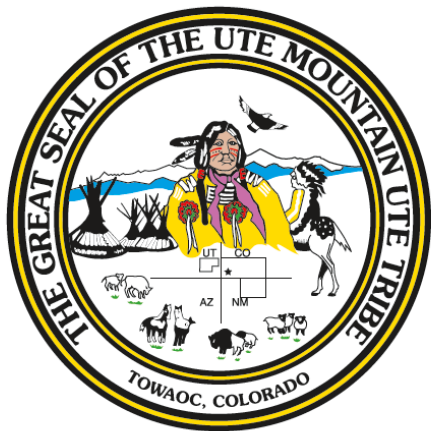


# Sub-Task Force of the Colorado River Drought Task Force

LISA YELLOW EAGLE, TRIBAL WATER ATTORNEY,  
SOUTHERN UTE INDIAN TRIBE

LETISHA YAZZIE, WATER RESOURCES DIRECTOR,  
UTE MOUNTAIN UTE TRIBE

SEPTEMBER 12, 2023

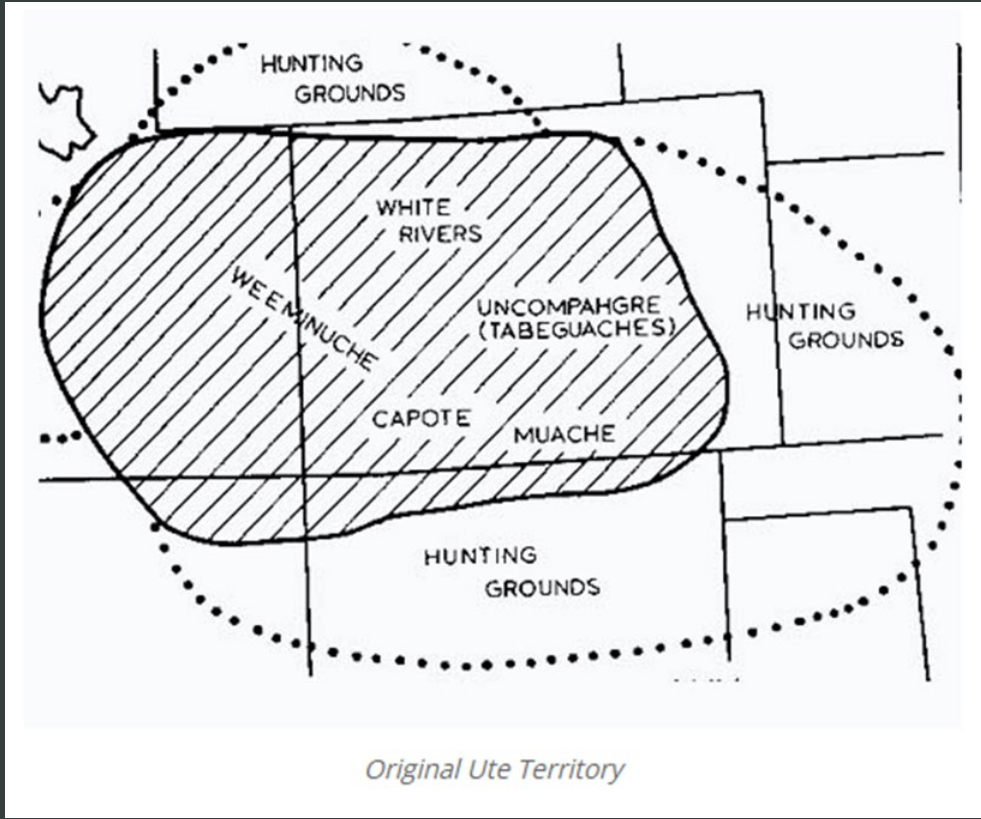




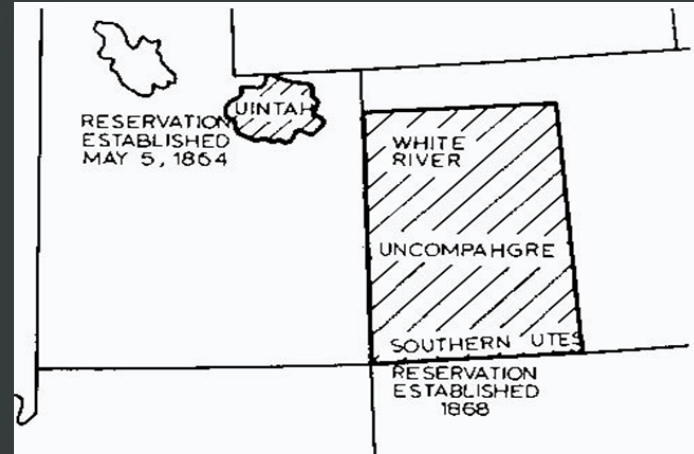
## History of the Southern Ute Indian Tribe and Ute Mountain Ute Tribe

THE UTES WERE THE ORIGINAL INHABITANTS OF WHAT IS NOW THE STATE OF COLORADO. THEY ALSO OCCUPIED UTAH, WYOMING, NEVADA, NORTHERN NEW MEXICO AND NORTHERN ARIZONA.

