

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

This Memorandum of Understanding is entered into this \_\_\_\_ day of February, 1990 by and among the Ute Indian Tribe of the Uintah and Ouray Reservations in Utah, the Bureau of Indian Affairs of the United States of America and 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 Uintah and Lake Fork Rivers.

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, 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 making it necessary for the water users thereto to arrange for distribution of water from the Uintah and Lake Fork Rivers by agreement or otherwise, and

WHEREAS, from year to year since that time, the water users have employed a Water Commissioner 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 Uintah 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 Uintah and Lake Fork Rivers, including representatives from the Ute Indian Tribe of the Uintah and Ouray Reservations, 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 Uintah 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 Uintah and Lake Fork Rivers and their tributaries

in accordance with the federal decrees and with existing water rights as they may be otherwise properly determined, including the final ratification of the Revised Ute Indian Water 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. The selection shall, when possible, be made upon a recommendation of a majority of the water users of the Uintah 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 Uintah and Lake Fork Rivers, <sup>and</sup> ~~including~~ representatives from the Ute Indian Tribe and the Bureau of Indian Affairs.

2. Bond The Water Commissioner before entering on his duties shall give a bond to the state for the faithful performance of his duties, in a penal sum to be fixed by the State Engineer.

3. 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 determined. 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.

4. 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 Project and the lands of the Associated Water Users of the Uintah 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 Uintah and Lake Fork Rivers and one to the Bureau of Indian Affairs. The Associated Water Users of the Uintah and Lake Fork Rivers shall assess their members and make one lump sum payment to the State Engineer on or before May 1 of each year. The Bureau of Indian Affairs shall pay their assessment to the State Engineer on or before May 1 of each year.

5. 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 Uintah 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.

6. Water to be Distributed. The waters to be distributed by the Water Commissioner are those waters of the Uintah and Lake Fork Rivers and their tributaries in accordance with the federal decrees and with existing water rights as they may be otherwise properly determined, including the final ratification of the Revised Ute Indian Water Compact.

7. General Authority of Water Commissioner. The Water Commissioner has the authority to distribute the waters of the Uintah 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.

8. Diversions to be Regulated. The Water Commissioner has jurisdiction to regulate the diversions along the main stems of the Uintah 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, if any.

The basis for the proper diversion of waters for the irrigation season is the cropped acreage as required to be submitted to the Water Commissioner for the previous year, except as modified by the additions or subtractions thereto submitted to him by certificate not later than May 1, of the ensuing irrigation season. Provided, that each year the water users shall submit their certification of the crop acreage by legal subdivisions under each canal system used for the past year, not later than December 1. Provided further, that if as between certain water

users other methods have been agreed upon, then the Water Commissioner shall permit delivery upon such agreed basis so long as it does not interfere with the satisfaction of priorities.

Provided further, that if a cropped acreage report is not presented to the Water Commissioner by December 1, that he is authorized and directed to withhold water from any such party, water user, or company until such report is made.

Provided further, that any party who has not made a report by December 1, the Water Commissioner is authorized to gather such data and obligate the cost of such work against the party receiving the benefit.

Provided further, that if a crop report is not submitted, the Water Commissioner shall make an estimate of the amount of water delivered and the amount of land cropped and his estimates shall be the basis for payment of the Water Commissioner's expenses and water delivery the following year.

The delivery of water to the water users shall be upon a demand basis, provided that any water user may prepare and present to the Water Commissioner a duty of water schedule which shall specify the flow required during set periods of time to supply the total seasonal quantity of water to which the water user is entitled if provided by the supplying stream and or other sources of supply.

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. Emergency Measure. If it shall appear that the water can be distributed more efficiently through canals or laterals other than those through which it has been distributed in the past and thereby effect a savings of water and at the same time meet the full necessities of the users, and without damage or expense to owners of said canals, the Water Commissioner is authorized as a emergency measure only to so distribute the water.

11. 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.

12. 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.

13. 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, -3 and -4 of the Utah Code.

14. Water Commissioner Report. The Water Commissioner 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 Water Users Committee and to the State Engineer.

15. 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: \_\_\_\_\_

UTAH STATE ENGINEER

By: \_\_\_\_\_  
ROBERT L. MORGAN  
State Engineer