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Colorado River Basin Study Comments--Dolores Water Conservancy District

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Dolores Water Conservancy District

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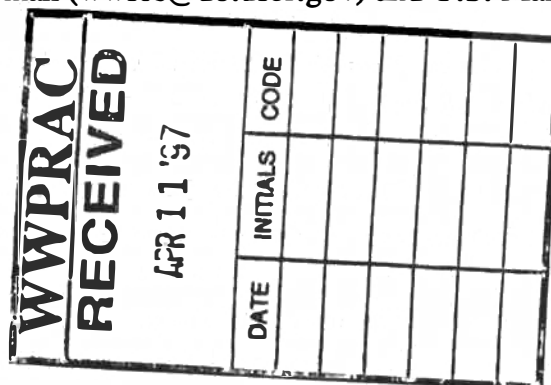
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Via E-mail (wwsec@do.usbr.gov) and U.S. Mail



Western Water Policy Review Advisory Commission
P. O. Box 25007, D-5001
Denver, CO 80225-0007

Re: Report on the Colorado River Basin

Gentlemen:

Maynes, Bradford, Shipps & Sheftel, LLP represents the Dolores Water Conservancy District (the "District"). Attached is a revised draft of Pages 84-92 of the Colorado River Basin Study by Dale Pontius, the portion on the Dolores River Watershed, showing suggested District changes to the document. The changes were made for the following reasons:

1. Introduction and Background Information.

a. While the Dolores River may enter Utah and carries water from the San Miguel River Basin into the Colorado River, the Dolores Project, the subject of all the negotiations regarding fishery releases, is solely in Colorado. No Utah interests were involved at all. Further, Telluride, on the San Miguel River not the Dolores River, has no role whatsoever in the Dolores Project. We assume that the area included the Dolores River watershed and the virgin flows of the Dolores River described in the draft include the San Miguel River Basin.

b. The Dolores River was fully appropriated at the turn of the century by the Montezuma Valley Irrigation Company ("MVIC"). Prior to the construction of the Dolores Project, MVIC's diversions dried up the Dolores River. With the Project, River conditions have improved. The draft introduction makes it seem as if the Project were responsible for the major reduction of flows in the Dolores River.

c. We believe it is important to add a statement on the value of the Dolores Project to the Montezuma and Dolores County area.

2. Water Shortages.

a. The District objected to the Bureau of Reclamation ("BOR") taking water for the downstream fishery not because of a *water rights* ownership issue but because of the prior allocation of all Project water under the District's Repayment Contract with BOR, with the District's attendant repayment obligation, and the BOR's lack of authority to make such a change given the terms of the DPR and EIS.

b. Throughout the document, the author fails to give sufficient credit to the District for its leadership role. In fact, the pool concept was proposed by the District.

c. The amount of the pool is misstated in various places throughout the document and has been corrected. The pool does not include the up to 3,900 acre-feet ("af") of downstream senior water rights.

d. The BOR never promised to provide a pool of more than 29,300 af plus up to 3,900 af of downstream senior rights without cost-sharing.

3. Lessons Learned.

a. The BOR's mistake was not "inaccurate scientific information" but a miscalculation based on incorrect assumptions of the average annual reservation to benefit the downstream fishery based on the DPR/EIS flow release regime.

b. Although rafting is not a Dolores Project purpose, the District has always worked to provide rafters with the best flow regime possible after taking into account authorized project purposes. Rafters pay nothing for this benefit, aside from personal income taxes.

c. It would be helpful to add additional language to the section labeled "Allow a long time period especially when conflicts are entrenched." regarding the heightened prospects for local settlements when the new users seek a win-win situation, one where old allocations are still protected but new users also receive benefits.

4. Future Concerns.

In exchange for 23,000 af of Dolores Project water, the Ute Mountain Ute Tribe agreed to settle its claims in the Mancos and Dolores Rivers. This resolution of the Ute Mountain Ute Tribe's

reserved water rights cost the potential for Dolores Project irrigation of 10,000 acres of land, which, in the light of the success of the Dolores Project, was a monumental sacrifice.

