

## **Chapter 21**

### **Ute Indian Water Compact**

#### **73-21-1 Approval of Ute Indian Water Compact.**

The within Compact, the Ute Indian Water Compact, 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, and approved for the State of Utah.

Enacted by Chapter 74, 1980 General Session

#### **73-21-2 Text.**

The text of the Ute Indian Water Compact is as follows:

#### **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, 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 471,035 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. All water delivered to groups 1 and 5 lands from storage under the Central Utah Project shall be assigned the priority date of the Water and Power Resources Service filing to accomplish the equitable allocation of water to all subscribers of the Project.

In addition to the water allocated under the previous paragraph, 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 reserved water for domestic, municipal, industrial, or related uses, 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.

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 agreement.

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, 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 recognized 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 677-677aa. Nothing in this Compact shall enlarge or diminish the scope of or otherwise affect either the United States' trust responsibility or the Ute Indian Tribe's responsibility 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. 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.

The Parties agree to use their best efforts in the expeditious planning and development of water projects for all group 5 lands, or substitute lands, including the Uintah and Upalco Units, the Leland Bench Project, or other similar projects of the Central Utah Project.

This Article is not intended to relieve the responsibility of the parties involved in the Midview Exchange Agreement and the Agreement dated the 20th day of September, 1965, among the United States of America, the Ute Indian Tribe of the Uintah and Ouray Reservation, and the Central Utah Water Conservancy District. The provisions of said Agreement of September 20, 1965, shall remain binding upon the parties thereto and continue in full force and effect.

#### 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.

#### 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 ratified by the United States, 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 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 implement this Compact by appropriate regulations.

DATED: \_\_\_\_\_ UTE INDIAN TRIBE

By \_\_\_\_\_

STATE OF UTAH

By \_\_\_\_\_

UNITED STATES OF AMERICA

By \_\_\_\_\_

Amended by Chapter 20, 1995 General Session