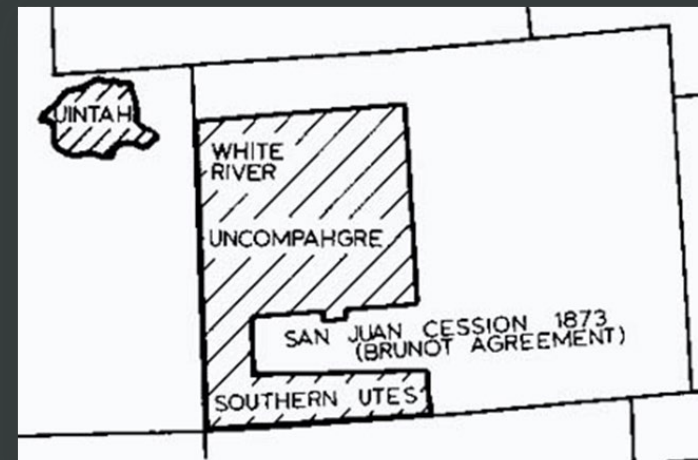
# Historical Homelands



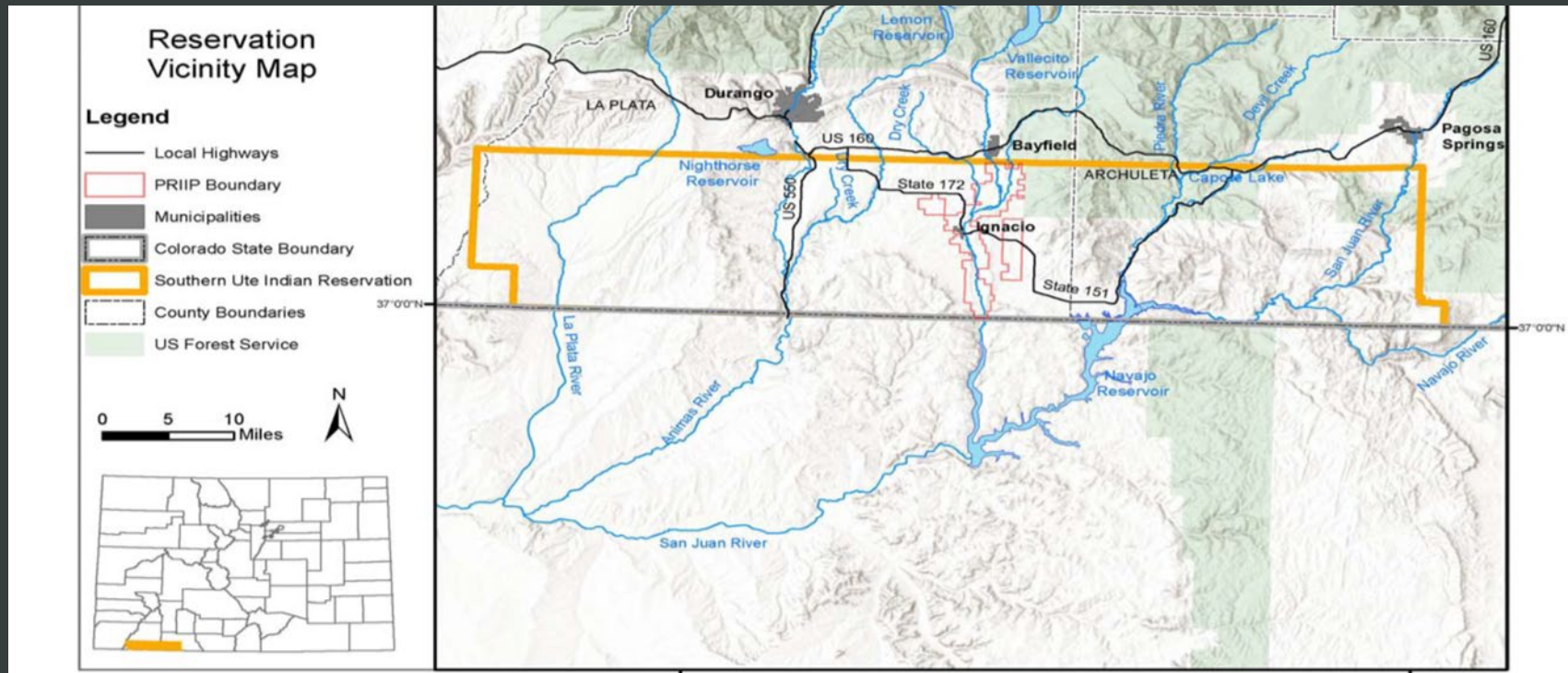
1868



1873

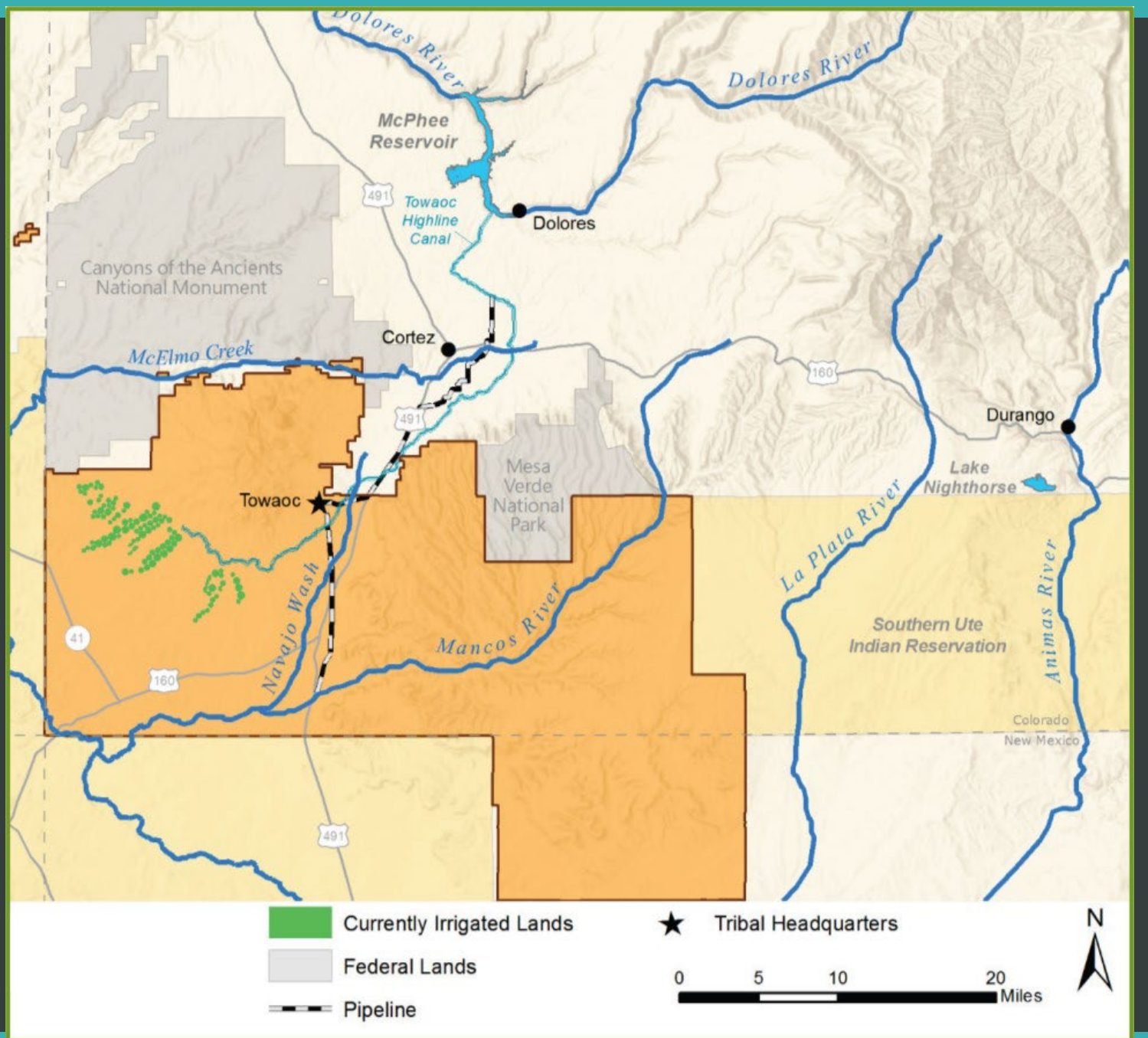


# SOUTHERN UTE INDIAN RESERVATION





# UTE MOUNTAIN UTE TRIBE RESERVATION



What are  
Federal Indian  
Reserved  
Water Rights?

# “Winters Rights”

***Winters v. United States***, 207 U.S. 564 (1908): The U.S. Supreme Court held that a right to water was impliedly reserved in the agreement establishing the reservation, thus giving the Fort Belknap Reservation an 1888 priority date.

