

Testimony of
John Baker, Jr., Chairman
Southern Ute Indian Tribe

Before the Committee on Indian Affairs
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Washington, D.C.

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Good Afternoon. My name is John Baker, Jr. I am the Chairman of the Southern Ute Indian Tribe. Thank you for the opportunity to testify today. On behalf of the Tribe and the Tribal Council, I offer unqualified support for the enactment of S. 2508, a bill to amend the Colorado Ute Indian Water Rights Settlement Act of 1988. We hope that the bill can be promptly enacted into law.

As you know, Senator, the resolution of the tribal water claims has been a long and painful process. Working with the State of Colorado and our neighbors, we have successfully settled our claims on all but two of the rivers that cross our reservation. Those successes could not have occurred without your help. But, as you understand, Senator, the construction of the Animas-La Plata Project is at the heart of the Colorado Ute settlement. We have always sought to settle the tribal claims without taking water from our non-Indian neighbors. This legislation and the proposal that was advanced as the preferred alternative in the draft Supplemental Environmental Impact Statement remain true to that principle. We, of course, are disappointed that the project envisioned in the 1988 legislation will not be constructed. We are especially troubled that the present compromise will not provide our neighbors with the water which they need for their farms and ranches. Nevertheless, the bill accomplishes what we all need -- even if it does not include everything that we want -- because it provides the Tribes with a firm water supply and respects the existing water rights of our neighbors. The legislation needs to go forward so that this chapter of the history of southwest Colorado can be completed.

Last fall, I was elected Chairman of the Tribe on a platform that included a new approach to tribal government. A lot has changed since I took office but one thing has not -- the strong tribal support for the Animas-La Plata Project. I know that even in its reduced form, ALP is the best and only way to provide the Tribe with a water supply to meet its present and future needs. The Tribal Council continues to support that approach, just as the prior Tribal Council did when my father, John Baker, was chairman, just as the Council did when my uncle, Chris Baker, was Chairman and the Colorado Ute Indian Water Rights Final Settlement Agreement (Dec.10, 1986) was signed, just as the Council did when my predecessor, Clement Frost was Chairman, and just as the Council did during the many years of Leonard Burch's leadership.

The Tribal Council is elected to lead the Southern Ute Indian Tribe. Over the years, the Council has sought a firm and reliable supply of water to serve as the foundation for tribal economic growth as we move into a new century. The present Council, like past Councils, understands that economic success in the arid southwest requires a dependable water supply. We know that you understand the importance of a firm water supply, Senator, but that lesson is lost on many of our opponents. Water will be needed whether the future of the Southern Ute Indian Tribe includes continued success in natural resource development or reflects the recreation and tourist industry that is now an important part of the economy of the Four Corners region. And, of course, with an ever-growing tribal membership, we need houses and a domestic water supply on the west side of our reservation, no matter what economic enterprises the Tribe ultimately undertakes. Based on the studies in the draft Supplemental Environmental Impact Statement, we

know that storage is required to provide the Tribe with a firm and flexible supply of water. The United States promised that the Tribe would have such a water supply in 1868 when it created the Ute Reservation. It confirmed that promise in 1988 when it passed the Colorado Ute Indian Water Rights Settlement Act of 1988, 102 Stat. 2973. Now is the time for the United States to carry out those commitments.

The project that would be constructed under the present legislation is much different than the originally proposed ALP. It is much different than Phase I of the Project which was to be constructed under the terms of the 1986 Settlement Agreement and 1988 Settlement Act. It is much different than ALP Lite which was proposed only two years ago. All of the changes that have been made respond to arguments by the project opponents.

First, the Project is now unquestionably an Indian water rights project. Approximately two-thirds of the Project water supply will be allocated to the Tribes. Previous configurations envisioned two-thirds of the water supply going to the non-Indian community. Now as the draft EIS states, the purpose of the Project is to settle the tribal water rights.

Second, the major environmental issues associated with irrigation and the Endangered Species Act have been eliminated. There are no irrigation facilities and, unlike ALP Lite, there is no storage capacity for irrigation water. Thus, the water quality and other issues related to the irrigation components are gone. The Project has been designed around the depletion limits previously endorsed by the Fish and Wildlife Service and will operate within the flow requirements that have been developed for the endangered fish. As a result, there is no conflict with endangered species. Mitigation is provided for the remaining impacts which are minor in nature.

Third, the cost of the Project has been greatly reduced. ALP in its original configuration would cost over \$700 million today. The preferred alternative in the draft EIS would cost \$366 million, including \$40 million to the two Tribes for resource development as provided in the bill. It also includes \$24 million for the Navajo pipeline and \$75 million in sunk costs.