The environmentalists' proposal to utilize the Dolores Project water to resolve the Ute claims seeks to revoke promises made by the State and Federal Governments and relied on by the District. The Settlement Agreement states that the Tribe is not entitled to any other reserved water right from the Mancos or Dolores Rivers. The Dolores District's 1977 Repayment Contract with the United States Government allocated the entire yield of McPhee Reservoir to all of its uses. Even Reclamation's discussion of Seven Options admits the Dolores Project is fully allocated. No user's share can be increased without reducing the shares of other users. No further water is available in the Dolores Project as a substitute for new water from the Animas-La Plata Project in settling the Tribes' reserved water rights claims.

The Ute Mountain Ute Tribe receives from the Dolores Project an average annual supply of 22,900 af of water for the irrigation of about 7,500 acres of land; 1,000 af of M&I water; and 800 af of water for recreation, fish, and wildlife purposes.

The District is, therefore, against any use of Dolores Project water for a new settlement of Tribal reserved water rights claims on the Animas and La Plata Rivers.

Sincerely,

MAYNES, BRADFORD, SHIPPS & SHEFTEL, LLP

A handwritten signature in dark ink, appearing to read "Janice C. Sheftel", written over a light blue rectangular stamp.

Janice C. Sheftel

JCS:eab
attachment

cc: Don Schwindt, President, DWCD
John Porter, Manager, DWCD
Ruth Gunnarson, WWPRAC (via E-mail: rgunnarson@do.usbr.gov)

DOLORES RIVER WATERSHED

The Dolores River watershed, ~~located in southwestern Colorado and southeastern Utah,~~ provides a case study as to how consensus can be reached when conflict is high over a water resource issue; how the federal **government**, local water users, states, and Indian tribes can work together to solve a water resource problem; how to manage a resource involving multiple jurisdictions; and what changes occur as traditional water users ~~seek to accommodate~~ **are faced with accommodating** other uses such as recreation and protection of fish habitat.

BACKGROUND INFORMATION

From its headwaters in the San Juan Mountains to its intersection with the Colorado River near Cisco, Utah, the Dolores River flows some 200 miles (Figure 16). The river courses across a range of biotic communities, from alpine grasslands to montane forest areas to **Colorado Plateau Sonoran** desert lands. Along the way, the ~~River~~ **provides water for municipal, industrial and agricultural uses; of both Indians uses and non-Indians and for a trout fishery fisheries.** The ~~Dolores River below McPhee Dam in southwestern Colorado~~ **is a popular fishing spot, drawing several thousands of anglers each year from Colorado and from other Western states.** A 12-mile stretch from McPhee Dam ~~down to the Bradfield Bridge~~ **was recently named one of the 50 best trout streams in America by *Trout Magazine*.** White water ~~Bboating~~ **is also very popular on the Dolores River downstream from McPhee Dam and relies entirely on releases from McPhee Reservoir managed to avoid spills over the dam.**

The Dolores River watershed, ~~[including the San Miguel River watershed?]~~ encompasses approximately 4,620 square miles in southwestern Colorado and southeastern Utah. Most of the lands within the watershed are owned by the BLM or USFS.¹ ~~However, relatively rapid population growth is taking place near the larger towns such as Telluride, which has nearly doubled its population since 1980.~~ Prior to the development of irrigated agriculture ~~Historically, the Dolores River, including the San Miguel and its tributaries, discharged approximately 544,000 af/yr to the Colorado River. Today, a series of diversions and impoundments have altered the streamflow regime dramatically.~~ Beginning in the late nineteenth century, ~~out-of-basin diversions by the Montezuma Valley Irrigation Company (MVIC) reduced the flow of the Dolores River to near zero during the irrigation season, July - October. and With the 1987 completion of McPhee Reservoir, the primary storage facility for the BOR's Dolores Project, have resulted in the depletion of 69 percent of the historic flow of the Dolores River is depleted annually (BLM, 1990), as opposed to 38% before Project construction.~~

¹ Relatively rapid population growth is taking place near larger towns such as Telluride, which has nearly doubled in size. Per State of Colorado, Department of Local Affairs, Division of Local Government, population in July 1995 was 1,803. Average annual change from 1990 to 1995 was 6.29%. Population in 1980 was 1,047. Population in the municipal areas served by the Dolores Project is increasing, but not at the rate of Telluride.

