delivered under the Upalco and Uintah Units. Nevertheless, this tabulation leaves in place the diversion and depletion quantities with respect to these Group 1 lands established under the 1980 Compact.

Within the group 1 lands there are 9,300 acres commonly referred to as Midview Exchange lands. As a result of this exchange these lands are now served from the Duchesne River and thus have a diversion requirement of 4.0 acre-feet per acre. Water for these lands shall be supplied in accordance with terms of the Midview Exchange Agreement.

The priority date of the group 1 through 5 lands is October 3, 1861. The source of supply for the group 5 lands has been transferred to the Green River, within the exterior reservation boundaries, and the Tribe waives any and all claims to develop the Group 5 lands in place as set forth in the Decker Report and identified in this tabulation. In transferring the Group 5 lands, 19,809 acres (which includes the 7 percent reduction) are transferred on an acre-per-acre bases, and 7,271 acres (which includes the 7 percent reduction) are transferred based upon depletion. In making the transfer based upon depletion the irrigable acreage is reduced by 1885.0 acres. The priority date of the group 6 and 7 lands is January 5, 1882, except those group 7 lands bearing the notation "To be determined" under the Priority Date. As to those certain group 7 lands the priority date shall be determined by mutual agreement, among the parties to the Compact on or before any call for such water is made or by binding arbitration using the following guidelines:

1. All matters are deemed resolved herein except the issue of the priority date for certain parcels of group 7 lands. That issue shall be submitted to an arbitrator who shall have the authority under Utah Revised Code Sections 78-31-1, et seq., to decide the unresolved factual issue as to the precise priority date for any parcel of group 7 lands specified in the Tabulation.
2. To reach a determination of the priority date, either the State of Utah or the Ute Tribe may request a panel of five water law experts. With the State of Utah striking first, the Ute Tribe and the State shall alternately strike names from the list until one name remains and such person shall be the arbitrator.
3. The decision of the arbitrator shall be final and shall conclusively determine the priority date in question.
4. The procedures of the American Arbitration Association shall govern any proceedings and the costs and expenses of the arbitrator shall be shared equally by the State and the Ute Tribe.

The acreage tabulations herein lists the land group, source of supply, canal or ditch (if applicable), point of diversion, irrigable acreage and place of use. The quantity of land to be irrigated is limited to the acreage listed as Irrigable Acreage and shall be located within the area described.

MUNICIPAL AND INDUSTRIAL WATER

In addition to the quantities of water set forth herein for the irrigable acreage of the Ute Indian Tribe, the United States of America in trust for the Ute Indian Tribe is allocated the depletion of 10,000 acre-feet of water annually for municipal, industrial and related purposes 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

land listed in the tabulation is properly made. The priority date for the water provided under this paragraph is October 3, 1861. The Tribe and the State shall conduct a cooperative inventory to identify all existing non-irrigation water uses of the Tribe or its members to determine the remaining quantity of water available for diversion.

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