Fourth, the Project passes muster under the Clean Water Act and the Endangered Species Act. The Project has been studied and restudied under the National Environmental Policy Act. Because of those studies, Congress knows that it is authorizing a small project that will have a small effect on the environment but which will settle a longstanding controversy by providing water to the two Tribes for present and future uses. The cost and impact of the settlement are substantially reduced from those authorized in the 1988 Settlement Act. If Congress passes this Act, it will know exactly what is doing. Moreover, it will be acting in accordance with the preferred alternative in the draft EIS.

Despite these major changes to the Project, there is still opposition. Now that there are no longer any meaningful environmental reasons to oppose the Project, the arguments have taken on a more offensive note.

Many of the opponents now directly attack the Tribe's entitlement to water under the

1986 Settlement Agreement and 1988 Settlement Act. That argument is wrong, as the Solicitor of the Department of the Interior determined last year. It also comes far too late in the day. The consent decrees recognizing the tribal water rights were entered in 1991 by the Colorado Water Court. Those who object to the recognition of reserved water rights for the benefit of the Tribes had the opportunity to challenge our rights at that time. They did not do so, perhaps because they knew that their challenges to the tribal rights would not survive in court. Whatever the reason for failing to raise this argument in court, there is no doubt of the validity of the tribal rights today. The tribal rights have been acknowledged by the Executive Branch, approved by the courts, and were acknowledged by Congress in 1988. No reason exists to reexamine that question now.

Other opponents continue to think that they, not the Tribal Council, know what is best for the Tribe. The Tribe is told by these self-appointed spokesmen for tribal interests that the Project will not benefit the Tribe because the reservoir is not located on the Reservation and does not include delivery facilities. We know that. After all, the 1988 Settlement Act called for the construction of irrigation delivery facilities to deliver water to tribal lands. Of course, we would prefer that the settlement include the construction of delivery facilities but we understand that the cost of the settlement is an issue. The Tribal Council -- the elected leadership of the Tribe -- understands that the first step in obtaining a reliable water supply is to build the bucket to store the water. The fact that we will have to wait to build the delivery facilities is an acceptable price to pay to ensure that the facilities needed to store water for the Tribe's benefit are built. The argument that the reservoir is not on the Reservation is even more ridiculous. Reservoirs are built where the geography permits. We know that we can benefit from a reservoir above the Reservation. There is no merit to the argument that the reservoir must be built on tribal lands to benefit the Tribe. Indeed, the Tribe benefits from the Vallecito Reservoir which is above the Reservation on the Pine River.

The opponents also continue to argue that alternatives are available. As the draft EIS demonstrates, that is not true. The proposal that the Tribe should buy land and the accompanying state water rights is not a solution to the tribal water right claims. It is widely opposed within the region where the water users on the streams in question thought that they had resolved their differences with the Tribe in 1988. The proposal would be a nightmare to implement. The purchased water rights would be subject to state law and would not have the protections afforded under federal law and the original settlement that protect against abandonment and forfeiture. Moreover, the land itself would be subject to state taxes and state jurisdiction. Finally, there is no assurance that a reliable supply of water would be obtained. In fact, the idea sounds suspiciously like rotating the four bald tires on your car. Only after 30 years would we know whether the supposed settlement would actually work. In short, the proposal would simply continue the present controversy over the tribal rights in a slightly different forum for another 30 years. That is not a settlement and it is not acceptable to the Tribal Council.

Finally, the opponents sometimes argue that the Tribe should just lease its water out of state and into the lower basin of the Colorado River. That is not what the Tribe wants. It wants to use the water for economic development on its Reservation and in the vicinity of the Reservation so that the Tribe can share in the resulting benefits in jobs and opportunities. The Tribal Council, unlike the project opponents, does not believe that the only good use of water is in

California. The Tribe has accepted the terms of the 1988 Settlement Act which subjects use of water off its Reservation to state law. We are not here today to revisit that issue. Congress has spoken as to the controlling principles on this sensitive issue and there is no reason to think that a different answer would be acceptable today.

In closing, Mr. Chairman, I want to express my appreciation for your long years of work on this matter. You have always supported the parties to the settlement and stood up for the United States keeping its word to the two Ute Tribes. We appreciate your hard work and support over the last 15 years. We also want to say thank you to Secretary Babbitt, Deputy Secretary Hayes, and the Department of the Interior. They have worked very hard on these matters and have recognized that the United States must honor its commitments to the two Ute Tribes. We also want to state our appreciation of the sacrifices made by our non-Indian neighbors who have never wavered in their insistence that the United States should keep its promises to the two Ute Tribes.