

# Colorado River Drought Task Force

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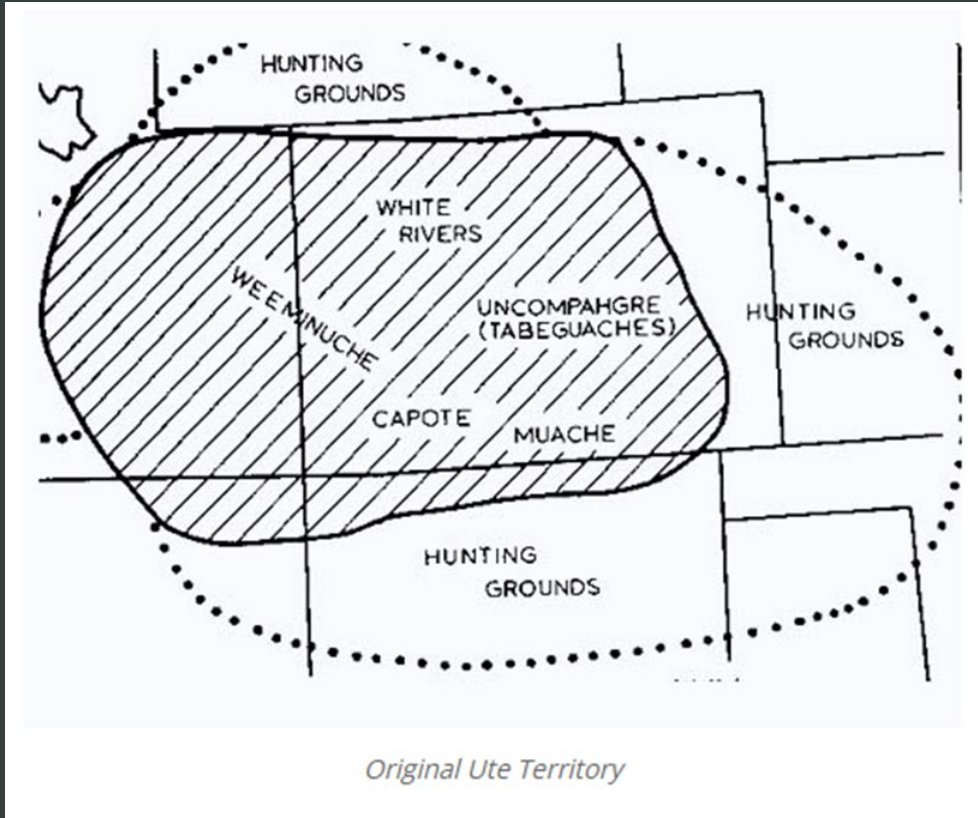




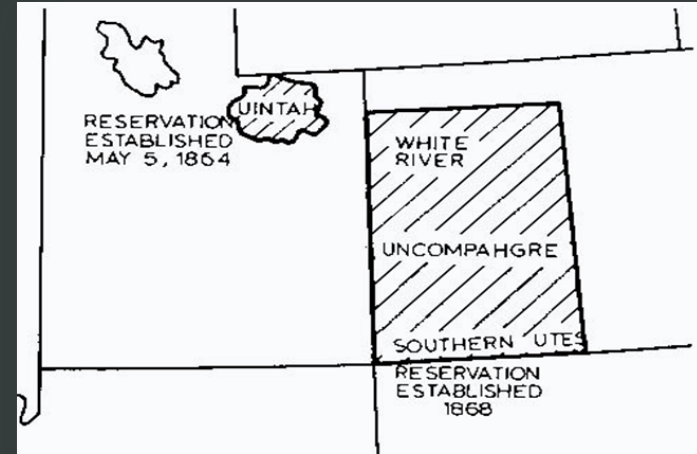
## History of the Southern Ute Indian Tribe and Ute Mountain Ute Tribe

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.

