

105TH CONGRESS
2D SESSION

H. R. 3478

To amend the Colorado Ute Indian Water Rights Settlement Act to provide for a final settlement of the claims of the Colorado Ute Indian Tribes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 1998

Mr. McINNIS (for himself, Mr. REDMOND, Mr. HEFLEY, Mr. BOB SCHAFFER, Mr. DAN SCHAEFER of Colorado, and Mr. SKEEN) introduced the following bill; which was referred to the Committee on Resources

A BILL

To amend the Colorado Ute Indian Water Rights Settlement Act to provide for a final settlement of the claims of the Colorado Ute Indian Tribes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Colorado Ute Settlement Act Amendments of 1998”.

6 (b) FINDINGS.—Congress finds that in order to pro-
7 vide for a full and final settlement of the claims of the
8 Colorado Ute Indian Tribes, the Tribes have agreed to re-
9 duced water supply facilities.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) AGREEMENT.—The term “Agreement” has
4 the meaning given that term in section 3(1) of the
5 Colorado Ute Indian Water Rights Settlement Act of
6 1988 (Public Law 100–585).

7 (2) ANIMAS-LA PLATA PROJECT.—The term
8 “Animas-La Plata Project” has the meaning given
9 that term in section 3(2) of the Colorado Ute Indian
10 Water Rights Settlement Act of 1988 (Public Law
11 100–585).

12 (3) DOLORES PROJECT.—The term “Dolores
13 Project” has the meaning given that term in section
14 3(3) of the Colorado Ute Indian Water Rights Set-
15 tlement Act of 1988 (Public Law 100–585).

16 (4) TRIBE; TRIBES.—The term “Tribe” or
17 “Tribes” has the meaning given that term in section
18 3(6) of the Colorado Ute Indian Water Rights Set-
19 tlement Act of 1988 (Public Law 100–585).

20 **SEC. 3. AMENDMENTS TO THE COLORADO UTE INDIAN**
21 **WATER RIGHTS SETTLEMENT ACT OF 1988.**

22 (a) RESERVOIR; MUNICIPAL AND INDUSTRIAL
23 WATER.—Section 6(a) of the Colorado Ute Indian Water
24 Rights Settlement Act of 1988 (Public Law 100–585) is
25 amended to read as follows:

1 “(a) RESERVOIR; MUNICIPAL AND INDUSTRIAL
2 WATER.—

3 “(1) IN GENERAL.—After the date of enact-
4 ment of the Colorado Ute Settlement Act Amend-
5 ments of 1998, the Secretary shall provide—

6 “(A) for the construction, as components
7 of the Animas-La Plata Project, of—

8 “(i) a reservoir with a storage capaci-
9 ty of 260,000 acres-feet; and

10 “(ii) a pumping plant and a reservoir
11 inlet conduit; and

12 “(B) through the use of the project compo-
13 nents referred in subparagraph (A), municipal
14 and industrial water allocations in such manner
15 as to result in allocations—

16 “(i) to the Southern Ute Tribe, with
17 an average annual depletion of an amount
18 not to exceed 16,525 acre-feet of water;

19 “(ii) to the Ute Mountain Ute Indian
20 Tribe, with an average annual depletion of
21 an amount not to exceed 16,525 acre-feet
22 of water;

23 “(iii) to the Navajo Nation, with an
24 average annual depletion of an amount not
25 to exceed 2,340 acre-feet of water;

1 “(iv) to the San Juan Water Commis-
2 sion, with an average annual depletion of
3 an amount not to exceed 10,400 acre-feet
4 of water; and

5 “(v) to the Animas-La Plata Conser-
6 vancy District, with an average annual de-
7 pletion of an amount not to exceed 2,600
8 acre-feet of water.

9 “(2) TRIBAL CONSTRUCTION COSTS.—Construc-
10 tion costs allocable to the Navajo Nation and to each
11 Tribe’s municipal and industrial water allocation
12 from the Animas-La Plata Project shall be non-
13 reimbursable.