FIGURE 16

THE DOLORES PROJECT

The primary major purpose of the Dolores Project is ~~was~~ to store and regulate flows of the Dolores River for irrigation, ~~downstream fish and wildlife enhancement~~ and M&I purposes. Other purposes of the ~~P~~project ~~are were~~ to provide ~~flatwater~~ recreational facilities in McPhee Reservoir, hydroelectric power generation, salinity control, ~~fish and wildlife enhancement and mitigation measures~~, area economic development, and cultural resources ~~and other~~ mitigation. To achieve the purposes of the ~~P~~project required a multi-agency effort. The BOR purchased 10,000 acres of land ~~adjacent to and downstream of McPhee Reservoir~~ and the associated water rights to protect the area ~~around McPhee Reservoir~~ from development, ~~with the senior downstream water rights were~~ deeded to the Colorado Division of Wildlife (CDOW). ~~The~~ Lands to the east of the reservoir were turned over to the USFS to manage. ~~and the~~ Lands to the west of the reservoir and 300 acres below Bradfield Bridge were turned over to the BLM to manage. The BLM ~~also~~ has historically managed ~~most of the section of the River below the Bradfield Bridge~~. In this area, they acquired all private lands downstream prior to dam construction to protect areas from development so that Lands turned over to CDOW, BLM and USFS are to be managed for recreation and Dolores Project wildlife mitigation efforts, including a sport fishery and river access could be created and protected from encroachment by later development. The ~~BLM also~~ BOR built and the BLM operates ~~maintains~~ a cultural center concerning the extensive Anasazi Indians ruins and archeological sites found in the area, some of which were partially inundated by the reservoir or disturbed by construction of Project delivery systems and roads.

Water rights for the ~~P~~project are in the name of the Dolores Water Conservancy District (DWCD), the repayment entity established under Colorado law for the Dolores Project. The MVIC holds senior rights for non-project water for irrigation and M&I use in the Montezuma Valley, (outside the Dolores River Watershed). Average annual diversions from the Dolores River pursuant to MVIC's ~~these~~ rights, together with supplemental deliveries of Project water, were projected in the Definite Plan Report ("DPR") to be have been approximately 143,900 ~~+43,000~~ af.

The ~~thirty~~ year average annual flow into McPhee Reservoir is ~~349,900~~ 352,500 af. The reservoir has an active capacity of 229,000 af and a total capacity of 381,000 af. The average annual amount stored in the reservoir is 126,000 af; approximately 70,000 af of the average annual flow is controlled through managed releases to avoid a spill ~~spills over the dam~~ and continues downstream.

The Dolores Project ~~was designed to currently~~ supplies an average annual ~~average~~ of 90,900 af for irrigation, 8,700 af for M&I use, and 25,400 ~~30,900~~ af for downstream fish and wildlife purposes. The ~~P~~project ~~will provides~~ irrigation water for 61,600 acres of land, including full-service irrigation water for 27,860 ~~27,928~~ acres in the Dove Creek area and 7,500 acres on the Ute Mountain Ute Indian Reservation, and supplemental irrigation water for 26,300 acres served by the MVIC. Total demand for ~~P~~project irrigation water ranges from 78,500 af during wet years (when the MVIC

lands have a full supply of non-~~P~~project water) to 139,000 af during dry years (when MVIC non-project water is in short supply). M&I uses are not yet fully developed,² but the supply is expected to be sufficient to meet future needs.

The Dolores Project now provides a dependable supply of water and therefore has stabilized the economies of Montezuma and Dolores Counties, including the Ute Mountain Ute Tribe. There are many benefits, some measurable and some not. Sales of agricultural products directly attributable to the Dolores Project totaled \$11.7 million in 1996. Remarkable increases in land and water values are also measurable. Not easily measurable are the benefits from archaeological mitigation (Anasazi Heritage Center) and a dependable source of water for municipal and recreational uses.

WATER SHORTAGES AND PROTECTION OF THE TROUT FISHERY

The original operating criteria for McPhee Reservoir were specified in the Final Environmental Statement (FES) and ~~Definite Plan Report (DPR)~~, published in 1977. Based upon records from 1928 to 1974, the FES/DPR indicated that **an average 25,400 af/yr of storage was sufficient to supply flows to support the trout fishery for all downstream purposes of McPhee Dam, designed to become a major sport fishery based on stocking and/or limitations on fishery methods and catch and release requirements.** Releases from McPhee Dam were to be determined each year based upon how much water was in storage in McPhee Reservoir and how much snowpack was available in the watershed. Based upon these two totals, the year was to be declared dry, normal, or wet on March 1 of each year. If the river were ~~was~~ declared dry, for the next 365 days, 20 cfs would be released to support the downstream fishery. In a normal year, 50 cfs would be released and in wet years, 78 cfs.

