

1 **RATIFICATION OF THE UTE INDIAN WATER COMPACT**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Kevin T. Van Tassell**

5 House Sponsor: Logan Wilde

7 **LONG TITLE**

8 **General Description:**

9 This bill ratifies the Ute Indian Water Compact.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ ratifies the Ute Indian Water Compact;
- 13 ▶ describes the purposes of the Ute Indian Water Compact; and
- 14 ▶ references the tabulations on file with the state engineer's office.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 **ENACTS:**

21 **73-21-101**, Utah Code Annotated 1953

22 **73-21-102**, Utah Code Annotated 1953

23 **73-21-103**, Utah Code Annotated 1953

24 **73-21-104**, Utah Code Annotated 1953

25 **73-21-105**, Utah Code Annotated 1953

26 **REPEALS:**

27 **73-21-1**, as enacted by Laws of Utah 1980, Chapter 74



28 73-21-2, as last amended by Laws of Utah 1995, Chapter 20



30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **73-21-101** is enacted to read:

32 **CHAPTER 21. UTE INDIAN WATER COMPACT**

33 **73-21-101. Title.**

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

35 Section 2. Section **73-21-102** is enacted to read:

36 **73-21-102. Approval of Ute Indian Water Compact.**

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

41 Section 3. Section **73-21-103** is enacted to read:

42 **73-21-103. Text.**

43 UTE INDIAN WATER COMPACT

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

47 ARTICLE I

48 Purpose of Compact

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

52 ARTICLE II

53 Legal Basis for Compact

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

56 ARTICLE III

57 Water

58 There is hereby apportioned, confirmed, and recognized from the waters apportioned to

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

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

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

87 No water allocated pursuant to this Compact shall be subject to loss or forfeiture under
88 the laws of the State of Utah or otherwise. Further, the water allocated herein shall not be
89 restricted to any particular use, but may be used for any purpose selected by the Tribe in

90 accordance with the procedures provided for in this Compact.

91 The quantities of water apportioned hereby include all water rights of every nature and
92 description derived from the reserved water rights doctrine, from all sources of water, both
93 surface and underground, and includes all types and kinds of uses, whether municipal,
94 industrial, recreational, in-stream uses, sale, exchange, lease, or any other use whatsoever, and
95 encompasses all claims asserted by or through the Ute Indian Tribe, and all persons and entities
96 other than the Tribe whose claims or rights are derived, directly or indirectly, from the reserved
97 water rights of the Tribe. Thus, any water rights adjudicated or otherwise established in the
98 future on behalf of any person or entity and based upon a claim, directly or indirectly, through
99 any reserved water rights of the Tribe shall be included within and as a part of the water
100 quantified by this Compact. Any state water rights acquired by the Tribe for land to which a
101 reserved right is recognized herein shall be forfeited.

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

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

119 The diversion and depletion requirements for the water rights apportioned under this
120 Compact are set forth in Tables 1, 2, and 3 of the Tabulation, consisting of acreage, diversion,

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

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

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

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

150 None of the waters secured to the Ute Indian Tribe in this Compact may be sold,
151 exchanged, leased, used, or otherwise disposed of into or in the Lower Colorado River Basin,

152 below Lees Ferry, unless water rights within the Upper Colorado River Basin in the State of
 153 Utah held by non-federal, non-Indian users could be so sold, exchanged, leased, used, or
 154 otherwise disposed of under Utah State law, federal law, interstate compacts, or international
 155 treaties pursuant to a final, non-appealable order of a federal court or pursuant to an agreement
 156 of the seven States signatory to the Colorado River Compact. Provided, however, that in no
 157 event shall such transfer of Indian water rights take place without the filing and approval of the
 158 appropriate applications with the Utah State Engineer pursuant to State law.

159 Nothing in this Compact shall:

160 (1) constitute specific authority for the sale, exchange, lease, use or other disposition of
 161 any federal reserved water right off the reservation;

162 (2) constitute specific authority for the sale, exchange, lease, use, or other disposition
 163 of any tribal water right outside the State of Utah;

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

167 (4) be deemed or construed to establish, address, or prejudice whether, or the extent to
 168 which, or to prevent any party from litigating whether, or the extent to which, any of the
 169 aforementioned laws do or do not permit, govern or apply to the use of the Tribe's water
 170 outside the State of Utah.

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

173 ARTICLE IV

174 Enforcement

175 For purposes of compelling compliance with the terms of this Compact, each party
 176 waives the defense of sovereign immunity as to actions brought by any other party, including
 177 any defense under the Eleventh Amendment to the United States Constitution. The United
 178 States District Court for the District of Utah is hereby granted jurisdiction to adjudicate any
 179 claim made by a party to this Compact that any other party, or its officials, are acting to impair
 180 or violate any right or privilege in this Compact. The federal court jurisdiction provided for
 181 herein shall not be diminished by reason of a related state court proceeding. While the parties
 182 agree that the primary responsibility for protecting and preserving the Ute Tribe's reserved

183 water rights rests with the United States and the Tribe, the State of Utah, through the State
184 Engineer, shall use its best efforts to see that the reserved water rights of the Ute Tribe secured
185 in this Compact are protected from impairment; provided, however, that nothing herein shall
186 subject the State of Utah or its officers or employees to a claim for monetary damages in its
187 efforts to so protect tribal water rights.

