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Ute Indian Tribe of the Uintah and Ouray Reservation

Comments on United States Bureau of Reclamation's Green River Block Water Exchange Contract with the State of Utah and Draft Environmental Assessment

November 2, 2018

I. INTRODUCTION

The Ute Tribal Business Committee of the Ute Indian Tribe (the "Tribe") of the Uintah and Ouray Indian Reservation submits these comments regarding the United States Bureau of Reclamation's ("USBR") Draft Environmental Assessment for the Green River Block Water Exchange Contract with the State of Utah. The Ute Indian Tribe is located on the Uintah and Ouray Reservation ("Reservation") located in northeastern Utah, approximately 150 miles east of Salt Lake City, Utah. The Reservation lies within the Upper Colorado River Basin. Today, the Reservation is the second largest Indian reservation in the United States, covering more than 4.5 million acres. The Ute Indian Tribe has a tribal membership of almost four thousand individuals, a majority of whom live within the exterior boundaries of the Reservation. All of the Reservation land lies within the drainage of the Colorado River Basin.

The Tribe has Indian reserved water rights by diversion of 530,665 acre-feet per year in the Upper Colorado River Basin. Priorities for these rights are dated 1861 for all historically and practicably irrigable lands of the Uintah Valley portion of the Reservation, including municipal and industrial water rights, and 1882 for all lands served on the Uncompahgre portion of the Reservation, through which the Green River and its tributaries flow and border. The Ute Indian Tribe owns the highest priority water right to natural flows from all rivers within the exterior boundaries of the Reservation.

The northwestern area of the Reservation consists of five major river drainages with seven contributing rivers that generally flow southeast and east into the Green River. The Duchesne River system to the west drains from the Wasatch and Uinta Mountains through major tributaries that include Rock Creek, the Strawberry River, the Lake Fork River (with its major tributary the Yellowstone River), and the Uinta River (with its major tributary the Whiterocks River). The White River and other desert tributaries, including Willow Creek and Bitter Creek, drain the southeastern area of the Reservation into the Green River.

The Bureau of Indian Affairs operates the Uintah Indian Irrigation Project, authorized by Congress in 1906, that serves the vast majority of current Tribal agricultural operations on the

Reservation, with water sourced from the Duchesne, Lake Fork, and Uinta River systems. A maximum diversion rate of 1 cfs to 70 acres was established for direct natural flow diversions, with an annual allocation of 3 acre-feet per acre in the Lake Fork and Uinta Basins (under 1923 federally-decreed reserved water rights), 4 acre-feet per acre in the Duchesne River, Bitter, Sweet Water, Willow, and Hill Creeks Basins, 4.8 acre-feet per acre in the White River Basin, and 4.5 acre-feet per acre in the Green River Basin. These Indian water rights belong to our Tribe because, under the *Winters* doctrine, the primary purpose of the federal government's establishment of our Reservation was to require members of our Tribe to become productive farmers, a government policy intended to promote Indian self-sufficiency. These rights are established as a quantified apportionment of Indian reserved water rights in the Upper Colorado River Basin, and are a Tribal trust asset of the Ute Indian Tribe—a sovereign government, federally recognized by the United States. These Indian reserved water rights are present perfected rights, as recognized by the United States Supreme Court in *Arizona v. California* (U.S. Supreme Court, 1963) (1964 Decree). Additionally, the water on the Reservation was recognized by Congress in 1899 as the paramount rights of the Tribe, and this federal legislation directed the Secretary of the Department of Interior to secure and preserve a quantity of water necessary for the present and prospective wants of the Tribe.

Our tribal government provides services to our members and manages the Reservation through 60 tribal departments and agencies including land, fish and wildlife management, housing, education, emergency medical services, public safety, and energy and minerals management. The Tribe is also a major employer and engine for economic growth in northeastern Utah. Tribal businesses include a bowling alley, a supermarket, gas stations, a feedlot, a manufacturing plant, Ute Oil Field Water Services, and Ute Energy. Our governmental programs and tribal enterprises employ approximately 450 people, 75% of whom are tribal members. The Tribe takes an active role in the development of its resources, including as a majority owner of Ute Energy and owns numerous oil and gas wells on the Reservation. We depend on our natural resources as a primary source of economic development to establish a permanent homeland and economic security for our members.