The operating regime for McPhee Reservoir came under fire when the first dry year was declared (1990) and the flow rate was changed from 78 cfs to 20 cfs on March 1. Biologists soon realized that the releases were not sufficient to sustain the downstream trout fishery and Trout Unlimited (TU), with support from the ~~Colorado Division of Wildlife (CDOW)~~, appealed to the BOR for increased flows. When the BOR ordered additional releases for the fishery, the DWCD challenged ~~the BOR~~ **them** on the grounds that the BOR lacked the authority to order the additional releases because they **were not specified in the DPR or FES and Project water was already otherwise allocated did not own any water rights.** In June, in a short-term DWCD agreement with BOR, ~~agreed to purchase 6,000 af from DWCD and~~ flows were increased through the summer.

Despite this agreement, the low flows during 1990 caused significant losses to the trout fishery. To avoid a repeat of such losses, extensive negotiations began between BOR and ~~the, TU,~~ DWCD, **with extensive input from TU, and other management agencies and water users.** In October 1990, the group established ~~an~~ **a three year interim operating agreement (IOA)** in which the 20/50/78 cfs

² Of the 8,700 af allocated for M&I purposes, approximately 80 percent is currently unused.

schedule was discarded in favor of the release of an average annual pool of water ("pool" management) of 25,400 acre-feet of water in storage ("pool" management), together with up to 3,900 af of downstream water rights senior to the Project, and an additional 3,900 af supplied during the IOA period by the District.

TU and CDOW argued that the fishery pool should be increased to 36,500 af and challenged the ~~science-behind~~ the original FES/DPR criteria. In response, during the IOA period, the BOR ~~completed another~~ revised its assumption in its hydrological study and determined that the original average annual reservation of water for the fishery in the FES/DPR estimate was short by 3,900 acre-feet; ~~the appropriate amount of water needed for downstream purposes was increased to 29,300 acre-feet.~~ Negotiations began again between the BOR and the DWCD to permanently increase the pool of water to 29,300 af ~~acre-feet~~.

To increase the pool, the BOR requested a supply ~~suggested a reallocation of 3,900 af from local entities. of municipal water from the City of Cortez, which had contracted to receive approximately 6,000 af from the Dolores Project. In turn, Cortez would be forgiven part of their repayment debt, an estimated \$500,000.~~ The MVIC suggested that it opposed this solution and argued that project water should not be used because they had an excess 3,900 af water to sell to the BOR. ~~The BOR agreed to pay \$3 to for \$6 million to MVIC for the additional 3,900 acre-feet.~~ However, stockholders of the MVIC opposed the sale of the water, arguing it would cause a shortage for the Company. Meanwhile, the City of Cortez offered to supply approximately 3,900 af from its Dolores Project allocation for which Cortez, in turn, would be forgiven part of its repayment debt to the District, an estimated \$500,000 annually. While the MVIC Board of Directors tried in earnest to convince its ~~their~~ stockholders of the benefits of the sale, the new Clinton administration rescinded ~~the all~~ offers.

In February 1994, the BOR proposed that the DWCD release additional flows to support the fishery, but ~~they~~ would not waive what was ultimately the DWCD's repayment obligation to BOR for this additional water. This decision met with vocal opposition from local interests. ~~A meeting was convened in November of 1994 in Cortez which ended with some local residents shouting at BOR officials.~~ The general sentiment was that the BOR was not taking responsibility for ~~the fact that~~ seeking to reallocate Pproject water to make up for its ~~their~~ mistakenly low calculation of the average annual fishery reservation pool in the FES/DPR when this water was already allocated to others ~~had been over-allocated due.~~ Further, the regional office of the BOR requested \$42 million to solve any remaining issues related to the Dolores Project, but only \$21 million was authorized. Although local interests generally felt betrayed by the BOR Washington DC office, they found common ground among themselves and a local coalition was established.

In 1996, an environmental assessment (EA) was completed which evaluated a permanent new operating regime for fish flows. The operating criteria were modified to release a managed pool of up to an average 29,300 af annually ~~from a managed pool~~ to provide seasonally fluctuating downstream flows (comprised of a pool of the 25,400 af reserved in the FES/DPR and up to 3,900 af of senior downstream water rights). In addition, the EA proposed that additional flows of 7,200

af/yr be acquired for fish and wildlife purposes, bringing the total **releases volume** to 36,500 af/yr.

