

MEMORANDUM OF UNDERSTANDING
FOR APPOINTMENT OF WATER COMMISSIONER
ON THE UINTA AND LAKE FORK RIVERS

This Memorandum of Understanding is entered into this _____ day of March, 1990 by and among the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah, the Bureau of Indian Affairs of the United States of America, ^{the Association of Water Users of the} and the State of Utah by ^{County} the Utah State Engineer for the purpose of setting forth the general operations, responsibilities and authority of a Water Commissioner, ~~to be appointed pursuant to Section 73-5-1 of the Utah Code for the distribution of waters in the Uinta and Lake Fork Rivers.~~ ^{collected}

WHEREAS, the United States District Court for the District of Utah entered final Decrees in U.S.A. v. Dry Gulch Irrigation Company, et al., Civil No. 4418, and U.S.A. v. Cedarview Irrigation Company, et al., Civil No. 4427, ^{even dated March 16, 1931,} and appointed a Water Commissioner to enforce the Decrees and distribute the waters to the various water users named in the Decrees, and

WHEREAS, the U.S. District Court prior to the irrigation season of 1931 made and entered an Order vacating the provisions of the Decrees relating to the appointment of a Water Commissioner and made it necessary for the water users thereto to arrange for distribution of water from the Uinta and Lake Fork Rivers by agreement or otherwise, and

WHEREAS, from year to year since that time, the water users have employed a Water Master to regulate the use of water in accordance with the provisions of the Court Decrees, during the

period 1931 to 1939 inclusive by verbal agreement, and thereafter under specific Agreement made and entered into on the 18th day of March 1940, duly renewed by the water users thereto and expressed in writing, and

WHEREAS, the water users considered it advisable in 1956 that an orderly and economical distribution of the water be duly provided for and continued, and in order to effect certain changes, particularly in adjustment of the costs incurred, a new Agreement was entered into December 19, 1956, and that since 1956 the waters of the Uinta and Lake Fork Rivers have been distributed in accordance with the 1956 Agreement, and

WHEREAS, on January 23, 1990 a meeting was held with the committee members of the Associated Water Users of the Uinta and Lake Fork Rivers, including representatives from the Ute Indian Tribe of the Uintah and Ouray Reservation, the Bureau of Indian Affairs, and also a representative from the State Engineer's Office, to discuss the establishment of a distribution system for the Uinta and Lake Fork Rivers and the appointment of a Water Commissioner under the jurisdiction of the State Engineer, and

WHEREAS, representatives of the Ute Indian Tribe, of the Bureau of Indian Affairs, and of the State Engineer agreed at the meeting to enter into a Memorandum of Understanding, and

NOW THEREFORE, in consideration of the premises and in order to provide for the orderly diversion and distribution of the waters of the Uinta and Lake Fork Rivers and their tributaries in accordance with the federal Decrees and in accordance with

other existing water rights as they may be otherwise properly determined, including water rights determined by the final ratification of either the Ute Indian Water Compact or a revised compact, the parties hereto acknowledge as follows:

1. Appointment of Water Commissioner. The Water Commissioner shall be appointed year to year as prescribed by Section 73-5-1, Utah Code Annotated 1953, as amended ^{and the Ute water compact}. The selection shall, when possible, be made upon a recommendation of a majority of the water users of the Uinta and Lake Fork Rivers as represented by the Water Users Committee. The Water Users Committee consists of committee members of the Associated Water Users of the Uinta and Lake Fork Rivers, including representatives from the Ute Indian Tribe and the Bureau of Indian Affairs.

2. Budget. The Water Users Committee shall approve a budget by March 1st of each year from which the salary and expenses of the Water Commissioner shall be paid. The budget shall also include any other necessary expenses of distribution. In the event work or services are required during the year in excess of the budget, written approval must be obtained from the Water Users Committee.

3. Assessments. Based on the approved budget, the Water Users Committee shall determine the amount of money each water user within the distribution system will be assessed. Prior to 1990, the assessments were apportioned to the water users in proportion to the total acre feet of water diverted to the lands of the United States Uintah Indian Irrigation Project and the

lands of the Associated Water Users of the Uinta and Lake Fork Rivers, and others, if any, as reported in the Annual Water Commissioner's Report for the previous year. The Water Users Committee may continue to assess the water users in the same manner as they have in the past, or by a different manner as agreed upon by the Water Users Committee. But in any event, the assessment shall be borne pro rata by the water users.