14 “(3) NONTRIBAL WATER CAPITAL OBLIGA-
15 TIONS.—The nontribal municipal and industrial
16 water capital repayment obligations for the Animas-
17 La Plata Project shall be satisfied, upon the pay-
18 ment in full—

19 “(A) by the San Juan Water Commission,
20 of an amount equal to \$8,600,000;

21 “(B) by the Animas-La Plata Water Con-
22 servancy District, of an amount equal to
23 \$4,400,000; and

24 “(C) by the State of Colorado, of an
25 amount equal to \$16,000,000, as a portion of

1 cost-sharing obligation of the State of Colorado
2 recognized in the Agreement in Principle Con-
3 cerning the Colorado Ute Indian Water Rights
4 Settlement and Animas-La Plata Cost Sharing
5 that the State of Colorado entered into on June
6 30, 1986.

7 “(4) CERTAIN NONREIMBURSABLE COSTS.—
8 Any cost of a component of the Animas-La Plata
9 Project described in paragraph (1) that is attributed
10 to and required for recreation, environmental com-
11 pliance and mitigation, the protection of cultural re-
12 sources, or fish and wildlife mitigation and enhance-
13 ment shall be nonreimbursable.

14 “(5) TRIBAL WATER ALLOCATIONS.—

15 “(A) IN GENERAL.—With respect to mu-
16 nicipal and industrial water allocated to a Tribe
17 from the Animas-La Plata Project or the Dolo-
18 res Project, until that water is first used by a
19 Tribe or pursuant to a water use contract with
20 the Tribe, the Secretary shall pay the annual
21 operation, maintenance, and replacement costs
22 allocable to that municipal and industrial water
23 allocation of the Tribe.

24 “(B) TREATMENT OF COSTS.—A Tribe
25 shall not be required to reimburse the Secretary

1 for the payment of any cost referred to in sub-
2 paragraph (A).

3 “(6) REPAYMENT OF PRO RATA SHARE.—As an
4 increment of a municipal and industrial water alloca-
5 tion of a Tribe described in paragraph (5) is first
6 used by a Tribe or is first used pursuant to the
7 terms of a water use contract with the Tribe—

8 “(A) repayment of that increment’s pro
9 rata share of those allocable construction costs
10 for the Dolores Project shall commence by the
11 Tribe; and

12 “(B) the Tribe shall commence bearing
13 that increment’s pro rata share of the allocable
14 annual operation, maintenance, and replace-
15 ment costs referred to in paragraph (5)(A).”.

16 (b) REMAINING WATER SUPPLIES.—Section 6(b) of
17 the Colorado Ute Indian Water Rights Settlement Act of
18 1988 (Public Law 100–585) is amended by adding at the
19 end the following:

20 “(3) At the request of the Animas-La Plata
21 Water Conservancy District of Colorado or the La
22 Plata Conservancy District of New Mexico, the Sec-
23 retary shall take such action as may be necessary to
24 provide, after the date of enactment of the Colorado

1 Ute Settlement Act Amendments of 1998, water al-
2 locations—

3 “(A) to the Animas-La Plata Water Con-
4 servancy District of Colorado, with an average
5 annual depletion of an amount not to exceed
6 5,230 acre-feet of water; and

7 “(B) to the La Plata Conservancy District
8 of New Mexico, with an average annual deple-
9 tion of an amount not to exceed 780 acre-feet
10 of water.

11 “(4) If depletions of water in addition to the
12 depletions otherwise permitted under this subsection
13 may be made in a manner consistent with the re-
14 quirements of the Endangered Species Act of 1973
15 (16 U.S.C. 1531 et seq.), the Secretary shall provide
16 for those depletions by making allocations among the
17 beneficiaries of the Animas-La Plata Project in ac-
18 cordance with an agreement among the beneficiaries
19 relating to those allocations.”.

20 (c) MISCELLANEOUS.—Section 6 of the Colorado Ute
21 Indian Water Rights Settlement Act of 1988 (Public Law
22 100–585) is amended by adding at the end the following:

23 “(i) TRANSFER OF WATER RIGHTS.—Upon request
24 of the State Engineer of the State of New Mexico, the
25 Secretary shall, in a manner consistent with applicable

1 State law, transfer, without consideration, to the New
2 Mexico Animas-La Plata Project beneficiaries or the New
3 Mexico Interstate Stream Commission any portion of the
4 interests in water rights of the Department of the Interior
5 under New Mexico Engineer permit number 2883, dated
6 May 1, 1956, in order to fulfill the New Mexico purposes
7 of the Animas La-Plata Project.