- When reservation lands were set aside for tribes, the water rights were reserved to carry out the purpose for which the lands were set aside
- The water rights cannot be lost through abandonment or forfeiture due to non-use
- The water rights are satisfied out of the unappropriated water that was available when the lands were taken into trust

# “Winans Rights”

*United States v. Winans*, 198 U.S. 371 (1905): The U.S. Supreme Court held that the “treaty was not a grant of rights to the Indians, but a grant of rights from them – a reservation of those not granted.”



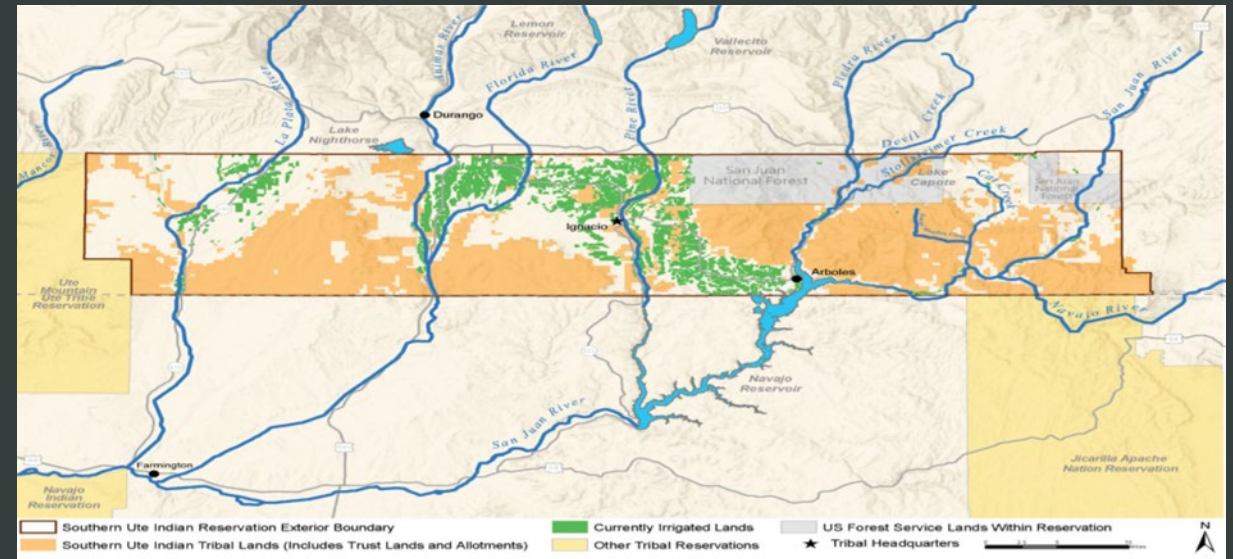


# **Southern Ute Indian Tribe and Ute Mountain Ute's Water Settlement**



# 1988 Colorado Ute Indian Water Rights Settlement Act

- ❖ Affirmed the 1986 Settlement Agreement
- ❖ Recognized Tribal water rights for all surface streams and tributary groundwater on the both Reservations
- ❖ Authorized the Animas-La Plata Project as part of the settlement
- ❖ Satisfied the congressional cost-sharing requirement for the ALP Project