For reasons detailed below, the Tribe requests that an Environmental Impact Statement (“EIS”) be conducted, with the final requirements incorporating the serious concerns raised by the Tribe. We also request that a government-to-government consultation be conducted on the Green River Block Water Exchange Contract with the State of Utah and on the Draft Environmental Assessment so that the USBR is aware of, discusses, and understands the Tribe's concerns on both of these issues. This way, we can work together, in accordance with federal law and policy, to ensure that the federal government, as trustee of the Tribe's reserved water rights, adheres to its fiduciary responsibilities to protect and preserve the Tribe's reserved water rights in the Green River and the Upper Colorado River Basin, and assists the Tribe in developing its Indian reserved water rights. We request that USBR takes our concerns into account.

II. FAILURE TO ENGAGE IN GOVERNMENT-TO-GOVERNMENT CONSULTATION

Under the policy of the United States, the USBR is required to conduct government-to-government consultation with the Ute Indian Tribe on this matter in order to be in compliance with Executive Order 13175, Presidential Memoranda, Department of Interior Secretarial Order 3317, and

the Bureau of Reclamation policy. (*See* Correspondence from Wayne G. Pullan, Area Manager of the Upper Colorado Region, to the Ute Tribal Business Committee, dated October 1, 2018).

According to the USBR Draft Environmental Assessment report, “Reclamation sent consultation letters with a determination of No Adverse Effect to historic properties for the Project to [the Ute Indian Tribe of the Uintah and Ouray Reservation] on June 8, 2018. The USBR explained that its consultation has been focused on “identify[ing] any concerns about historic properties; to advise on the identification and evaluation of historic properties; and to participate in the resolution of Project effects. (p. 6). The scope of the USBR’s consultation is too narrow, where the primary, if only, focus has been on historical properties.

Although representatives of the Tribe attended a recent public meeting in Vernal, Utah, on September 26, 2018, on the proposed Draft Environmental Assessment, conducted by representatives from the USBR for “stakeholders,” the USBR has had no governmental consultation with the Tribal government—even though the USBR has worked on the development of water within the exterior boundaries of the Reservation since the early 1900s. The USBR is very aware of the interests and rights of the Ute Indian Tribe in the Green River and its fiduciary responsibility to the Tribe regarding these trust assets. Most of the USBR efforts, however, have been primarily focused on developing the State-based water rights to the detriment of the Tribe’s development and use of its Indian reserved water rights in the Upper Colorado River Basin.

Ironically, the USBR has identified one of the purposes of the Green River Block Water Exchange Agreement as “provid[ing] the State with a reliable water supply for development of the 1996 Assignment.” The State’s existing water right is a junior natural flow water right that is unreliable, especially during the later part of the summer months. As the Draft Environmental Assessment report stated under the No Action Alternative, “[t]he State may run into shortages in years of drought, especially during the latter part of the summer when tributary flows can be significantly reduced.” The Ute Indian Tribe has been under a “no action” plan since 1882, when the Uncompahgre reservation was established, creating a present perfected property right to the water flowing through, on, and bordering the Reservation. In 1965, the Tribe reached an agreement with the federal government on the apportionment of the Tribe’s Indian reserved water rights and agreed to defer the development of a portion of its quantified reserved water rights to assist in the development of the CUP. It has been meeting with representatives from the Central Utah Project Completion Act (“CUPCA”) Office and the USBR for at least the last ten years about its need to acquire storage in Flaming Gorge in order to have a more reliable water supply for the development of its Green River reserved water rights. This has yet to happen.

After a representative of the Tribe raised the concern at the September 26, 2018, Vernal, Utah, meeting that the USBR had failed to engage in government-to-government consultation between the Tribe and the USBR, the Ute Tribal Business Committee received a request, dated October 1, 2018. At this time, the parties are seeking a mutually agreeable date on which to conduct the required government-to-government consultation. The Tribe requests that no decision be finalized on the adequacy of the Draft Environmental Assessment until after the Tribe has had the opportunity to have a government-to-government consultations with the USBR to discuss its concerns regarding the adverse impact on the availability and development of the Tribe’s reserved

water rights and to ensure the protection and preservation of its Indian reserved water rights.

III. BACKGROUND ON THE GREEN RIVER BLOCK EXCHANGE CONTRACT DRAFT ENVIRONMENTAL ASSESSMENT

The USBR published the Green River Block Water Exchange Contract Draft Environmental Assessment (Green River Block Draft EA) in September of 2018. The Tribe’s comments describe several concerns of the Tribe that must be taken into consideration by the USBR before concluding that its Proposed Action based on the Draft Environmental Assessment has sufficient evidence to rely on an Environmental Assessment for its compliance with the National Environmental Policy Act (“NEPA”). It is our conclusion that an Environmental Impact Statement is necessary.