To **permanently** increase the pool to **up to 33,200 36,500** af/yr, the BOR purchased 3,900 af/yr from the ~~DWCD Dolores Water Conservancy District~~. In addition, BOR ~~and~~ leased ~~an additional~~ 3,300 af/yr from the Ute Mountain Ute ~~Indian~~ Tribe to reach a total average annual release of up to 36,500 af. The Ute Mountain Ute lease is for up to five years (until water year 2000) or until tribal lands are developed for irrigation. While the current arrangement provides an adequate supply for fish in the near term, CDOW biologists believe a permanent water source for the 3,300 af/yr needs to be identified and acquired. When the lease ends, the cooperation of interested parties will be needed to cooperate to acquire, lease, or otherwise obtain the 3,300 af increment.

Diverse interests have joined together to solve this problem, including the BOR, the DWCD, BLM, CDOW, USFWS, USFS, irrigators and other water users, and TU. While the BOR has offered \$371,000 as its cost-share,³ the cost to acquire a permanent water source has been estimated by others to cost from \$2 million to \$10 million. Stakeholders are considering different strategies to secure the necessary funding, including setting up an escrow account with a new non-profit organization. By channeling funds to this account, agencies may have more flexibility in cost sharing efforts and applying for grants. For example, by demonstrating potential sellers and the availability of collaborative funding collaboration, agencies may have more success securing funds from programs such as the Land and Water Conservation Fund. As monies accumulate in the account, the stakeholders could ~~will~~ seek to obtain water as opportunities arise.

LESSONS LEARNED

Consensus has been reached on a number of issues in the Dolores River Watershed and a working coalition of stakeholders has formed. Several lessons may be derived from the process:

- **Involve all affected interests early in the conflict.**

An extended public participation process must be established as early as possible in conflicts over water. All interests must be involved at the earliest stages of problem identification, data gathering, and data analysis. If the initial alternatives (for **reservoir dam** management in this case) are determined only by agency officials and traditional water users, conflicts can develop. In the case of the Dolores Project, fishery and recreational interests did not initially feel that they were fully included in the process. It took four years to establish a common ground between these interests.

³ MVIC stock, which ~~was estimated by BOR to cost is priced at~~ \$900 per share, entitles the shareholder to 4 af/yr of water from the Dolores River. BOR assumed that 825 shares of this stock could be purchased to meet the 3,300 af increment at a total price of \$742,500. Based on a 50% cost share, BOR offered half of \$742,500, or \$371,000. In practice, however, local irrigators rarely trade shares of the stock and when they do, market forces ~~have can~~ driven the price up to \$1,500 to \$2,000 ~~\$1,600~~ per share. Local water users do not believe that as many as 825 shares of the stock will be traded in the foreseeable future.

It is only in recent years that these interests have developed a good working relationship. The inclusion of all interests at the earliest stages of a conflict can eliminate distrust among parties and decrease the time needed to resolve a conflict. Further, involving a broad spectrum of local residents and resource users increases the likelihood the decision will be accepted and maintained over the long term.

Allow a long time period, especially when conflicts are entrenched.

When competing water uses are involved, particularly between newer uses of water such as recreation and traditional uses such as agriculture, it can take a great deal of time for the parties to reach common ground. While in the Dolores River watershed there was a common understanding of the issues, it took seven years for the diverse stakeholders to formulate solutions. Example: The stakeholders recognized from the beginning that the repayment contract between the DWCD and the BOR was the governing factor. It was recognized that since all of the agricultural and municipal uses of the reservoir are trans basin diversions, without return flows to the Dolores River, any additional water for fish and wildlife habitat below McPhee Reservoir would come from another user's allocation. Therefore, irrigators had to be convinced the short term damage (the burden of greater shortages during drought periods) was outweighed by the long term benefit of a cooperative environmental / recreational community. In the Dolores River watershed, it took ten years before the diverse stakeholders could come to a common understanding of the issues and problems to even begin to formulate solutions. Once this understanding was reached, a new operating regime for the dam was negotiated. But until all parties developed some measure of trust in each other, no solutions could be reached.

