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| DISTRICT COURT LA PLATA COUNTY, COLORADO 1060 E. Second Ave., Durango, Colorado 81301 Phone number: 970-247-2304 | EFILED Document CO La Plata County District Court 6th JD Filing Date: Feb 8 2007 3:31PM MST Filing ID: 13749962 Review Clerk: Paula Petersen |
| IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF THE UNITED STATES OF AMERICA (BUREAU OF INDIAN AFFAIRS, SOUTHERN UTE AND UTE MOUNTAIN UTE INDIAN TRIBES) FOR CLAIMS TO THE ANIMAS RIVER IN DIVISION NO. 7, COLORADO | ▲ Court Use Only ▲ |
| | Case Number: W-1603-76F Case Number: W-1603-76J Case Number: 02CW85 Case Number: 02CW86 Division: Water Division 7 |
| ORDER AMENDING NOVEMBER 9, 2006 DECREE | |

THIS MATTER is before the Court pursuant to the *Moving Parties' Motion for Reconsideration and Request for Oral Argument* (Dec. 15, 2006). The Motion is well taken and therefore GRANTED. THEREFORE, IT IS ORDERED AND ADJUDGED that:

1. This Court's *Decree* (Nov. 9, 2006) ("November 9 Decree"), is hereby amended as follows:
 - a. Paragraphs 3.b. and 3.c. of the November 9 Decree are deleted; and
 - b. Paragraphs 3.e. and 3.f. are clarified to state that notification shall be done through the resume process.

2. The Court finds that Paragraphs 3.b. and 3.c. of the November 9 Decree are unnecessary:
 - a. The Court has found that diversions for ALP are governed by the separate ALP Decree, which is not before the Court, and that each Ute Tribe has a right to an allocation of water from ALP. See ¶¶ 15, 18, 19, 28, 81, and 83 of the Court's Findings of Fact. The Court further finds that the two Ute Tribes have no independent diversion right from the Animas River under the 1991 Consent Decrees or their amendments, and that there can be no increased diversions from the Animas River pursuant to the requested amendments and changes because the terms and conditions of the separate ALP Decree are unchanged. Consequently, there is no basis to impose restrictions on diversions as part of amending the 1991 Consent Decrees.

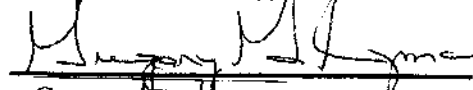
 - b. The Court finds that the critical attribute of the Tribal water right, which is the right to the beneficial use of an allocation of water from the Animas-la Plata Project, is reduced significantly under the amendments to the Consent Decree, so that the

consumptive use allocated each Tribe has now dropped by over 10,000 AF on an average annual basis.

- c. The Court finds that Paragraph 6.A.iii.a. of the 1991 Consent Decrees, which is the source of the restrictions imposed in Paragraphs 3.b., is not applicable to diversions, but instead, applies to theoretical monthly deliveries from the earlier and larger version of ALP of the available annual supply of irrigation and municipal & industrial water, and is not relevant to the down-sized project. Moving Parties have already eliminated these provisions by their agreement to the Stipulation to Amend, which the 1991 Consent Decree expressly allowed them to do. See Applicant's Ex. 2 & 3 (1991 Consent Decree) at Stipulation to a Consent Decree, ¶¶6.A.iii.c, and 7.A.iii.c. (Allowing the parties to the Stipulation to a Consent Decree to modify Paragraphs 6.A.iii.a. and b. and 7.A.iii.a. and b.).
 - d. The 1991 Consent Decrees entitled each Tribe to "receive and beneficially use" an allocation of water from the ALP, which in turn is governed by annual diversion limits in the ALP Decrees. There is no change to the ALP Decree; consequently there is no expansion of the decreed diversions for ALP. Because each Tribes' water right is to an allocation of water from ALP, instead of a decreed diversion right, res judicata concerns are not implicated.
 - e. The Stipulations to Amend the 1991 Consent Decrees and Change Applications do not result in an expansion of a water right under Colorado law. The Stipulations to Amend the 1991 Consent Decrees and Change Applications do not expand the decreed diversions for ALP under the ALP Decree. Because the two Ute Tribes' water rights are to an allocation of water from ALP that is governed by diversions under the ALP Decree and no increase in consumptive use, there is no expansion of a water right, and no injury to other water rights (including stream conditions) so long as the Ute Tribes take their decreed water right from the reduced ALP as authorized by Congress in the 2000 Settlement Act Amendments, which diverts from the Animas River pursuant to the separate ALP Decree.
 - f. To the extent that future uses and related deliveries of Ute Tribal water from ALP, apart from those set forth in Paragraphs 6.A.i. and 7.A.i. of the 1991 Consent Decrees, as amended, raise questions of injury, these are concerns that, if applicable, may come before this Court pursuant to its retention of jurisdiction pursuant to C.R.S. § 37-02-304(6).
3. To the extent the *Findings of Fact and Conclusions of Law* (Nov. 9, 2006) associated with the November 9 Decree conflict with this Amended Decree, they are hereby amended to be consistent with the Amended Decree.

DATED this 8th day
of February, 2007.

BY THE COURT:



Gregory G. Lyman
District Court Judge .