As explained in the USBR Draft Environmental Assessment report, “[t]he Colorado River Storage Project Act of April 11, 1956 (“CRSP Act”), authorized construction of the Colorado River Storage Project (“CRSP”) which allowed for comprehensive development of the water resources of the Upper Basin states” (p. 3). The Flaming Gorge Unit is one of the four initial storage units in the CRSP. In addition, “[t]he CRSP Act and subsequent legislation authorized the construction of 16 participating projects, including the Central Utah Project (“CUP”).” (p. 3-4). The Ute Indian Unit was one of these CUP units, identified as part of the final phase of the CUP development, known as the “Ultimate Phase,” which was intended to transfer water from Flaming Gorge to the Uinta and Duchesne River basins to provide irrigation to lands under the Uintah Indian Irrigation Project (including future irrigated lands) with the Ute Indian Tribe’s reserved water rights on the Reservation. When the CUP became too expensive, Congress directed that it be scaled down and, in 1992, the Ute Indian Unit was de-authorized under the Central Utah Project Completion Act (“CUPCA”). Subsequently, of the four units initially identified for development under the CUP, only the Ute Indian Unit was completely abandoned—the only unit dedicated to providing storage and water delivery of the Tribe’s Indian reserved water rights for its development and use. (p. 4).

In 1958, USBR filed an application with the State of Utah for water to be stored in Flaming Gorge Reservoir that included 500,000 acre-feet of Green River water supply for the Central Utah Project. According to the Green River Block Draft Environmental Assessment report (“Report”), “[t]he consumptive uses of this appropriation included the support of the Ultimate Phase Units[,]” including the Ute Indian Unit. The Green River Block Draft EA states that because “the Ultimate Phase Units were de-funded under CUPCA,” the water rights were reallocated to other uses, and 447,500 acre-feet of diversion remained with the United States. Nevertheless, portions of the stored water right were to be used to deliver Flaming Gorge water to lands on the Uintah and Ouray Reservation for irrigation of historical, current, and future trust lands of the Ute Indian Tribe and its members, as well as for non-tribal members with the right to use the Indian reserved water rights under the Uintah Indian Irrigation Project. This never happened. In 1996, the USBR assigned this remaining water right (“1996 Assignment”) to the Utah Board of Water Resources, which “provided the Board an opportunity to develop a portion of the Ultimate Phase Right before it lapsed in 2009”—for State-based water users.

The USBR received a letter dated January 5, 2016, from the State requesting two contracts for the use of its assigned water rights (total of 158,890 acre-feet depletion); one is for

the Lake Powell Pipeline Project, and the second contract is for developing water along the Green River. The second contract, a proposed “Exchange Contract” between the USBR and the State, is the subject of the Green River Block Draft EA and the meeting held September 26, 2018, where representatives of the Ute Indian Tribe participated. With this proposed action between the USBR and the State of Utah, the Ute Indian Tribe may not only be cut out of the storage facility and related water delivery system that the Ute Indian Unit was to provide under the CUP, but also from the ability to use stored water in Flaming Gorge representing a portion of its Indian reserved water rights.

As with the current activity between the USBR and the State of Utah, there appears to have been no consideration by USBR in 1996 of its responsibility to the Ute Indian Tribe as the trustee of the Tribe’s present perfected, Indian reserved water rights—a Tribal trust asset. In spite of the fact that the USBR and the State redesigned the CUP units in a manner that cut the Tribe out of any storage facility and water delivery system from which to develop its Indian reserved water rights (according to the report, three of the four “Initial Phase” CUP units have been fully constructed, with the remaining unit nearing completion, and the Uintah Unit from the “Ultimate Phase” being partially developed, with none of these storage facilities providing storage or water delivery for Tribal water), the USBR and the State of Utah have continued their partnership to develop the State’s apportionment of the Colorado River, to the detriment of the Tribe’s ability to develop its Indian reserved water rights’ apportionment in the Colorado River system, including in the Green River.