# Animas-La Plata Project

- ❖ Authorized in 1968
- ❖ EIS completed in 1980
- ❖ Original settlement authorized water use for Municipal, Industrial, and Irrigation
- ❖ Significant environmental concerns despite the completed environmental documentation
- ❖ Significant cost concerns especially related to the irrigation component





# 2000 Settlement Act Amendments

- ❖ Only applied to the Animas and La Plata Rivers
- ❖ Required Court approval to change
- ❖ The amendments are only in the legislation, not in the settlement agreement
- ❖ Eliminated irrigation components
- ❖ Included \$40M for a Tribal Resource Fund with requirement that \$30M be spent in partnership with surrounding communities







# Challenges For the Tribes Related to ALP Project

- ❖ O&M – The Tribes are required to pay O&M once they begin using the water. Thus, the Tribes must find cost-effective and/or profitable projects to use the water for
- ❖ Funding – The Tribes will need funding to build infrastructure to use its quantified settled water rights for municipal or industrial uses.
- ❖ Contracting – The UMUT has not been able to negotiate an acceptable Repayment Contract



# Pine River Indian Irrigation Project

- ❖ BIA constructed the PRIIP in late 1800s – early 1900s and still operates the PRIIP
- ❖ Delivers irrigation water to SUII tribal members and non-Indians, including the Town Of Ignacio, CO



# Pine River Indian Irrigation Project

(Southern Ute)

- ❖ Project is in extreme disrepair
- ❖ Approximately 175 miles of canals with an estimated 15% that is in good condition
- ❖ No major repairs made since the 1960s
- ❖ Many structures are failing due to erosion and poor maintenance
- ❖ Erosion has created miles of incised canals and ditches with elevated headgates which no longer allow for diversion to occur





# PRIIP O&M Costs



- ❖ PRIIP water users pay for 100% of the Project's operation and maintenance (O&M) annual assessments, but the fees are insufficient to cover the necessary O&M work.
- ❖ These fees will also be too low to address the deferred maintenance costs
- ❖ In addition, the O&M costs are too high for the individual tribal members, so the Tribe must assist with those costs



# Current PRIIP concerns

- ❖ A large amount of the Project's irrigable acreage is not being irrigated due to the current state of the Project
- ❖ The Project's largest canal has breached 3 times in last few years and this canal has multiple, large antiquated flumes in danger of failing
- ❖ Neglect of roads used for operation and maintenance have made access to structures and sections of ditches impossible or unsafe.



# Dolores Project

- ❖ Authorized in 1968 for M&I and Irrigation
- ❖ Constructed in 1988 – The Project brought drinking water to the UMUT members for the first time
- ❖ The Project allowed the UMUT to be economically viable
  - Irrigation water is delivered to the Farm & Ranch to grow corn and feed to support the Bow and Arrow Corn Mill and the Bow and Arrow Cattle herd
  - Drinking water allowed the Tribe to build a Casino and Hotel
  - The enterprises that are supported by Project water employ 20 percent of the Tribal population



Farm and Ranch  
“Before”



Farm and Ranch  
Now



# Challenges For the UMUT Related to Dolores Project



- ❖ In 2021, the UMUT received only 10% of normal supply, and only 40% of normal supply in 2022
- ❖ In 2021, Tribe had to disk and spray 6,000 acres of fallowed land at a cost of \$2M+ with almost no crop income with which to replant the farm when a full water supply became available in 2023.
- ❖ They were able to negotiate some relief from operating costs with the USBR during the period when supplies were low, but the negotiations took over 2 years

# Effects of the Drought



- ❖ Reduction in snow pack and runoff
- ❖ Water Quality is an issue due to that decreased snow pack and runoff
- ❖ Less water for irrigation season
- ❖ Longer fire seasons