188 ARTICLE V

189 Ratification and Amendment

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

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

205 DATED: _____

UTE INDIAN TRIBE

206 By _____

207 STATE OF UTAH

208 By _____

209 UNITED STATES OF AMERICA

210 By _____

211 Section 4. Section **73-21-104** is enacted to read:

212 **73-21-104. Tabulations.**

213 The tabulations described in Sections [73-21-103](#) and [73-21-105](#) are on file and more

214 fully described at the state engineer's office.

215 Section 5. Section **73-21-105** is enacted to read:

216 **73-21-105. Tabulation of Ute Indian Water Rights.**

217 PURPOSE

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

223 FORWARD

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

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

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

236 Group (2): Lands included in the Uintah Indian Irrigation Project, the water right to
 237 which has been certificated by the State of Utah, served from the ~~H~~→ [~~D~~uschense] ~~D~~uchesne ←~~H~~
 237a River, including
 238 the townsites of ~~H~~→ [~~D~~uschense] ~~D~~uchesne ←~~H~~ , Randlett and Myton.

239 Group (3): Lands that are or can be served from the ~~H~~→ [~~D~~uschense] ~~D~~uchesne ←~~H~~ River
 239a through the
 240 facilities of the Uintah Indian Irrigation Project which lands have not been certificated by the
 241 State of Utah.

242 Group (4): Lands which have been found to be productive and economically feasible to
 243 irrigate from privately constructed ditch systems on the ~~H~~→ [~~D~~uschense] ~~D~~uchesne ←~~H~~ River
 243a or its tributaries
 244 above the Pahcease Canal.

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

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

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

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

256 Delivery schedules specifying the quantity of water to be diverted from the various
 257 streams are shown in tables 4 through 7. The quantity of water to be diverted into the various
 258 canals and/or ditches shall be determined based on the irrigable acreage as shown in the
 259 acreage tabulation, times the flow rate per acre corresponding to the period of time on the
 260 appropriate delivery schedule. The delivery schedules may be modified by mutual consent of
 261 the Tribe, State and other affected water users or through the pending general adjudication
 262 process. No delivery of water shall be made to lands until the lands are developed or an
 263 appropriate change application is filed and approved. For the Group 1 lands the diversion
 264 requirement was established at 3.40 acre-feet per acre under the 1980 Ute Indian Water
 265 Compact, of which 3.00 acre-feet per acre was to have been supplied from direct streamflow in
 266 accordance with the appropriate delivery schedule and the remaining 0.40 acre-feet per acre
 267 was to have been supplied from storage under the proposed Uintah and Upalco Units of the
 268 Central Utah Project. Such water delivered from storage (0.40 acre-feet per acre) was to
 269 assume, or if developed in the future will assume, the priority date of the Bureau of
 270 Reclamation water rights to accomplish the equitable allocation of water to all subscribers of
 271 the projects. Under the 1990 Compact such water will not be developed or delivered under the
 272 Upalco and Uintah Units. Nevertheless, this tabulation leaves in place the diversion and
 273 depletion quantities with respect to these Group 1 lands established under the 1980 Compact.

274 Within the group 1 lands there are 9,300 acres commonly referred to as Midview
 275 Exchange lands. As a result of this exchange these lands are now served from the

275a H→ [Duchesne] Duchesne ←H

276 River and thus have a diversion requirement of 4.0 acre-feet per acre. Water for these lands
277 shall be supplied in accordance with terms of the Midview Exchange Agreement.

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

290 1. All matters are deemed resolved herein except the issue of the priority date for
291 certain parcels of group 7 lands. That issue shall be submitted to an arbitrator who shall have
292 the authority under Utah Revised Code Sections 78-31-1, et seq., to decide the unresolved
293 factual issue as to the precise priority date for any parcel of group 7 lands specified in the
294 Tabulation.

295 2. To reach a determination of the priority date, either the State of Utah or the Ute
296 Tribe may request a panel of five water law experts. With the State of Utah striking first, the
297 Ute Tribe and the State shall alternately strike names from the list until one name remains and
298 such person shall be the arbitrator.

299 3. The decision of the arbitrator shall be final and shall conclusively determine the
300 priority date in question.

301 4. The procedures of the American Arbitration Association shall govern any
302 proceedings and the costs and expenses of the arbitrator shall be shared equally by the State
303 and the Ute Tribe.

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

307 described.

308 MUNICIPAL AND INDUSTRIAL WATER

309 In addition to the quantities of water set forth herein for the irrigable acreage of the Ute
310 Indian Tribe, the United States of America in trust for the Ute Indian Tribe is allocated the
311 depletion of 10,000 acre-feet of water annually for municipal, industrial and related purposes
312 from the Green River. To the extent that the tribe or its members use water, other than for
313 irrigation purposes, the quantity so used shall be included within said 10,000 acre feet unless a
314 transfer of water from land listed in the tabulation is properly made. The priority date for the
315 water provided under this paragraph is October 3, 1861. The Tribe and the State shall conduct a
316 cooperative inventory to identify all existing non-irrigation water uses of the Tribe or its
317 members to determine the remaining quantity of water available for diversion.

318 Section 6. **Repealer.**

319 This bill repeals:

320 Section **73-21-1, Approval of Ute Indian Water Compact.**

321 Section **73-21-2, Text.**

Legislative Review Note
Office of Legislative Research and General Counsel