The Green River Block Draft EA involves a water exchange between the State of Utah and the USBR. Under this Exchange Contract, the State of Utah would agree to pay a base rate of \$19 (plus a \$3.47 O&M fee) per acre-foot to use USBR released storage from Flaming Gorge Reservoir in exchange for the State’s agreement not to develop an equal quantity of water rights. The Green River Block Draft EA states that the purpose of the Exchange Contract is to facilitate a water exchange of 72,641 acre-feet of depletions annually under the 1996 Assignment, which was previously included as part of CRSP (Colorado River Storage Project) participating project water right. The USBR stated that “this contract is needed to resolve a long-standing disagreement between Reclamation and the State regarding the use of the water rights assigned in 1961.” The following comments describe potential impacts to the Tribe resulting from the Green River Block Water Exchange Contract and Draft EA, which the USBR has not considered and included in its conclusions as reflected in the Draft EA.

IV. THE DRAFT ENVIRONMENTAL ASSESSMENT IS BASED ON INADEQUATE WATER SUPPLY AND DEMAND MODELING

The Tribe has federal, Indian reserved water rights in the Green River, which are present perfected rights as of the date of the creation of the Reservation, and the method the USBR used to model the potential impacts of the Green River Exchange Contract may underestimate its adverse impacts on the Tribe’s natural flow rights in the Green River. In conducting its Environmental Assessment and modeling of the water rights under the Exchange Contract and its effect on the environment, which must include the effect on the water supply, the USBR did not consider the 110-

year trend of decreasing water supply. The Green River Block Draft EA states on page 2 of Appendix A that:

“For each depletion scenario (no action, [Green River Block] depletion, and full depletion), one future inflow hydrology scenario was modeled. The inflow scenario uses data from the observed streamflow record (1906-2015).”

A simple linear trend line through the USBR’s estimated natural flow data (<https://www.usbr.gov/lc/region/g4000/NaturalFlow/current.html>) shows that the Colorado River’s water supply at Lee’s Ferry has decreased by an average of 34,000 acre-feet per year over the past 110 years.

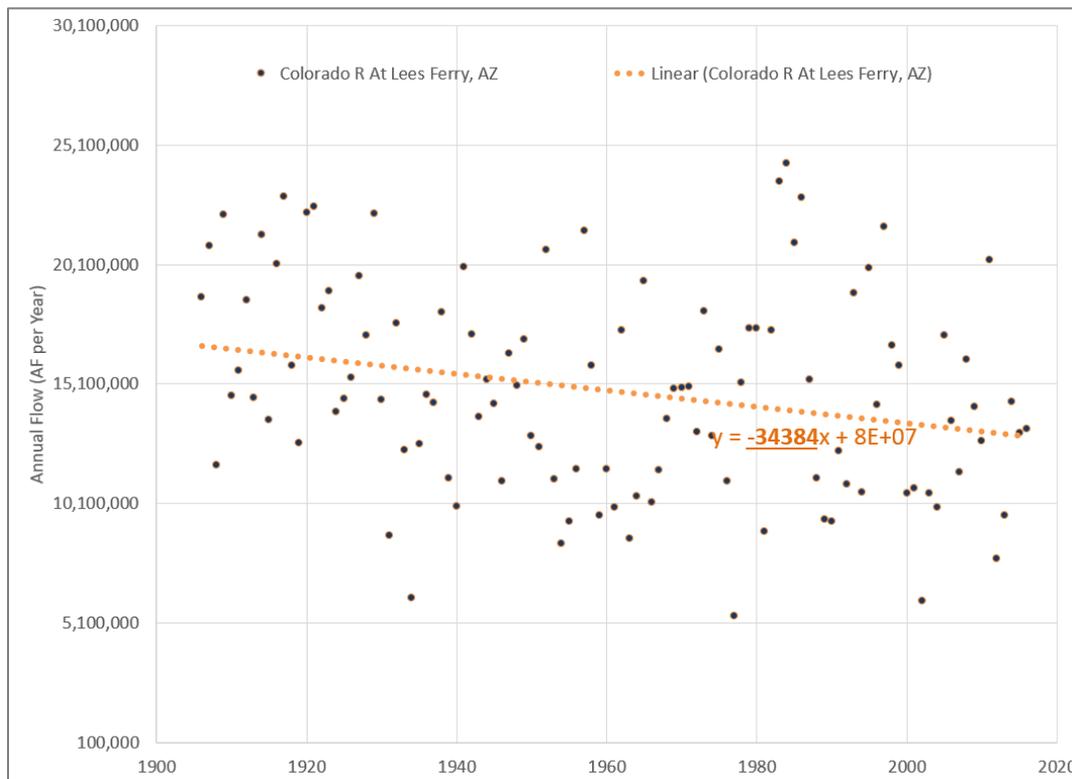


Figure 1: USBR Natural Flow Data for the Colorado River at Lee’s Ferry with a linear trend line