The State Engineer will then, based on the Water Users Committee's budget determination, make two assessments; one to the Associated Water Users of the Uinta and Lake Fork Rivers and one to the Bureau of Indian Affairs. The Associated Water Users of the Uinta and Lake Fork Rivers shall assess their members and make one lump sum payment to the State Engineer on or before May 1st of each year. The Bureau of Indian Affairs shall pay their assessment to the State Engineer on or before May 1st of each year.

4. Salary and Expenses. The State Engineer shall pay the salary and expenses of the Water Commissioner as determined by the Water Users Committee. The payments shall be made from the assessments received and placed in the Uinta and Lake Fork Rivers Distribution account. No money may be paid from this account except as authorized by the budget approved by the Water Users Committee.

5. Waters to be Distributed. The waters to be distributed by the Water Commissioner are those waters of the Uinta and Lake Fork Rivers and their tributaries.

6. General Authority of Water Commissioner. The Water Commissioner has the authority to distribute the waters of the Uinta and Lake Fork Rivers as provided by Title 73 of the Utah Code, particularly Sections 73-5-1 through -4, and as more particularly described below.

7. Delivery of Water. The delivery of water shall be ~~based on historical diversion practices, including a duty of water schedule~~ based on cropped acreage when available. The delivery of water shall continue as it has in past practice and in accordance with the federal Decrees and in accordance with other existing water rights as they may be otherwise properly determined, including water rights determined by the final ratification of either the Ute Indian Water Compact or a revised compact.

8. Diversions to be Regulated. The Water Commissioner, ~~except as described below,~~ has jurisdiction to regulate the diversions along the main stems of the Uinta and Lake Fork River system. Once the water has been diverted into the various water users' canals or ditches, each water user has the responsibility to distribute the water to its water user members. ~~In certain circumstances there are some water users who divert water from another water user's ditch or canal. The Water Master's past practice was to regulate certain of these diversions. The Water Commissioner will continue to regulate these diversions in conformance with past practice.~~

9. Reservoirs. The Water Commissioner may require all reservoir owners to permit normal flow to pass through their

reservoirs at all times to the extent required to meet the direct diversion rights below such reservoirs. The Water Commissioner may require reservoir owners to install, operate and properly maintain such gauging stations and measuring devices as will permit the accurate determination of the amount of water stored and the amount of stored water discharged into the stream.

10. Control and Measuring Devices. The Water Commissioner is authorized by Section 73-5-4 of the Utah Code to require all water users to install and maintain such diversion structures, gauging stations and necessary measuring devices as he deems necessary for properly measuring and distributing the water. However, where such devices are not installed and an estimate by the Water Commissioner is necessary to establish the quantity of water diverted, such estimate shall be final for the purposes of the Water Commissioner's report.

11. Entering Property. In order to carry out his distribution duties, the Water Commissioner may enter and cross any land, including trust lands of the Ute Indian Tribe, so long as such entering is reasonably necessary for the purposes of fulfilling his duties and, where possible, with the permission of the land owner.

~~12. Refusal to Deliver Water. The Water Commissioner may refuse to deliver water in accordance with the circumstances and procedures as provided in Sections 73-5-1, 73 and -4 of the Utah Code.~~

13. Water Commissioner Report. The Water Commissioner

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shall tabulate and analyze daily sheets showing the quantity of water distributed to the respective users. At the close of the irrigation season, the Water Commissioner shall prepare a report showing the daily quantity of water distributed to the respective users, ~~the conditions under which the water was used~~ the flow of the various streams from which the water was diverted, and a tabulation and analysis of the hydrologic data collected. He shall supply a reasonable number of copies thereof to the members of the Water Users Committee and to the State Engineer.

13 ~~X~~. Nonbinding. It is understood that this Memorandum of Understanding does not constitute a binding precedent on any of the parties hereto, and that it does not constitute a waiver of any existing rights belonging to any party hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date written above.

UTE INDIAN TRIBE

By: _____

UNITED STATES OF AMERICA
BUREAU OF INDIAN AFFAIRS

By: _____

STATE OF UTAH

By: _____
ROBERT L. MORGAN
Utah State Engineer

13- Association of the Users of the
Cintura and Lakepark Rivers.

*14- notwithstanding any
statement herein to the
contrary, neither the water
commissioner nor the State
of Utah may in any way
create in any water
rights or lands or facilities
therein owned by the U.S.
or controlled by the U.S. in
trust for Indian or water
users.*

~~Chairman~~