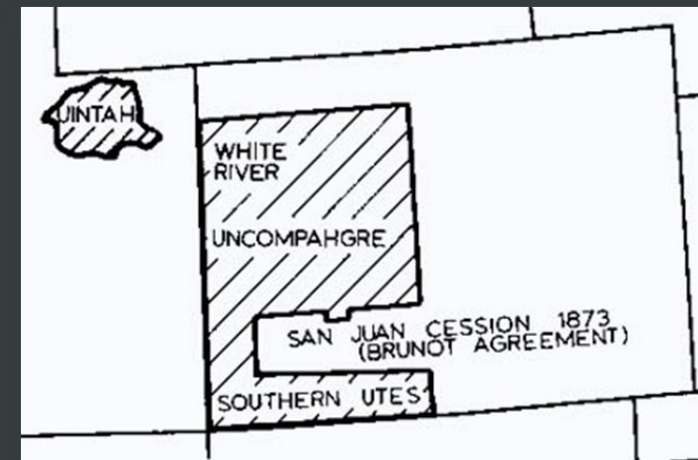
# Historical Homelands



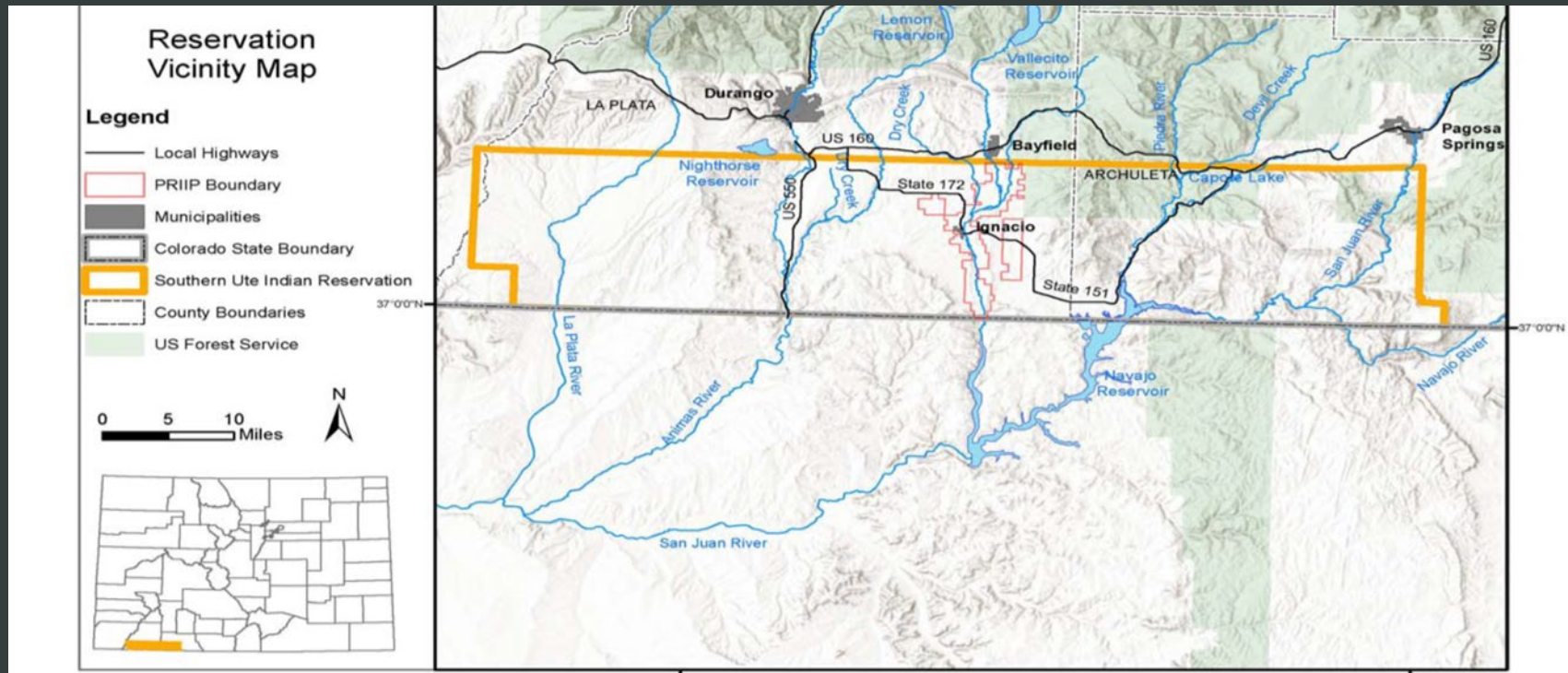
1868



1873



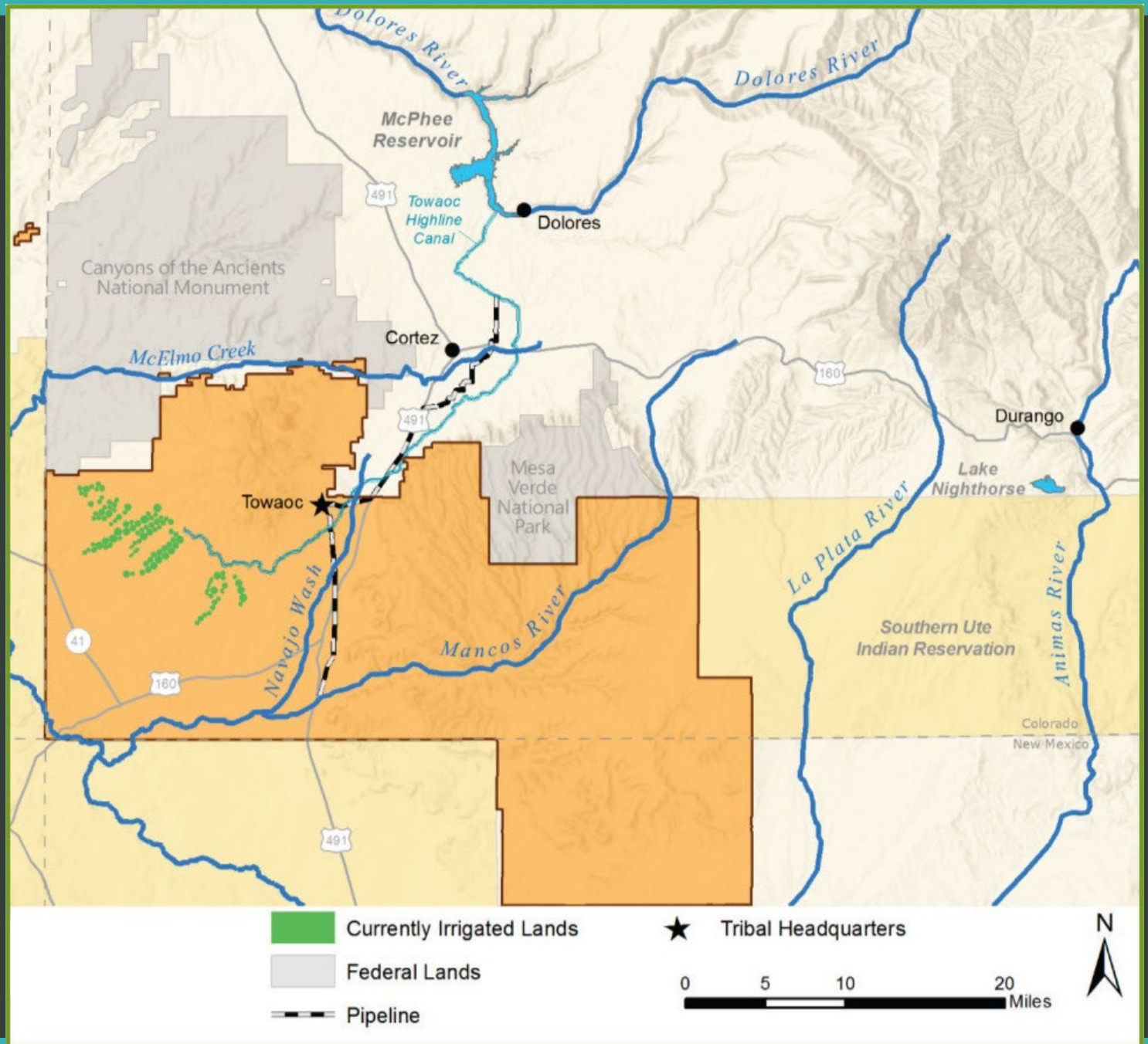
# SOUTHERN UTE INDIAN RESERVATION





# UTE MOUNTAIN UTE TRIBE RESERVATION

- Dolores Project
- Mancos River
- San Juan River
- Animas La Plata Project



How are Tribal Water  
Rights different from  
State-Based water  
rights?

# Tribal Sovereignty

Tribal sovereignty refers to the right of American Indians and Alaska Natives to govern themselves. The U.S. Constitution recognizes Indian tribes as distinct governments and they have, with some exceptions, similar powers as federal and state governments to regulate internal affairs.