This decreasing trend of average annual flow in the Colorado River was also found in the USBR’s Colorado River Water Supply and Demand Report (<https://www.usbr.gov/lc/region/programs/crbstudy/finalreport/index.html>). Table B-3 on page B-82 of Technical Report B – Water Supply Assessment summarized results from the USBR’s water supply projections using the downscaled GCM Projected Scenario. This analysis predicted that average annual future flows in the Colorado River would be 7.5% less than historic by 2025, 10.9% less than historic by 2055, and 12.4% less than historic by 2080.

TABLE B-3

Summary of Annual and Monthly Streamflow Statistics for the Downscaled GCM Projected Scenario for the 3 Future 30 Year Time Periods: 2011–2040 (2025), 2041–2070 (2055), and 2066–2095 (2080)

	Statistic	Downscaled GCM Projected 2011–2040 (2025)	Downscaled GCM Projected 2041–2070 (2055)	Downscaled GCM Projected 2066–2095 (2080)
Annual (Water Year)	Average Annual Flow (maf)	13.9	13.4	13.1
	Percent Change from Long-Term Mean (1906–2007)	-7.5%	-10.9%	-12.4%
	Median (maf)	13.8	13.3	13.4
	25th Percentile (maf)	12.8	12.0	11.2
	75th Percentile (maf)	15.1	14.6	14.5
	Minimum Year Flow (maf)	4.4	3.9	3.7
	Maximum Year Flow (maf)	43.8	44.3	44.3
Monthly	Peak Month	June	May	May
	Peak Month Mean Flow (kaf)	3,535	3,388	3,495
	Peak Month Maximum Flow (kaf)	14,693	10,830	12,991
	Month at Which Half of Annual Flow (Water Year) is Exceeded	June	May	May

The last time period is beyond the Study period, but is shown for informational purposes.

Source: Colorado River Water Supply and Demand Report - Technical Report B – Water Supply Assessment (<https://www.usbr.gov/lc/region/programs/crbstudy/finalreport/index.html>).

Accordingly, it is the Tribe’s position that future natural inflows used for modeling should, on average, be lower flows than historic natural flows. These observed reductions in natural flow should not be ignored because reductions in future natural flow will increase impacts predicted by the Green River Block Draft EA.

Also, on page 5 of Appendix A of the Green River Block Draft EA, the USBR states “*In this analysis, except for reasonably foreseeable depletions, future Upper Basin depletions from the 2007 [Upper Colorado River Commission] UCRC schedule was assumed constant at 2018 levels; this assumption results in depletions significantly lower than the future depletion projections used in long term planning studies such as the Basin Study, which assumed that Upper Basin depletions will grow through 2060.*” The Tribe is concerned that this study does not account for realistic future water development patterns as observed by past trends and predicted under the USBR’s Basin Study.

Therefore, the Tribe requests that an EIS be performed that quantifies impacts by accounting for these observed trends of decreasing water supply and increasing water demand.

V. THE FEDERAL GOVERNMENT, ACTING THROUGH THE BUREAU OF RECLAMATION AND THE CENTRAL UTAH PROJECT COMPLETION ACT OFFICE, AS TRUSTEE OF THE TRIBE'S RESERVED WATER RIGHTS, FAILED TO CONSIDER AND ANALYZE THE ADVERSE IMPACT FROM THE EXCHANGE CONTRACT AND ENVIRONMENTAL ASSESSMENT ON THE TRIBE'S ABILITY TO STORE ITS GREEN RIVER RESERVED WATER RIGHTS IN FLAMING GORGE.