- **Let solutions generate from the local interests.**

The traditional public participation model in water resource management generally allows local residents to choose from alternatives developed by agency officials. Further, many decisions tend to be made at the national level of an agency, such as the BOR. In the Dolores River watershed, conflict over water management issues rose when the national office of BOR made decisions about the basin without input from basin residents. Solutions to problems should not be unilaterally formulated and imposed by agency officials. They must be crafted with the participation of local residents if consensus is to be achieved.

Local leadership is essential.

In many high profile conflicts over water, personnel at the national level get involved, whether it is a federal agency or an environmental group. However, the events in the Dolores River watershed suggest the need for leadership to develop at the local level. Local leadership is more acceptable, often ensures local economic issues are not ignored, and engenders more trust in the community. In the Dolores River watershed, the conflict escalated with the entry of a national environmental group. National environmental groups, however, may be more effective by participating through their state and local chapters. National environmental groups have historically been an important component in decisions about natural resources, representing an important public interest that widens the debate

on water resource issues. However, they may be much more effective if they utilize their expertise gained at the grassroots level.

- **Maintain an open, not formal, public participation process.**

Frequently, to settle conflicts over water management requires people who have never worked together before to formulate a solution agreeable to all. A prerequisite to developing a solution is the establishment of a open, informal, process of public participation. Maintaining an open process with no hidden agendas is important to overcoming distrust. The best approach will be one that is consensus-based and works to ensure that everyone's concerns have been addressed. After a common understanding of the problem has been reached, it may be more successful to establish informal working groups, rather than follow a more traditional formal public participation procedure. In the Dolores, much of the discussion over water management issues is currently being conducted by a small, informal, working group that is representative of all interests. This group, which emerged after many years of conflict and negotiation, meets regularly to discuss dam operation and any other water management issues, such as salinity control.

- **Federal agencies must provide resources.**

Federal agencies have an essential role to fill in settling conflicts by providing the necessary resources, including personnel, technical advice, financial incentives, and the establishment of research and monitoring programs. Accurate scientific information is needed to support the resolution of a conflict. For example, in the Dolores, ~~the BOR a mistake concerning was made early in the process on the average annual amount of water to be reserved for the downstream fishery needed to support fisheries.~~ This ~~mistake in developing accurate scientific information~~ had to be addressed before a new operating plan could be established. Once an accurate assessment of the water reserved ~~needed~~ for the fish was established, negotiations could proceed. Further, an important service provided by the BOR and DWCD in the Dolores was the establishment of a hotline for rafters to provide information on river flows during the rafting season. Under no obligation to establish such a service, the BOR and DWCD improved working relations with this group ~~by providing a service to a "newer" user of federal water~~

FUTURE CONCERNS

Collaboration between the diverse group of stakeholders on Dolores River did not come easily. The conflict can best be characterized as traditional water users pitted against "newer" demands on the river such as fishermen and rafters. A number of compromises were made during extensive formal and informal negotiations between the major parties, yet many residents in the watershed still oppose any additional allocation of water for fish. A recent survey of DWCD ~~constituents members~~ revealed a sentiment that their interests had not been protected by DWCD's agreeing to provide more water for fish downstream; any additional water allocated to fish flows is viewed by many local residents as a "California water grab." Residents argue that the water cannot be put to a beneficial use in the watershed if it is allocated for fish flows because the water goes straight to the Colorado River (which

to residents of the watershed, means California). As one resident noted of the recent survey, "The local community spoke loud and clear -- no more water for fish."

Another outstanding issue in the watershed stems from the ALP. While the watershed currently has unused M&I water, the BOR recently withheld approval for DWCD to lease it to agricultural users pending resolution of issues related to the ALP. In the current negotiations concerning ALP, alternatives are being explored to full construction of the **ALP project**. If a modified ALP ~~were was~~ agreed to by the parties involved in these negotiations, **the BOR has stated that** excess water from existing BOR projects in the Four Corners region (including the Dolores Project) may be required to fulfill Indian settlement obligations. **The DWCD disagrees with the BOR position. In exchange for 23,200 af of Dolores Project water, the Ute Mountain Ute Tribe agreed to settle its claims in the Mancos and Dolores Rivers. This resolution of the Ute Mountain Ute Tribe's reserved water rights cost the potential for Dolores Project irrigation of 10,000 acres of land, which, in the light of the success of the Dolores Project, was a monumental sacrifice.**