8 “(j) TREATMENT OF CERTAIN REPORTS.—

9 “(1) IN GENERAL.—The April 1996 Final Sup-
10 plement to the Final Environmental Impact State-
11 ment, Animas-La Plata Project issued by the De-
12 partment of the Interior and all documents incor-
13 porated therein and attachments thereto, and the
14 February 19, 1996, Final Biological Opinion of the
15 United States Fish and Wildlife Service, Animas-La
16 Plata Project shall be considered to be adequate to
17 satisfy any applicable requirement under the Endan-
18 gered Species Act of 1973 (16 U.S.C. 1531 et seq.),
19 the National Environmental Policy Act of 1969 (42
20 U.S.C. 4321 et seq.) or the Federal Water Pollution
21 Control Act (33 U.S.C. 1251 et seq.) with respect
22 to—

23 “(A) the amendments made to this section
24 by the Colorado Ute Indian Water Rights Set-
25 tlement Act Amendments of 1998;

1 “(B) the initiation of, and completion of
2 construction of the facilities described in this
3 section; and

4 “(C) an aggregate depletion of 57,100
5 acre-feet of water (or any portion thereof) as
6 described and approved in that biological opin-
7 ion.

8 “(2) STATUTORY CONSTRUCTION.—Nothing in
9 this subsection shall affect—

10 “(A) the construction of facilities that are
11 not described in this section; or

12 “(B) any use of water that is not described
13 and approved by the Director of the United
14 States Fish and Wildlife Service in the final bi-
15 ological opinion described in paragraph (1).

16 “(k) FINAL SETTLEMENT.—

17 “(1) IN GENERAL.—The provision of water to
18 the Tribes in accordance with this section shall con-
19 stitute final settlement of the tribal claims to water
20 rights on the Animas and La Plata Rivers.

21 “(2) STATUTORY CONSTRUCTION.—Nothing in
22 this section may be construed to affect the right of
23 the Tribes to water rights on the streams and rivers
24 described in the Agreement, other than the Animas
25 and La Plata Rivers, to participate in the Animas-

1 La Plata Project, to receive the amounts of water
2 dedicated to tribal use under the Agreement, or to
3 acquire water rights under the laws of the State of
4 Colorado.

5 “(3) ACTION BY THE ATTORNEY GENERAL.—
6 The Attorney General of the United States shall file
7 with the District Court, Water Division Number 7,
8 of the State of Colorado such instruments as may be
9 necessary to request the court to amend the final
10 consent decree to provide for the amendments made
11 to this section under section 2 of the Colorado Ute
12 Settlement Act Amendments of 1998.”.

13 **SEC. 4. STATUTORY CONSTRUCTION; TREATMENT OF CER-**
14 **TAIN FUNDS.**

15 (a) IN GENERAL.—Nothing in the amendments made
16 by this Act to section 6 of the Colorado Ute Indian Water
17 Rights Settlement of 1988 (Public Law 100–585) shall
18 affect—

19 (1) the applicability of any other provision of
20 that Act;

21 (2) the obligation of the Secretary of the Inte-
22 rior to deliver water from the Dolores Project and
23 to complete the construction of the facilities located
24 on the Ute Mountain Ute Indian Reservation de-
25 scribed in—

1 (A) the Department of the Interior and
2 Related Agencies Appropriations Act, 1991
3 (Public Law 101–512);

4 (B) the Department of the Interior and
5 Related Agencies Appropriations Act, 1992
6 (Public Law 102–154);

7 (C) the Department of the Interior and
8 Related Agencies Appropriations Act, 1993
9 (Public Law 102–381);

10 (D) the Department of the Interior and
11 Related Agencies Appropriations Act, 1994
12 (Public Law 103–138); and

13 (E) the Department of the Interior and
14 Related Agencies Appropriations Act, 1995
15 (Public Law 103–332); or

16 (3) the treatment of the uncommitted portion of
17 the cost-sharing obligation of the State of Colorado
18 referred to in subsection (b).

19 (b) TREATMENT OF UNCOMMITTED PORTION OF
20 COST-SHARING OBLIGATION.—The uncommitted portion
21 of the cost-sharing obligation of the State of Colorado re-
22 ferred to in section 6(a)(3) of the Colorado Ute Indian
23 Water Rights Settlement Act of 1988 (Public Law 100–
24 585), as added by section 3[(a)] of this Act, remains
25 available after the date of payment of the amount specified

1 in that section and may be used to assist in the funding
2 of any component of the Animas-La Plata Project that
3 is not described in such section 6(a)(3).

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