The Tribe has expressed its interest in storing a portion of its Indian reserved water rights in the Flaming Gorge Reservoir and, in fact, has been discussing and negotiating for this with the federal government, through the USBR and the Central Utah Project Completion Act ("CUPCA") Office representatives, for at least the past ten years, and more intensely over the last four years. The 1992 CUPCA, Title V, s. 503 (Revised 1990 Water Compact), proposed the transfer of a substantial amount of Tribal reserved water rights from the Duchesne River Basin (known in the E.L. Decker Report quantifying the Tribe's reserved water rights as Group 5 lands in the Duchesne River Basin) to the Green River, Indian reserved water rights that are present perfected rights as of the date of the establishment of the Reservation with an 1861 priority date. This is the basis for the Tribe's negotiations with the federal government for storage in Flaming Gorge, although the parties have not reached an agreement on such a water transfer. In CUPCA, Congress required that the proposed Revised 1990 Water Compact be re-ratified by the Ute Indian Tribe before it can become effective. The Ute Indian Tribe and its members have not and will not re-ratify this proposed Water Compact unless there is sufficient storage to support the development of its Indian reserved water rights. In fact, the Tribe is in litigation against the United States, in part, over this uncertainty.

The Revised 1990 Water Compact proposed to transfer Indian reserved water rights out of the Duchesne River Basin from a portion of the Tribe's practicably irrigable acreage ("PIA") to the Green River. The transfer was made in an area where there are no Indian trust, arable lands to support PIA lands. First, the Green River runs through a deep canyon through the Reservation where it cannot be economically used for irrigation purposes. Without some storage on the Green River, the Tribe will not be able to use the proposed transfer of this Indian water. The proposed transfer of Indian water is to benefit the non-Tribal, State-based water users in the Duchesne River Basin by reducing a portion of the Tribe's use of its senior priority rights in that Duchesne River Basin. The amount of this proposed water transfer ranges from a portion of the Group 5 PIA land water rights with 60,968 acre-feet of diversion annually, to the entirety of the Tribe's Group 5 reserved water rights. In addition, the Tribe has additional water rights under what are known in the Decker Report as Groups 6 and 7 lands in the Green River and its tributaries. The Tribe must have the flexibility of both stored water (in Flaming Gorge Dam) and natural flow water in the Green River if the Tribe, with the assistance of its trustee, the federal government, is to protect and preserve through storage its Indian reserved water rights. The Tribe has discussed this extensively with the federal representatives from the CUPCA Office and the USBR.

And yet, the USBR has failed to consider and study whether, by permitting the State of Utah to exchange natural flow rights of 127,026 acre-feet per year to access low cost, released storage water from the Green River, this will adversely impact ongoing negotiations between the USBR, the CUPCA Office, and the Tribe related to the Tribe's ability to secure a portion of its water rights coming out of released storage water. In a statement in the Draft EA, the USBR presents a

conclusion that “[a]lthough the Green River flows through the Uintah and Ouray Indian Reservation, no negative effects have been identified to the native population as a result of the Proposed Action.” (at page 47, Socioeconomics). If the Ute Indian Tribe is unable to fully develop and use its Indian reserved water rights, including those in the Green River, such an outcome will have a direct, significant, and certain economic adverse impact on the Tribe and its members. (*See also* section VII, impact on trust assets, below).

Therefore, the Tribe requests that an EIS be performed that quantifies any impacts under the Exchange Contract on the Tribe’s ability to store a portion of its Green River reserved water rights in Flaming Gorge.

VI. THE FEDERAL GOVERNMENT, ACTING THROUGH THE BUREAU OF RECLAMATION AND THE CENTRAL UTAH PROJECT COMPLETION ACT OFFICE, AS TRUSTEE OF THE TRIBE’S RESERVED WATER RIGHTS, FAILED TO CONSIDER AND ANALYZE ANY ADVERSE IMPACT ON THE TRIBE’S ABILITY TO USE ITS GREEN RIVER RESERVED WATER RIGHTS.

Currently, the State of Utah has a 1958 priority natural flow water right (where the flows in some of the streams are intermittent and is only available at certain times of the year). The Green River Block Exchange would provide the State of Utah with access to a firm supply of 127,026 acre-feet of diversion and 72,641 acre-feet of depletion by utilizing year-round storage releases from Flaming Gorge Reservoir and, as stated in the Green River Block Draft EA, “*provide the State with a reliable water supply for development of the 1996 Assignment.*”

As explained in Comment section V, above, the 1992 CUPCA Act, Title V, s. 503 (Revised 1990 Water Compact), proposed the transfer of a substantial amount of Tribal reserved water rights from the Duchesne River Basin (Group 5 lands) to the Green River with an 1861 priority date. Due to the lack of irrigable lands, the primary beneficial use of this water can only be through Tribal water marketing. If the USBR provides a substantial quantity of low-cost, released storage water to the State under the Green River Block Exchange, the USBR will significantly diminish the ability of the Tribe to market water in the Green River and, therefore, reduce the Tribe’s ability to develop and use its full apportioned Indian reserved water rights.