# Types of Tribal Water Rights

- ❖ ABORIGINAL
- ❖ FEDERAL INDIAN RESERVED
- ❖ PUEBLO



# “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.”



# “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



# “Pueblo Water Rights”

- ❖ These water rights are based on the Treaty of Guadalupe Hidalgo
- ❖ The United States recognized pre-existing property titles including water rights when it signed the Treaty.
- ❖ Pueblo Communities own the underlying lands
- ❖ Water rights are derived from Spanish and Mexican laws



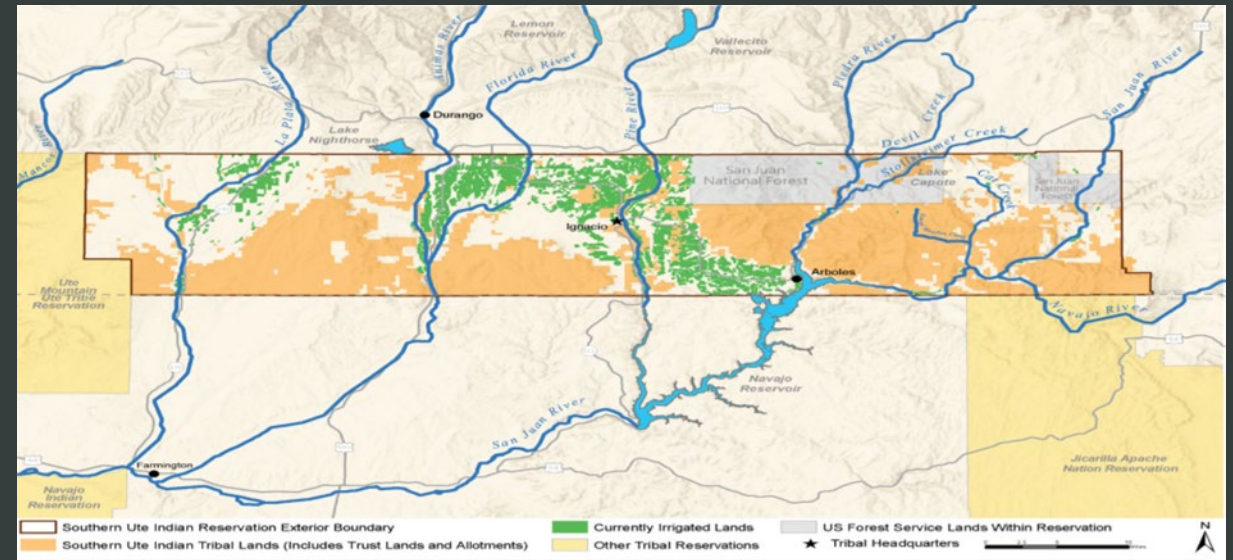


# **Southern Ute Indian Tribe and Ute Mountain Ute's Water Settlement**



# 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 both Reservations
- ❖ Authorized the Animas-La Plata Project and the Dolores Project as part of the settlement
- ❖ Satisfied the congressional cost-sharing requirement for the ALP Project
- ❖ Created a Tribal Development Fund with both Federal and State monies
- ❖ Detailed provisions for the administration of tribal water rights





# 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

(Southern Ute)

- ❖ Many ditches constructed in late 1800s – early 1900s. BIA designation survey in the 1960's. BIA still operates the PRIIP
- ❖ Delivers irrigation water to SUIIT tribal members and non-Indians, including the Town Of Ignacio, CO

# Pine River Indian Irrigation Project

(Continued...)

- ❖ Project is in extreme disrepair
- ❖ Approximately 175 miles of canals with an estimated 15% that is in good condition
- ❖ No major BIA 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 high for the individual tribal members, so the Tribe assists with those costs

# Current PRIIP concerns

- ❖ 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
- ❖ There is approximately \$12 million in immediate needs for repairs
- ❖ Cost estimates for the entire PRIIP to be rehabilitated have ranged as high as \$12 million
- ❖ Neglect of roads used for operation and maintenance have made access to structures and sections of ditches impossible or unsafe



# Challenges to Development of Southern Ute Water Resources

- ❖ Funding for new projects; new infrastructure; aging infrastructure
- ❖ Checkerboard Jurisdiction limits where can build new housing, new infrastructure, etc.