In other words, since the State’s current water right is a natural flow right, during drought years and towards the summer the State may face shortages. By converting a relatively junior natural flow water right to a more reliable released storage water right and, therefore, providing a more firm water supply to be available to the State throughout the year, the proposed water exchange elevates the State’s water right, making it more attractive than the most senior natural flow right of the Ute Indian Tribe in the Green River. Hence, potential water leasing entities will be more interested in the newly acquired released storage right of the State water users compared to the Tribe’s most senior natural flow water right, adversely impacting the ability of the Ute Indian Tribe to market its water right—resulting in a significant, adverse socioeconomic impact on the Tribe, in particular, on the economic development of this Tribal natural resource (as mentioned previously). Also, because the purpose of the federal government in creating the Reservation was to provide a permanent homeland for the Ute Indian Tribe and its members, which includes the development of self-

sufficiency, such purpose could be defeated under the proposed Exchange Contract—representing a failure of the federal government’s fiduciary duty to the Tribe.

Therefore, the Tribe requests that an EIS be performed that quantifies any impacts from this Exchange on the Tribe’s ability to utilize its Green River reserved water rights.

VII. THE GREEN RIVER BLOCK DRAFT ENVIRONMENTAL ASSESSMENT FAILS TO RECOGNIZE THE TRIBE’S RESERVED WATER RIGHTS, HELD IN TRUST BY THE UNITED STATES FOR THE BENEFIT OF THE TRIBE, AS A TRUST ASSET OF THE TRIBE.

As stated in the Draft EA, “[t]he ITAs are legal interests in property held in trust by the United States for Indian tribes and individuals.” (at p. 56). The Green River Block Draft EA states that “*Trust assets may include lands, minerals, hunting and fishing rights, traditional gathering grounds, and water rights.*” (p. 57, emphasis added). It also states that “[t]he development and operation of oil and gas wells associated with tribal mineral rights, tribal fishing access, and hunting and gathering are expected to continue within the Project APE [Area of Potential Effects].” It is the Tribe’s position that the USBR’s analysis of the Proposed Action is insufficient and deficient, and that the USBR failed to properly identify, consider, and analyze the Tribe’s reserved water rights as a Tribal trust asset, titled in the United States as trustee for the benefit of the Tribe, and, consequently, has failed to analyze the effects on the Ute Indian Tribe, including the present, reasonably foreseeable, and cumulative effects, the Proposed Action will have on the Ute Indian Tribe’s reserved water rights as a trust asset, resulting in a legally flawed Draft EA and the conclusions the USBR has drawn from the Draft EA.

Therefore, the Tribe requests that an EIS be performed to address our concern that the Proposed Action will have a significant, adverse effect on the Tribe’s reserved water rights, a Tribal Trust Asset, and a highly relevant factor in analyzing the environmental consequences of the Exchange Contract.

VIII. CONCLUSION

The Ute Indian Tribe appreciates the opportunity to comment on the Green River Block Draft Environmental Assessment. For the reasons described above, it is our conclusion that the USBR’s conclusion that no EIS need be prepared because the proposed impact will not have a significant effect on the human environment is based on legally insufficient analysis. Therefore, we ask that the USBR, first, engage in the legally required government-to-government consultation process with the Tribe, as it is required to do under federal law and policy, before issuing a final decision on whether an Environmental Impact Statement is required. Second, it is the Tribe’s position that the USBR failed to identify and give legally sufficient consideration to the consequences of the Green River Block Exchange Contract on the Tribe’s reserved water rights as a trust asset with the paramount water rights in the Green River—which is to be preserved and protected by the Secretary, such as through storage and sufficient natural flow to allow for the Tribe’s use of this trust asset to economically benefit its members—resulting in the conclusion that the Draft Environmental Assessment is flawed and insufficiently accounts for the Tribe’s reserved water rights development, including storage and use.

Additional studies resulting in an Environmental Impact Statement are needed to give these Tribal concerns regarding the consequences of the Proposed Action a hard look and the serious consideration that is required under the environmental assessment process. The Tribe appreciates USBR's consideration of these comments and we look forward to consulting with the Department of the Interior on these issues.