# Dolores Project: Life Blood of the Tribal Water Rights

(Ute Mountain Ute)

- ❖ Authorized in 1968 for M&I, Irrigation, and Fish and Wildlife
- ❖ 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.
- ❖ The Tribe had to purchase hay to maintain a smaller Bow and Arrow cattle herd plus they had to purchase corn to keep their mill in reduced production
- ❖ 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
- ❖ Fortunately, 2023 provided a full supply, allowing the Farm & Ranch to increase production





# Mancos Farm Water Right

The Tribe has a reserved water right on the Mancos River

- This year they rehabilitated the diversion and ditch to deliver water to their Mancos Farm
- The reserved water right is subordinated, meaning it is a very junior right on the Mancos River
- Up stream, UMUT Environmental Department has taken on many stream restoration projects.

**The biggest challenge the Tribe faces with the Mancos Farm is the impacts of a junior water right on an over-appropriated river – which will likely keep this farm from achieving full production**



# San Juan River Water Right

The Tribe has a reserved water right on the San Juan River

- The right has yet to be developed
- The senior right is expected to be available even in extremely dry years
- The right will irrigate up to 640 acres, providing additional forage for the Bow & Arrow Cattel herd when the Dolores Project cannot deliver a full supply

**The biggest challenge the Tribe faces developing a San Juan River Farm is funding. They are in the process of applying for several grants to fund design and construction of the diversion, delivery system, and irrigation system.**



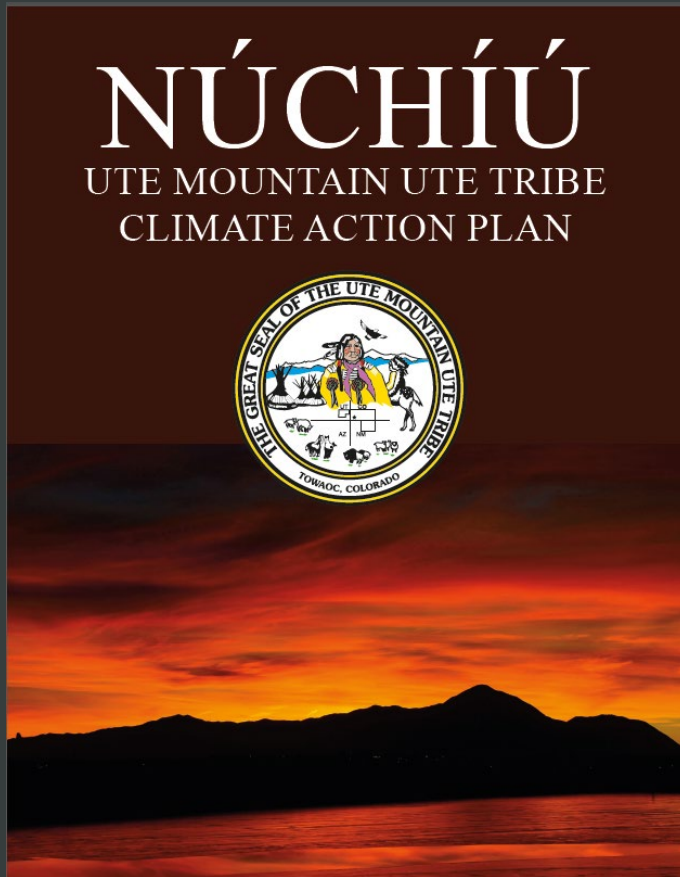
# Effects of the Drought



- ❖ Reduction in snow pack and runoff
- ❖ Less water for irrigation season
- ❖ Longer fire seasons







# UMUT is Adapting to Changing Climate

The Tribe's 2020 Climate Action Plan provides a roadmap for the next 20 years as part of the Tribe's contribution to address climate change – with specific goals for adapting to reduced water supply

*•“ The old people went by the weather. The climate has really changed. You expect heat in summer; winter is cold. That’s how I grew up. Winter was long back then. The snow no longer comes in October. Sometimes, we don’t have snow in December. It used to snow into April. A long time ago it used to rain a lot and we played in the mud. The frogs would come out of nowhere. We don’t see that rain anymore.”*

*•UMU Elder*